## ADMINISTRATIVE REGISTER OF KENTUCKY

### LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

### VOLUME 40, NUMBER 1
MONDAY, JULY 1, 2013

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 14, 2013.

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### MEETING NOTICE: ARRS
The *Administrative Regulation Review Subcommittee* is tentatively scheduled to meet July 9, 2013 at 10:00 a.m. in room 149 Capitol Annex. See [tentative agenda](#) on pages 1-2 of this Administrative Register.
The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2013 Edition of KENTUCKY ADMINISTRA-
TIVE REGULATIONS SERVICE.

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Department for Medicaid Services

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(Comments Received)
907 KAR 3:230 & E. Reimbursement policies and requirements for specialty intermediate care (IC) clinic services. ("E" expires 11/4/2013)
(Deferred from July)

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922 KAR 1:320 & E. Service appeals. ("E" expires 10/25/2013) (Comments Received; SOC Ext)
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922 KAR 2:100. Certification of family child-care homes. (Comments Received; SOC Ext)
922 KAR 2:110. Child-care center provider requirements. (Comments Received; SOC Ext)
922 KAR 2:120. Child-care center health and safety standards. (Deferred from June)
922 KAR 1:140 & E. Foster care and adoption permanency services. ("E" expires 9/24/2013) (Deferred from June)
922 KAR 2:160 & E. Child Care Assistance Program. ("E" expires 10/24/2013) (Comments Received; SOC Ext)
922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program. (Deferred from June)
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.
STATEMENT OF EMERGENCY
201 KAR 22:055E

This administrative emergency regulation establishes the interim standards for supervision for physical therapists until September 1, 2013. This emergency administrative regulation must be placed into effect immediately in order to protect human health by ensuring the public is protected through the appropriate standards for supervision for a physical therapist until permanent standards for supervision are effective starting September 1, 2013, in an ordinary administrative regulation already promulgated. This emergency administrative regulation is temporary in nature and shall not be replaced by an ordinary administrative regulation. An ordinary administrative regulation governing standards for supervision for physical therapists is already promulgated and effective September 1, 2013.

STEVE BESHEAR, Governor
SCOTT D. MAJORS, Executive Director

GENERAL GOVERNMENT CABINET
Kentucky Board of Physical Therapy
(New Emergency Administrative Regulation)

201 KAR 22:055E. Interim standards for supervision for physical therapists.

RELATES TO: KRS 327.040, 327.070
STATUTORY AUTHORITY: KRS 327.040(11), (12), (13)
EFFECTIVE: May 15, 2013
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 interim standards for supervision for physical therapists.

Section 1. Interim Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

1. Comply with 201 KAR 22:053 and this emergency administrative regulation;
2. Provide on-site supervision as defined by 201 KAR 22:001, Section 1(13), when supervising supportive personnel as defined by 201 KAR 22:001, Section 1(20), until August 31, 2013;
3. Provide direct supervision as defined by 201 KAR 22:001, Section 1(6), when supervising supportive personnel as defined by 201 KAR 22:001, Section 1(20), effective September 1, 2013;
4. Ensure if supportive personnel provide direct patient care there is on-site supervision as defined by 201 KAR 22:001, Section 1(13), until August 31, 2013, by a physical therapist or physical therapist assistant; and
5. Ensure if supportive personnel provide direct patient care there is direct supervision as defined by 201 KAR 22:001, Section 1(6), effective September 1, 2013, by a physical therapist or physical therapist assistant.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: April 23, 2013
FILED WITH LRC: May 15, 2013 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new emergency administrative regulation shall be held on July 31, 2013, at 1:15 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the new emergency 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 new emergency administrative regulation. Written comments shall be accepted until July 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the new emergency administrative regulation to the contact person.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the interim standards for supervision for physical therapists.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.040(11), (12) and (13) regarding the standards for supervision for physical therapists of physical therapist assistants and supportive personnel.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the standards for supervision for physical therapists when supervising physical therapist assistants and supportive personnel.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the standards for supervision for physical therapists when supervising physical therapist assistants and supportive personnel.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is not an amendment.
(b) The necessity of the amendment to this administrative regulation: This is not an amendment.
(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.
(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6,000 physical therapists, physical therapist assistants, and supportive personnel.

(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 identified in question (3) shall comply with the interim standards for supervision, which are identical to the standards for supervision that were in effect prior to December 11, 2012.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The long-term benefits of establishing interim standards for supervision, which are identical to the standards for supervision that were in effect prior to December 11, 2012, will far outweigh any short-term costs the entities identified in question (3) may incur. An ordinary regulation sets new standards for supervision effective September 1, 2013.
(e) As a result of compliance, what benefits will accrue to the entities identified in question (3): To help ensure they meet minimum standards for supervision for physical therapists to maintain proper oversight of other health care professionals.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be minimal, if any, costs to the board.
(b) On a continuing basis: There will be minimal, if any, costs to the board.
(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Agency
Revenue Fund.

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

(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: This
emergency administrative regulation does not change the fees
directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not used in this
administrative regulation because the emergency 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? Physical therapists
and physical therapist assistant examination applicants.

2. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative
regulation. KRS 327.040(11), (12), (13) and KRS 327.070

3. Estimate the effect of this administrative regulation on the
expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is to be in effect. No
effect

(a) How much revenue will this administrative regulation gen-
erate 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 gen-
erate 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 subse-
quent 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:

STATEMENT OF EMERGENCY
804 KAR 4:390E

This emergency administrative regulation amends an existing
administrative regulation to incorporate the new renewal schedule
for all alcoholic beverage licenses issues by the Department of
Alcoholic Beverage Control. This emergency administrative regula-
tion is necessary to implement the new schedule in a timely man-
ner once the new alcoholic beverage license types become law, in
accordance with the emergency clause enactment included in KRS
13A.190(1)(a)(3). This emergency administrative regulation will be
replaced by an ordinary administrative regulation. The ordinary
administrative regulation will be filed simultaneously with this
emergency administrative regulation. The ordinary administrative
regulation is identical to this emergency administrative regulation.

STEWEN L. BESHEAR, Governor
TONY DEHNER, Distilled Spirits Administrator
ROBERT D. VANCE, Secretary

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Emergency Amendment)

804 KAR 4:390E. License renewals.

RELATES TO: KRS 243.090(1)
STATUTORY AUTHORITY: KRS 241.060(1), 243.090(1)[EO.

2008-507]

EFFECTIVE: June 14, 2013
NECESSITY, FUNCTION, AND CONFORMITY: KRS
243.090(1) requires the Department of Alcoholic Beverage Control
to establish a year-round system for renewal of licenses. This ad-
ministrative regulation establishes the system for license renewal.

Section 1. All licenses in Ballard, Breckinridge, Bullitt, Butler,
Caldwell, Calloway, Carlisle, Christian, Crittenden, Cumberland,
Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock,
Hardin, Hart, Henderson, Hickman, Larue, Livingston, Lyon, Mar-
shall, McCracken, McLean, Meade, Metcalf, Monroe, Ohio, Owen,
Spencer, Trigg, Trimble, Union, and Webster Counties shall renew in
the month of January.

Section 2. All licenses in Adair, Allen, Barren, Bath, Bell, Boyle,
Breathitt, Casey, Clark, Clay, Clinton, Elliott, Estill, Fleming, Floyd,
Garrard, Harlan, Harrison, Hopkins, Jackson, Jessamine, Johnson,
Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, Logan,
Madison, Magoffin, Marion, Martin, McCracken, Menifee, Merc-
er, Montgomery, Morgan, Muhlenberg, Nelson, Owlsley, Perry,
Powell, Pulaski, Rockcastle, Russell, Simpson, Taylor, Todd, War-
ren, Washington, Wayne, and Whitley Counties shall renew in the
month of April.

Section 3. All licenses in Anderson, Bourbon, Boyd, Bracken,
Carroll, Carter, Franklin, Gallatin, Grant, Greenup, Henry, Lewis,
Mason, Nicholas, Oldham, Pendleton, Pike, Robertson, Rowan,
Scott, Shelby, Wolfe, and Woodford Counties shall renew in the
month of June.

Section 4. All licenses in Jefferson County shall renew in the
month of October.

Section 5. All licenses in Boone, Campbell, Fayette, and Ken-
ton Counties shall renew in the month of November.

Section 6. The license of a statewide or out-of-state licensee
shall renew in December.

Section 7. All batch renewals shall renew in August.

Section 8. Unless a licensee notifies the department of its in-
tent to renew premises licenses separately as provided in Sections
1 through 6 of this administrative regulation, a licensee that holds a
group license that covers multiple premises shall renew its licenses
at the same time.

Section 9. If a licensee that holds a group license that covers
multiple premises wants to renew the premise licenses separately,
the licensee shall notify the board, in writing, of its intent to renew
each premises separately. The licenses shall then be renewed
using the license expiration date based on the county of each pre-
mises, as provided in Sections 1 through 5 of this administrative
regulation.

Section 10. A licensee that holds more than one (1) license
shall not be required to send a letter requesting that its licenses be
renewed separately or in a batch unless the licensee wishes to
change its current renewal schedule from batch to separate or from
separate to batch (KRS 243.090(1)) requires the Office of Alcoholic
Beverage Control to establish a year-round system for renewal of
licenses, EO 2008-507, effective June 16, 2008, abolished the
Environmental and Public Protection Cabinet and established the
new Public Protection Cabinet and reorganized the Office of Alco-
hol Beverage Control as the Department of Alcohol Beverage Con-
trol. This administrative regulation establishes the system for li-
cense renewal.

Section 1. A licensee shall renew its license on or before the
expiration date of the license as established in the document titled
“ABC Table of License Expiration Dates by Zip Code”.

(1) Except as provided in subsections (2) and (3) of this sec-
tion, a licensee shall renew in the month listed under the column
titiled "Month License Expires" based on the zip code of the location for which the license was issued.

(2) The license of a statewide or out of state licensee shall expire in December.

(3) Unless the licensee notifies the department of its intent to renew premises separately as provided in subsection (4) of this section, a license that covers a group license that covers multiple premises shall renew its licenses at the same time as follows:
(a) If the licensee's name begins with a numeral or the letters A through L, the license shall expire in July; and
(b) If the licensee's name begins with the letters M through Z, the license shall expire in August.

(4) If a license that holds a group license that covers multiple premises wants to renew the premise licenses separately, the licensee shall notify the board, in writing, of its intent to renew each premises separately. The licenses shall then be renewed using the license expiration date based on the zip code of each premise, as provided in subsection (1) of this administrative regulation.

(5) A licensee that holds more than one license shall not be required to send a letter requesting that its licenses be renewed separately or in a batch unless the licensee wishes to change its current renewal schedule from batch to separate or from separate to batch.

Section 2. Incorporation by Reference. (1) "ABC Table of License Expiration Dates by Zip Code," 07/15/04 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

FREDERICK A. HIGDON, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
CONTACT PERSON: Trey Hiemenan, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hiemenan

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a year-round system for renewal of alcoholic licenses in all 120 counties.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to codify agency interpretation of KRS Chapters 241, 242, 243, and 244 to comply with KRS 243.090(1) which requires the board to promulgate reasonable administrative regulations establishing a year-round system for renewal of alcoholic licenses.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the board may promulgate reasonable administrative regulations. KRS 243.090(1) requires the board to establish a year-round system for renewal of alcoholic licenses.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides assistance to all licensees, local administrators and the state office in distributing the license renewal workload evenly throughout all 120 counties.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment will provide for renewals of licenses in all 120 counties so that if a dry territory votes to permit alcohol sales, a license renewal date will already exist.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment is necessary to implement the findings of the 2012 Governor's Task Force on the Study of Kentucky's Alcoholic Beverage Control Laws and establish a year-round system for renewal of licenses.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the ABC board to promulgate reasonable administrative regulations. KRS 243.090(1) requires the board to establish a year-round system for renewal of alcoholic licenses. This administrative regulation amendment establishes a year-round system for renewal of licenses.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will provide a year-round renewal system for alcohol licenses for all 120 counties.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all state alcoholic licenses issued by the Department of Alcoholic Beverage Control in the Commonwealth of Kentucky.
(4) Provide an analysis of how 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 alcoholic beverage license holders will have a renewal date for their respective licenses.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None.
(b) On a continuing basis: None.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing Trust and Agency account, KRS 243.025, already provides the necessary 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: No fees or assessments will be established or increased to implement this administrative regulation amendment.
(9) TIERING: Is tiering applied? The statutory requirements are applicable to all licensees and, accordingly, tiering does not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The Department of Alcoholic Beverage Control is the only state or local entity affected by this amendment.
2. Identify each state or federal statute or federal regulation that requires of authorizes the action taken by the administrative regulation: KRS 241.060 authorizes the ABC to promulgate reasonable administrative regulations.
3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A
(c) How much will it cost to administer this program for the first
This new emergency administrative regulation issues new equivalent licenses to all current licensees who are in good standing with the state, and whose current license is being repealed under 2013 SB 13. This emergency administrative regulation is necessary to ensure that all alcoholic beverage licensees are compliant with the law when the new alcoholic beverage license types become law, in accordance with the emergency clause enactment included in KRS 13A.190(1)(a)(3). This emergency administrative regulation will not be replaced by an ordinary administrative regulation. Once all licensees affected by this emergency administrative regulation have been issued equivalent licenses, this administrative regulation will be obsolete, and should expire.

STATEMENT OF EMERGENCY
804 KAR 4:430E

This new emergency administrative regulation issues new equivalent licenses to all current licensees who are in good standing with the state, and whose current license is being repealed under 2013 SB 13. This emergency administrative regulation is necessary to ensure that all alcoholic beverage licensees are compliant with the law when the new alcoholic beverage license types become law, in accordance with the emergency clause enactment included in KRS 13A.190(1)(a)(3). This emergency administrative regulation will not be replaced by an ordinary administrative regulation. Once all licensees affected by this emergency administrative regulation have been issued equivalent licenses, this administrative regulation will be obsolete, and should expire.

STATEMENT OF EMERGENCY
804 KAR 4:430E. Issuance of Licenses.

RELATES TO: KRS 241.060(1), 243.030(46), 243.040(18)
EFFECTIVE: June 24, 2013
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.030(46) and 243.040(18) authorizes the Alcoholic Beverage Control Board to issue any special licenses necessary for the proper regulation and control of traffic in alcoholic beverages. This administrative regulation authorizes the department to issue replacement licenses to effectuate changes in licenses.

Section 1. An individual or business entity holding a state alcoholic beverage license, in good standing pursuant to KRS Chapter 243, on June 24, 2013, and whose license is no longer issued after June 24, 2013 because of changes in the law, may be issued the applicable equivalent state license by the department at no additional cost to the licensee.

Section 2. An individual or business entity holding a county or city license in good standing pursuant to KRS Chapter 243, on June 24, 2013, and whose license is no longer issued because of changes in the law, may be issued the applicable equivalent county or city license by the county or city at no additional cost to the licensee.

FREDERICK A. HIGDON, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2013, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by July 19, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Trey Hieneman, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Trey Hieneman
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides current licensees who are in good standing a new license that is the equivalent license that will exist after SB 13 becomes law. These licenses are only issued to those licensees whose license has been affected by SB 13.
(b) The necessity of this administrative regulation: SB 13 repealed, combined and created new alcoholic beverage licenses in an effort to streamline the number of licenses. This regulation is necessary to ensure all current license holders who are in good standing will have the equivalent license after SB 13 becomes law.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.030(46) and 243.040(180) authorizes the Alcoholic Beverage Control Board to issue any special licenses necessary for the proper regulation and control of traffic in alcoholic beverages.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This regulation ensures all licensees who are in good standing will have the equivalent license that exists after SB 13 becomes law.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current licensees who are in good standing with the state will be affected by this regulation. All of these licensees will receive the new equivalent license at no cost to the licensee.
(4) Provide an analysis of how 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 licensees affected by this regulation will be issued the license at no charge to the licensee. Therefore, they will have to take no action.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No extra costs are anticipated to implement this new administrative regulation.
(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: Agency funds will be used to issue these new licenses at no cost to the
licensee.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering 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. All wet and moist territories will be impacted by the regulation.

2. Identify each state or federal statute or federal regulation that requires the action taken by the executive regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to alcoholic beverage licenses. KRS 243.030(46) and 243.040(18) authorizes the Alcoholic Beverage Control Board to issue any special licenses necessary for the proper regulation and control of traffic in alcoholic beverages. KRS 241.140, 241.190, and 241.250 allow county, city, and urban-county alcoholic beverage administrators to issue equivalent licenses.

3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. County, city, and urban-county alcoholic beverage administrators will be affected by issuing new equivalent licenses. The cost should be minimal.

There will be no effect on revenue.

(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? Minimal.

(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:

Revenue (+/-):
Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

900 KAR 10:020E

This emergency administrative regulation is being promulgated to establish the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156. This administrative regulation must be promulgated on an emergency basis: To meet the deadlines and requirements of 42 C.F.R. 155.105, which sets the standards for approval for Kentucky to operate a state-based Exchange. Pursuant to 42 U.S.C. Section 18031, which sets forth the federal requirements in establishing a state-based Exchange, Kentucky must implement a Small Business Health Options Program. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Exchange to timely implement the Small Business Health Options Program. The Small Business Health Options Program will be operated by the Exchange and will allow small employers to provide employees with access to Qualified Health Plans and for small employers to qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Kentucky Health Benefit Exchange
(New Emergency Administrative Regulation)

900 KAR 10:020E. Kentucky Health Benefit Exchange Small Business Health Options Program.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Parts 155, 156
STATUTORY AUTHORITY: KRS 194A.050(1)
EFFECTIVE: June 7, 2013
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of the Kentucky Health Benefit Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth, to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. 18031 and 45 C.F.R. parts 155 and 156.

Section 1. Definitions. (1) "Agent" is defined by KRS 304.9-020(1).

(2) "Annual open enrollment period" means the period each year during which a qualified employee may enroll or change coverage in a qualified health plan through an exchange.

(3) "Annual renewal date" means the date following twelve (12) months from the first day of the first coverage month and every twelve (12) months thereafter.

(4) "Children's Health Insurance Program" or "CHIP" is defined by 42 C.F.R. 457.10.

(5) "COBRA" means continuation of coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended.

(6) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(7) "Employer identification number" means a unique numerical identifier which is used to identify a business, partnership, or other entity.

(8) "Full-time employee" is defined by 45 C.F.R. 155.20.

(9) "Full-time equivalent employee" means the number of employees determined by using the method set forth in section 4980H(c)(2) of the Internal Revenue Code.

(10) "Group participation rate" means the number of eligible employees enrolled in a group health plan in relation to the number of employees eligible to enroll in the group health plan.

(11) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

(12) "Indian" means any individual as defined by 25 U.S.C. 450b(ird).

(13) "Initial open enrollment period" means the period during which a qualified employee may enroll in health coverage through an exchange for the 2014 benefit year which shall:

(a) Begin October 1, 2013; and

(b) Extend through March 31, 2014.

(14) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange conditionally approved by HHS under standards set forth in 45 C.F.R. 155.105 to offer qualified health plans on January 1, 2014.

(15) "Kentucky Health Insurance Premium Payment Program" or "KHIPPP" means a Kentucky Medicaid program that pays the costs of some or the entire employee portion of employer-
sponsored health insurance premiums.

16. "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. sections 1396 et seq. as amended.

17. "Medicare advantage plan" means a Medicare program under Part C of title XVIII of the Social Security Act, which provides Medicare Part A and B benefits through a private insurer.

18. "Metal level of coverage" means health care coverage provided within plus or minus two (2) percentage points of the full actuarial value as follows:
   (a) Bronze level with an actuarial value of sixty (60) percent;
   (b) Silver level with an actuarial value of seventy (70) percent;
   (c) Gold level with an actuarial value of eighty (80) percent; and
   (d) Platinum level with an actuarial value of ninety (90) percent.


20. "Participation agreement" means an agreement between the Office of the qualified employer participating in the KHBE Small Business Health Options Program.

21. "Plan year" means a consecutive twelve (12) month period during which a health plan provides coverage for health benefits.

22. "Premium" is defined by KRS 304.14-030.

23. "Qualified employee" means an individual employed full-time by a qualified employer who has been offered health insurance coverage through the SHOP.

24. "Qualified employer" means a small employer that elects to offer, at a minimum, all full-time employees of such employer eligible for one (1) or more QHPs in the small group market offered through a SHOP.

25. "Qualified Health Plan" or "QHP" means a health plan that has in effect a certification issued by the KHBE that it meets the standards described in 45 C.F.R. 156 subpart C.

26. "Qualifying event" means an event described in Section 9(1) of this administrative regulation.

27. "Reference plan" means the selection of a single plan on which an employer will base their contribution and employees are then able to elect other plans and pay the premium differential.

28. "Service area" means a geographical area in which an individual shall reside or be employed in order to enroll in a QHP.

29. "Shared responsibility payment" means a penalty imposed for failing to meet the requirement to maintain minimum essential coverage in accordance with 26 U.S.C. 5000A.

30. "SHOP" means a Small Business Health Options Program operated by an exchange through which a qualified employer can provide employees, spouses, and their dependents with access to one (1) or more QHPs.

31. "Small employer" or "small group" means for a plan year:
   (a) Before January 1, 2016, an employer who employed an average of at least two (2) but no more than fifty (50) full-time employees on business days during the preceding calendar year; or
   (b) On or after January 1, 2016, an employer who employed an average of at least one (1) but no more than 100 full-time equivalent employees on business days during the preceding calendar year and who employs at least one (1) employee on the first day of the plan year.

32. "Special enrollment period" means a period during which a qualified employee who experiences certain qualifying events may enroll in, or change enrollment, in a QHP through the KHBE outside the initial and annual open enrollment periods.

33. "TRICARE" means the Department of Defense health care program administered serving active uniformed service members, retirees, and their families.

Section 2. Employer Eligibility and Participation Requirements.

1. Beginning October 1, 2013, a small employer shall be eligible to purchase health insurance coverage for its small group through the KHBE SHOP if the employer has:
   (a) Elects to offer, at a minimum, a full-time employee coverage in a QHP through the KHBE SHOP; and
   (b) Has its principal business address in the service area and offers coverage to its full-time employees through the KHBE SHOP; or

2. Offers coverage to each eligible employee through the KHBE SHOP serving that employee’s primary work site;

3. Has a valid federal employer identification number; and

4. Has a group participation rate of at least seventy five (75) percent in accordance with subsection (6) of this section.

5. A small employer participating in more than one (1) SHOP and meeting the criteria in subsection (1) of this section shall offer coverage to its employees whose primary work site is in the service area of the KHBE SHOP.

6. A calculation of a group participation rate shall not include in the count of eligible employees an employer:
   (a) Enrolled in:
      1. A group health plan offered by a second employer;
      2. A group health plan offer through the spouse of the employee;
      3. An individual health plan;
      4. Medicare, including a Medicare advantage plan;
      5. Medicaid or CHIP;
      6. TRICARE or other veteran’s health coverage;
      7. A parent’s health plan;
      8. Coverage identified in 45 C.F.R. 156.602; or
      9. Coverage recognized by HHS as meeting the requirement for minimum essential coverage under 45 C.F.R. 156.604;
   (b) Issued a certificate of exemption from the shared responsibility payment by KHBE or HHS; or
   (c) Not residing in the service area of at least one (1) QHP offered by the employer.

7. If a small employer’s group participation rate falls below the requirement in subsection (1)(d) of this section during a plan year, the qualified small employer shall be eligible to participate in the KHBE SHOP through the remainder of the plan year.

8. If the information submitted by a small employer is inconsistent with the eligibility standards in this section, the employer shall have thirty (30) days after a notification of the inconsistency to present documentation to support the employer’s application or resolve the inconsistency.

9. A qualified small employer participating in the KHBE SHOP shall:
   (a) Disseminate information to its qualified employees about the process to enroll in a QHP through the KHBE SHOP;
   (b) Make a contribution toward the premium of any qualified employee in accordance with Section 4 of this administrative regulation;
   (c) Remit to the KHBE, employer and employee contributions upon receipt of invoice from the KHBE;
   (d) Notify the KHBE of a change in eligibility status of an employee or dependent of an employee enrolled in a QHP within thirty (30) days of the event; and
   (e) Enter into a participation agreement with the KHBE.

10. A small employer may designate an agent to:
    (a) Perform an employer function on behalf of the employer; or
    (b) Assist an employee with enrollment and plan selection.

11. A small employer participating in a SHOP may be eligible...
for small employer health insurance tax credits in accordance with
26 U.S.C. 45R.

Section 3. Employer Selection of Qualified Health Plans. (1) A small employer shall make available to a qualified employee:
(a) A single QHP;
(b) All available QHPs at a single metal level of coverage; or
(c) If metal levels are contiguous, one (1) or more QHPs at
more than one (1) metal level of coverage.
(2) A qualified employer may apply for coverage through the
KHBE SHOP for its small group at any time in a year.
(3) The employer’s plan year shall consist of the twelve (12)-
month period beginning with the qualified employer’s effective date
of coverage.

Section 4. Minimum Contribution. (1) If a small employer se-
selects one (1) QHP to offer to a qualified employee in accordance
with Section 3 of this administrative regulation, the small employer
shall:
(a) Define a percentage contribution of at least fifty (50) per-
cent toward a premium for employee-only coverage under the
QHP; and
(b) Apply the employer contribution determined in paragraph
(a) of this subsection toward a QHP selected by the employee.
(2) If a small employer selects more than one (1) QHP to offer to
a qualified employee in accordance with Section 3 of this admin-
istrative regulation, the small employer shall:
(a) Select a QHP to serve as a reference plan on which a con-
tribution shall be based;
(b) Make a percentage contribution of at least fifty (50) percent
toward a premium for employee-only coverage under the reference
plan; and
(c) Apply the employer contribution determined in paragraph
(b) of this subsection toward a QHP selected by the employee.
(3) If a small employer elects to provide dependent coverage,
the small employer may make a contribution toward a premium for
dependent coverage.

Section 5. Annual Employer Election Period. (1) On an annual
basis a small employer shall have a thirty (30) day period prior to
the completion of the employer’s plan year and before the annual
open enrollment to change the employer’s participation in the
KHBE SHOP for the next plan year.
(2) During the employer annual election period, a small em-
ployer may change the:
(a) Method by which the qualified employer makes QHPs
available to qualified employees in accordance with Section 3 of
this administrative regulation;
(b) Employer contribution towards the premium of a qualified
employee made in accordance with Section 4 of this administrative
regulation; and
(c) QHP or QHPs offered to qualified employees in accordance
with Section 3 of this administrative regulation.

Section 6. Employee Eligibility. (1) An employee shall be eligi-
ble to enroll in a QHP through the KHBE SHOP if the employee
receives an offer of coverage from a qualified employer.
(2) An employee shall submit an application to enroll in a QHP:
(a) Via the internet at www.kynect.ky.gov;
(b) By telephone by calling the KHBE customer service center;
(c) By mail; or
(d) In person.
(3) If the information submitted by an employee is inconsistent
with the eligibility standards in this section, the employee shall
have thirty (30) days after a notification of the inconsistency to
present documentation to support the employee’s application or
resolve the inconsistency.
(4) A qualified employee may designate an individual or organ-
zation as an authorized representative.
(5) An eligible employee who does not want to enroll in a QHP
offered by a qualified employer shall waive coverage.
(6) A small employer shall be notified if a qualified employee
enrolled in a QHP terminates coverage in the QHP.

Section 7. Enrollment and Effective Dates of Coverage. (1) A
qualified employee shall select a QHP or change a QHP offered by
a qualified employer in accordance with Section 3 of this admin-
istrative regulation during:
(a) The initial open enrollment period;
(b) An annual open enrollment period as set forth in Section 8
of this administrative regulation;
(c) A special enrollment period set forth in Section 9 of this
administrative regulation; or
(d) An enrollment period outside of the employer’s annual
enrollment period set forth in Section 8(3) of this administrative
regulation, only for a qualified employee who is newly eligible.
(2) The length of an initial open enrollment period and annual
open enrollment period shall be:
(a) Thirty (30) days; and
(b) At the request of a small employer, extended up to a maxi-
mum of fifteen (15) additional days.
(3) Coverage in a QHP shall be effective:
(a) If plan selection is made prior to December 15, 2013, dur-
ing the initial open enrollment period, January 1, 2014;
(b) If open enrollment ends between the first and 15th day of
any month, the first day of the following month;
(c) If open enrollment ends between the 16th and the last day
of any month, the first day of the second following month; and
(d) Upon receipt of the full first month’s premium from a small
employer.
(4) For a renewal, the effective date of coverage shall be an
employer’s annual renewal date.
(5) For a special enrollment period, the effective date of cov-
verage shall be in accordance with Section 9(5) and (6) of this admin-
istrative regulation.
(6)(a) Except for the death of an employee or dependent of an
employee, the effective date for cancellation of coverage shall be the
last day of the month during which an issuer terminates an
employee’s or dependent of an employee’s coverage.
(b) The effective date for cancellation of coverage for the death
of an employee or dependent of an employee shall be the date of
death.
(7) Unless an employee changes coverage due to a qualifying
event, a premium shall not change until the employer’s annual
renewal date.

Section 8. Annual Open Enrollment Period. (1) A qualified
employee shall select a QHP or change QHPs during an annual
open enrollment period that shall be:
(a) No less than thirty (30) days; and
(b) Prior to the end of the employee’s plan year.
(2) If a qualified employer enrolled in a QHP remains eligible
coverage, the qualified employee shall remain enrolled in the
QHP selected the previous year unless:
(a) The qualified employee enrolls in another QHP; or
(b) The QHP is no longer available to the qualified employee.
(3)(a) A newly added employee who becomes eligible after the
beginning of the plan year and prior to the annual enrollment pe-
riod shall have thirty (30) days prior to the date the newly added
employee becomes eligible for employer-sponsored coverage to
enroll in a QHP.
(b) The effective date of coverage of a newly added employee
is the first day of the month following the month the newly added
employee becomes eligible for employer-sponsored coverage.

Section 9. Special Enrollment Period. (1) A qualified employee
or dependent of a qualified employee may enroll in a QHP or a
qualified employee may change QHPs during a special enrollment
period if:
(a) The qualified employee or dependent of a qualified em-
ployee loses minimal essential coverage;
(b) The qualified employee gains a dependent through mar-
rriage, birth, adoption, or placement for adoption;
(c) The qualified employee or dependent of the qualified em-
ployee enrolls or fails to enroll in a QHP due to an error, misrepre-
sentation, or inaction of an officer, employee, or agent of the KHBE
or HHS;
(d) The qualified employee or dependent of the qualified em-

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Employee demonstrates to the KHBE that the QHP in which the qualified employee or dependent of the qualified employee is enrolled substantially violated a material provision of its contract in relation to the enrollee.

(e) The qualified employee or dependent of the qualified employee gains access to new QHPs as a result of a permanent move.

(f) The qualified employee or dependent of the qualified employee demonstrates that the qualified employee or dependent of an employee meets other exceptional circumstances.

(g) The qualified employee is an Indian who may change from one (1) QHP to another QHP one (1) time per month.

(h) The qualified employee or dependent of the qualified employee loses eligibility for coverage under Medicaid or CHIP; or

(i) The qualified employee or dependent of a qualified employee becomes eligible for premium assistance through KHIPP.

(2) A qualified employee or dependent of a qualified employee has thirty (30) days from the date of a triggering event described in subsection (1) through (g) of this section to select a QHP through the KHBE SHOP.

(3) A qualified employee or dependent of a qualified employee has sixty (60) days from the date of a triggering event described in subsection (1)(h) and (i) of this section to select a QHP through the KHBE SHOP.

(4) A dependent of a qualified employee shall not be eligible for a special enrollment period if a small employer does not offer coverage to a dependent.

(5) Except as provided in subsection (6) of this section, the effective date of coverage for an enrollment during a special enrollment period if a qualified employee selects a QHP shall be:

(a) Between the first and the fifteenth day of any month, the first day of the following month; and

(b) Between the sixteenth and the last day of any month, the first day of the second following month.

(6)(a) In the case of birth, adoption, or placement for adoption, the effective date of coverage shall be the date of birth, adoption, or placement for adoption.

(b) In the case of marriage, or in the case where a qualified employee loses minimum essential coverage includes those circumstances described in subsection (7) and (8) of this section, the effective date of coverage shall be:

(1) The earliest effective date of termination shall be the last day of the calendar month following the calendar month in which notice is given.

(2) An employer may be terminated from participation in KHBE SHOP if the employer:

(a) Fails to meet the employer eligibility requirements established in Section 2 of this administrative regulation; or

(c) Commits fraud or misrepresentation.

(3) The effective date of employer termination from participation in the KHBE SHOP shall be:

(a) The date of notification of termination for non-payment of premiums, if the condition in subsection (2)(a) of this section is met,

(b) The last day of the plan year, if the condition in subsection (2)(b) of this section is met; or

(c) The last day of the calendar month following the month in which an employer shall be notified of the termination by the KHBE, if the condition in subsection (2)(c) of this section is met.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: June 1, 2013
FILED WITH LRC: June 7, 2013 at 9 a.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures relating to the operation of a Small Business Health Options Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that small businesses are aware of the small business health options program which will allow them to enroll employees in qualified health plans offered on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156 and qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for the small business health options program and how small businesses may enroll employees in qualified plans to be offered on the Kentucky Health Benefit Exchange to comply with the statute and qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 2,500 small businesses that may purchase health insurance for their employees on the Kentucky Health Benefit Exchange and potentially qualify for small employer health insurance tax credits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be able to submit an application online to purchase health insurance coverage for their employees through the Exchange, provide supporting documentation, and contribute at least fifty (50) percent of the premium towards an employee coverage.

(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 the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each small business as it may ease the administrative burden of administering their health insurance program and may benefit certain employers through health insurance tax credits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105. An Exchange must establish a Small Business Health Options Program (SHOP). A SHOP is designed to assist qualified small employers in the state in enrolling their employees in qualified health plans in the state's small group market.

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. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of the Kentucky Health Benefit Exchange 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.050(1), 42 U.S.C. § 18031, and 45 C.F.R. Parts 155 and 156.

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.

(b) How 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.

(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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156.

3. Minimum or uniform standards contained in the federal
GENERAL GOVERNMENT CABINET

Board of Nursing

(As Amended at ARRS, June 11, 2013)


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)" or "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 the Practice of Midwifery;
(5) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;
(6) Pediatric Nursing: Scope and Standards of Practice;
(7) Standards of Practice for Nurse Practitioners;
(8) Scope of Practice for Nurse Practitioners;
(9) Scope and Standards of Practice for the Acute Care Nurse Practitioner;
(10) Neonatal Nursing: Scope and Standards of Practice;
(11) Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice; and
(12) 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 include 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 pursuant to prescribing a controlled substance other than a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.

(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) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance.

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, or the hospital, long-term-care facility, or licensed provider KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query into the patient's or resi-
dent's medical records during the duration of the patient's stay at the facility;
2. As part of the patient's hospice or end-of-life treatment;
3. For the treatment of pain associated with cancer or with the treatment of cancer;
4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;
5. Within seven (7) days of an initial prescribing pursuant to[under] subsection (1) of this section if the prescribing:
   a. Is done as a substitute for the initial prescribing;
   b. Cancels any refills for the initial prescription; and
   c. Requires the patient to dispose of any remaining unconsumed medication;
6. Within ninety (90) days of an initial prescribing pursuant to[under] subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition;
7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;
8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;
9. Administering or prescribing controlled substances to prisoners in a state, county, or municipal correctional facility;
10. Prescribing a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or
11. That has been classified as a Schedule V controlled substance.
(a) Administering or prescribing a controlled substance of 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;
1. 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;
2. A patient who is a registered resident of a long term care facility as defined in KRS 216.510;
3. 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) Administering 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; or
(i) Schedule II controlled substances and Schedule III controlled substances with hydrocodone as established in KRS 218A.172);
(k) Prescribing of a Schedule V controlled substance.
An 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 available data on the patient;
(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.
(e) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.
(f) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:
   (a) Update the patient's medical history and document the information in the patient's medical record;
   (b) Modify the treatment plan as clinically appropriate; and
   (c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.
(g) 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.
(h) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall:
   (a) Deems a drug screen to be clinically appropriate; or
   (b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient;
(i) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section.
(j) If prescribing a controlled substance for a patient 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.
(k) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation as specified in subsection (2) of this section, the APRN shall:
   (a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;
   (b) Query KASPER for all available data on the patient;
   (c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;
   (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
Section 10. Prescribing Standards for Controlled Substances

(a) Any APRN prescribing or administering a controlled substance shall: (1) Review the plan of care at reasonable intervals based on the patient’s circumstances and course of treatment; (2) Provide the patient with any new information about the treatment; and (3) Modify or terminate the treatment as appropriate.

(b) If the course of treatment extends beyond three (3) months, the licensee shall:

1. Query KASPER no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and
2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.

(3)(4) For each patient for whom an APRN prescribes a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, the licensee shall keep accurate, readily accessible, and complete medical records, which include, as appropriate:

(a) Medical history and physical or mental health examination;
(b) Diagnostic, therapeutic, and laboratory results;
(c) Evaluations and consultations;
(d) Treatment objectives;
(e) Discussion of risk, benefits, and limitations of treatments;
(f) Treatments;
(g) Medications, including date, type, dosage, and quantity prescribed;
(h) Instructions and agreements; and
(i) Periodic reviews of the patient’s file.

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

(b) “Nursing: Scope and Standards of Practice”, 2010 Edition, American Nurses’ Association; 
(e) “Standards for the Practice of Midwifery”, 2011 Edition, American College of Nurse-midwives; 
(g) “Pediatric Nursing: Scope and Standards of Practice”, 2008 Edition, National Association of Pediatric Nurse Practitioners; 
(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.

SALLY BAXTER, President
APPROVED BY AGENCY: April 11, 2013
FILED WITH LRC: April 12, 2013 at 4 p.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, June 11, 2013)
201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 214.615, 314.041, 314.051(3), (6), 314.470
STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a practical nurse to pass an examination prescribed by the board. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of the Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:
(a) Submit:
1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);
2. The licensure application fee as established in 201 KAR 20:240;
3. A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;
4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
5. A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
6. A letter of explanation that addresses each conviction, if applicable;
7. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction; and
8. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications [as approved by the board].
(b) Notify the board as soon as a new address is established after submitting the application;
(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;
(d) While [Under] taking the examination, abide by and cooperate with security procedures adopted by the board;
(e) Apply to take and pass the National Council Licensure Examination; and
(f) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615.
(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination or until the provisional license expires, whichever comes first.
(3) The name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates as established in 201 KAR 20:260, the Certified List of Out-of-State Program of Nursing Graduates, or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. The Certified List of Out-of-State Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.
(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.
(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to [under] subsection (1)(a)3 of this section and any conviction is addressed by the board.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.
(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:
(1) The candidate;
(2) Other state boards of nursing;
(3) The National Council of State Boards of Nursing, Inc.;
(4) The candidate's program of nursing; and
(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.
(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.
(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4) are met.
(3) To qualify as "direct supervision" pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant holds a provisional license.
(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice as a nurse in Kentucky.
(5) Upon notification to the board that the applicant has failed the NCLEX examination, the provisional license shall be voided.

Section 5. Practical Nurse Role Delineation Course. (1) A graduate of a board-approved registered nurse program who is unsuccessful on the National Council Licensure Examination for registered nurses may apply for licensure by examination as a licensed practical nurse pursuant to KRS 314.041(13).
(2)(a) Prior to applying for licensure as a practical nurse, the applicant seeking practical nurse licensure pursuant to KRS 314.041(13) shall complete a board-approved practical nursing role delineation course in accordance with this section.
(b) The applicant shall return the registered nurse provisional license, if applicable.
(3)(a) The course shall be taken only at an approved LPN program of nursing.
(b) The program of nursing shall seek approval of the course from the board.
(4) The course shall consist of at least eight (8) hours of didactic instruction and sixteen (16) hours of clinical instruction.
(5) At the conclusion of the course, the individual shall be able to make decisions and take actions that are consistent with the scope and standards of practical nursing practice, established policies, procedures, and licensing laws.
(6) The LPN program of nursing shall submit to the board a certified list of individuals who completed the course.

(7) After completion of the practical nurse role delineation course, the applicant shall comply with Section 1 of this administrative regulation.

Section 6. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant’s state of residence.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “Certified List of Kentucky Program of Nursing Graduates”, 6/10, Kentucky Board of Nursing; and


(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.

SALLY BAXTER, President
APPROVED BY AGENCY: April 11, 2013
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CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 11, 2013)

301 KAR 1:122. Importation, possession, and prohibited aquatic species; [live fish].

RELATES TO: KRS[150.025, 150.175, 150.180, 150.190] STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.280(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems. Authorizes the department to promulgate administrative regulations regarding the taking of wildlife to carry out the purposes of KRS Chapter 150, including the protection and conservation of wildlife. This administrative regulation establishes the species of aquatic life which are prohibited in the Commonwealth.

Section 1. A person shall not buy, sell, possess, import, or release any aquatic species not native or established in Kentucky waters, except as specified in Sections 2, 4, or 5 of this administrative regulation. [A live fish, live minnow or live bait organisms, including a reproductive part thereof, not native or established in Kentucky waters shall not be bought, sold, possessed, imported, used or released into the waters of this Commonwealth, except as specified in Sections 2 and 4 of this administrative regulation.]

Section 2. Exceptions. (1) A person may buy, sell, import, or possess aquarium species, except those specified in Section 3 of this administrative regulation, but shall not release the species into Kentucky waters. [Aquarium species, except those specified in Section 3 of this administrative regulation may be imported, sold, or possessed in aquaria, but shall not be released directly or indirectly into the waters of this Commonwealth.]

(2) A person may buy, sell, import, or possess sterile, triploid grass carp (Ctenopharyngodon idella), but shall comply with the requirements of 301 KAR 1:17(1). [Triploid (sterile) grass carp (Ctenopharyngodon idella) may be imported, sold, or possessed provided the proper permit is obtained as provided in 301 KAR 1:17(1).]

(3) A fertile, diploid grass carp may only be imported or possessed by a certified propagator for the exclusive purpose of producing triploid grass carp. Triploid (fertile) grass carp may be imported and possessed only by certified propagators for the exclusive purpose of producing triploid grass carp.

(4) Other nonnative fishes may be imported, possessed, and sold with the approval of the Division of Fisheries.

Section 3. The following live aquatic organisms shall not be imported, bought [organism shall not be imported], sold, or possessed in aquaria:

(1) Subfamily Serrasalminae - piranha, piraya, pirae, or tiger characins.

(2) Astyanax mexicanus - Mexican banded tetra, Mexican minnow or Mexican tetra.

(3) Petromyzon marinus - sea lamprey.

(4) Genus Clarias - walking catfish.

(5) Genus Channa - snakeheads of Asia and Africa.

(6) Dreissena polymorpha - zebra mussel.

Section 4. Asian carp. (1) A person shall not buy, sell, import, transport, or release the following live Asian carp species:

(a) Hypophthalmichthys molitrix – silver carp;

(b) Hypophthalmichthys nobilis – bighead carp;

(c) Mylopharyngodon piceus – black carp; or

(d) Ctenopharyngodon idella – grass carp, except as established in Section 2(2) and (3) of this administrative regulation.

(2) A licensed commercial fisherman shall be permitted to possess, sell, and transport the species of Asian carp listed in Section 4(1) of this administrative regulation if the Asian carp are:

(a) Not being transported in water;

(b) Moribund; and

(c) Being transported to a fish processing facility.

Section 5. Commissioner Approval. The commissioner may permit the importation of a banned aquatic species if the applicant demonstrates that the species shall be used for legitimate scientific or educational purposes.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: March 8, 2013
FILED WITH LRC: April 10, 2013 at 4 p.m.
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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended at ARRS, June 11, 2013)


STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the Kentucky Board of Housing, Buildings, and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code’s general provisions.

Section 1. Definitions. (1) “Board of Housing” or “board” means the Kentucky Board of Housing, Buildings, and Construction.

(2) “Building” is defined by KRS 198B.010(4).

(2)(a) Except as provided in paragraph (b) and (c) of this subsection and as superseded by the provisions of this administrative regulation and the 2013[2012][2007] Kentucky Building Code, the 2012 International Building Code[2006], shall be the state building code for Kentucky for all buildings constructed in Kentucky.

(b) One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 6:001.

(c) Manufactured homes shall be governed by KRS 227.550 through 227.665.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department.

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional thirty (30) percent of the basic plan review or inspection fee.

(b) The additional thirty (30) percent fee shall not be less than $400 and not more than $3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The department's inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Department [Office] Fee Schedule.

The basic plan review or inspection fee shall be:

(a) Assembly occupancies, fourteen (14) cents;

(b) Business occupancies, thirteen (13) cents;

(c) Day care centers, thirteen (13) cents;

(d) Educational occupancies, thirteen (13) cents;

(e) High hazard occupancies, twelve (12) cents;

(f) Industrial factories, twelve (12) cents;

(g) Institutional occupancies, fourteen (14) cents;

(h) Mercantile occupancies, thirteen (13) cents;

(i) Residential occupancies, thirteen (13) cents;

(j) Storage, eleven (11) cents; or

(k) Utility and miscellaneous, eleven (11) cents.

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.

(b) The minimum fee for review of plans pursuant to [under] this subsection shall be $250.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to [under] the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans pursuant to [under] this subsection shall be $250.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0025; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans pursuant to [under] this subsection shall be $250.

(7) Specialized fees. In addition to the fees established by [listed in] subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule.

1. An inspection of four (4) through twenty-five (25) sprinklers shall be a fee of $150;-

2. An inspection of twenty-six (26) through 100 sprinklers shall be a fee of $200;-

3. An inspection of 101 through 200 sprinklers shall be a fee of $250;-

4. An inspection of 201 through 300 sprinklers shall be a fee of $275;-

5. An inspection of 301 through 400 sprinklers shall be a fee of $325;-

6. An inspection of 401 through 750 sprinklers shall be a fee of $375;-

7. An inspection of over 750 sprinklers shall be a fee of $375 plus thirty (30) cents per sprinkler over 750.

(b) Fire detection system review fee:

1. Zero through 1,000 square feet shall be $275; and

2. Over 20,000 square feet shall be $275 plus thirty (30) dollars
for each additional 10,000 square feet in excess of 20,000 square feet.

(c) The standpipe plan review fee shall be $275. The combination stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule.

(d) Carbon dioxide suppression system review fee:
1. One (1) through 200 pounds of agent shall be $275; and
2. Over 200 pounds of agent shall be $275 plus five (5) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:
1. Up to thirty-five (35) pounds of agent shall be $275; and
2. Over thirty-five (35) pounds shall be $275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and
3. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than $150.

(f) Foam suppression system review fee.
1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.
2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.
3. The fee for review of plans pursuant to subparagraph 1 of this paragraph shall not be less than $275 or more than $1,500.

(g) The commercial range hood review fee shall be $225 per hood.

(h) Dry chemical systems review fee (except range hoods). The fee for review of:
1. One (1) through thirty (30) pounds of agent shall be $275; and
2. Over thirty (30) pounds of agent shall be $275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be $100 for the first tank, plus fifty (50) dollars for each additional tank and $100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection, or associated components.

(j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 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: December 12, 2012
FILED WITH LRC: December 13, 2012, at 2 p.m.
CONTACT PERSON: Michael Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-0385, Ext. 144, fax 502-573-1057.

VOLUME 40, NUMBER 1 – JULY 1, 2013

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Provider Operations
(As Amended at ARRS, June 11, 2013)


RELATES TO: KRS 205.520, 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or otherwise presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the policies and requirements regarding Medicaid program supplemental payments for certain primary care services and vaccines in accordance with Title V, Subtitle F, Section 5501 of the Affordable Care Act (42 U.S.C. 1395l and 42 U.S.C. 1395w-4(c)(2)(B)), 42 C.F.R. 447.405, 42 C.F.R. 447.410, and 42 C.F.R. 447.415.

Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners [physicians] and published annually by the American Medical Association in Current Procedural Terminology.

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

(4) "Eligible evaluation and management service" means a service: (a) Which qualifies for supplemental reimbursement in accordance with Section 3(1)(a), (b), and (c)(1) of this administrative regulation; and
(b) For which there is a corresponding paid claim.

(5) "Eligible provider" means a provider who qualifies for supplemental reimbursement in accordance with Section 2 of this administrative regulation.

(6) "Eligible vaccine" means a vaccine: (a) Which qualifies for supplemental reimbursement in accordance with Section 3(1)(a), (b), and (c)(2) of this administrative regulation; and
(b) For which there is a corresponding paid claim.

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

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

(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10) "Medicaid program" means Kentucky's program of services and benefits covered by the Department for Medicaid Services or managed care organizations.

(11) "Personal supervision" means being professionally responsible for the services rendered by an advanced practice registered nurse or a physician assistant.

(12) "Physician" is defined by KRS 311.550(12).
(13) "Physician assistant" is defined by KRS 311.840(3).
(14) "Provider" is defined by KRS 205.8451(7).
(15) "Recipient" is defined in KRS 205.8451(9).

Section 2. Conditions to Qualify for Supplemental Reimbursement for Primary Care Services and Vaccines. (1) To qualify for a supplemental payment, a provider shall:
(a) Be currently enrolled with the Medicaid program in accordance with 907 KAR 1:672;
(b) Be currently participating in the Medicaid program in ac-
Section 3. Supplemental Reimbursement for Primary Care Services and Vaccines. (1) Supplemental reimbursement shall be made, as established in subsections (2) and (3) of this section, for providing a service or vaccine:

(a) [Provided] On a day on or after January 1, 2013 until midnight December 31, 2014:
   1. To a recipient; and
   2. By a:
      a. Provider who qualifies for the supplemental reimbursement pursuant to Section 2 of this administrative regulation; or
      b. An APRN or a physician assistant working under the personal supervision of a qualifying primary care physician shall qualify for the supplemental reimbursement.

(b) That is medically necessary for the given recipient; and

(c) That is:
   1. An evaluation and management service which:
      a. Corresponds to a CPT code within the range of 99201 through 99499; and
      b. Is currently covered by the department in accordance with 907 KAR 3:010; or
   2. Billed using a vaccine code which is covered by the department in accordance with 907 KAR 1:680 (regardless of the age of the recipient) or 907 KAR 3:010.

(2)(a) For a given quarter of paid claims associated with eligible evaluation and management services provided by an eligible provider to recipients who were not enrolled in a managed care organization and for which:

   a. The DMS established rates as of July 1, 2009, the department shall make a lump sum payment that represents the difference between:
      a. The DMS established rates as of December 31, 2012 for the claims in aggregate for the quarter; and
      b. What the provider would have received for the same paid claims in aggregate for the quarter if the provider’s reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(a); or
   2. DMS did not have an established rate as of July 1, 2009, but established a rate prior to January 1, 2013, the department shall make a lump sum payment that represents the difference between:
      a. The DMS established rates as of December 31, 2012 for the claims in aggregate for the quarter; and
      b. What the provider would have received for the same paid claims in aggregate for the quarter if the provider’s reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(a).

(b) For a given quarter of paid claims associated with eligible vaccines provided by an eligible provider to recipients who were not enrolled in a managed care organization and for which:

1. DMS had an established rate as of July 1, 2009, the department shall make a lump sum payment that represents the difference between:
   a. The DMS established rates as of December 31, 2012 for the claims in aggregate for the quarter; and
   b. What the provider would have received for the same paid claims in aggregate for the quarter if the provider’s reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(b); or
2. DMS did not have an established rate as of July 1, 2009, but established a rate prior to January 1, 2013, the department shall make a lump sum payment that represents the difference between:
   a. The DMS established rates as of December 31, 2012 for the claims in aggregate for the quarter; and
   b. What the provider would have received for the same paid claims in aggregate for the quarter if the provider’s reimbursement for the claims had been the amount established in 42 C.F.R. 447.405(b).

(3)(a) For a given quarter of paid claims associated with eligible evaluation and management services provided by all eligible providers to recipients who were enrolled in a given managed care organization, the:

1. Department shall send funds to the managed care organization representing the aggregate supplemental reimbursement amount for the paid claims; and
2. Managed care organization shall:
   a. Within fifteen (15) business days of receiving the funds referenced in subparagraph 1. of this paragraph, supplement reimbursement to each eligible provider in an amount determined using the methodology described in subsection (2)(a) of this section; and
   b. Submit documentation to the department demonstrating that the supplemental reimbursement referenced in subparagraph 1. of this paragraph was made to all eligible providers for the corresponding quarter.
   (b) For a given quarter of paid claims associated with eligible vaccines provided by all eligible providers to recipients who were enrolled in a given managed care organization, the:

1. Department shall send funds to the managed care organization representing the aggregate supplemental reimbursement amount for the paid claims; and
2. Managed care organization shall:
   a. Within fifteen (15) business days of receiving the funds referenced in subparagraph 1. of this paragraph, supplement reimbursement to each eligible provider in an amount determined using the methodology described in subsection (2)(b) of this section; and
   b. Submit documentation to the department demonstrating that the supplemental reimbursement referenced in subparagraph 1. of this paragraph was made to all eligible providers for the corresponding quarter.


(2) Any policy or requirement regarding payments for physician or primary care services or vaccines established in any other ad-
ministrative regulation within Title 907 of the Kentucky Administrative Regulations shall not apply to the supplemental payments referenced in subsection (1) of this section.

Section 5. Auditing. (1) A provider shall be subject to departmental review or audit.

(2) The department shall be authorized to take action regarding fraud or abuse in accordance with:

(a) 907 KAR 1:671; or
(b) KRS 205.8453.

Section 6. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

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

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: April 2, 2013
FILED WITH LRC: April 3, 2013 at 2 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 Community Based Services
Division of Family Support
(As Amended at ARRS, June 11, 2013)

921 KAR 3:090. Simplified assistance for the elderly program or “SAFE”.


STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program, a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions. (1) “Regular SNAP benefits” means SNAP benefits received in accordance with the procedures specified in:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Identify SSI participants who are potentially eligible for SAFE; and
(b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.

(2) A SAFE application shall be considered filed if the SF-1 is:

(a) Signed; and
(b) Received at the Department for Community Based Services, Division of Family Support.

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

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

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

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

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

(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

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

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

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

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

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

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member’s:
   (a) Name;
   (b) Date of birth; or
   (c) Address.

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

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", [edition] 04/13[07/11]; and
   (b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", [edition] 04/13[07/11].

(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: March 19, 2013
FILED WITH LRC: March 28, 2013 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.
GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

201 KAR 20:400. Delegation of nursing tasks.

RELATES TO: KRS 314.011, 314.011, 314.021(2), 314.091(1)

STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314. KRS 314.091(1)(d) prohibits a person from negligently or willfully acting in a manner inconsistent with the practice of nursing. This administrative regulation establishes requirements that govern the delegation of a nursing task in a safe, effective manner so as to safeguard the health and welfare of the citizens of the Commonwealth.

Section 1. Definitions. (1) "Board" is defined in KRS 314.0111(1).
(2) "Client" means a patient, resident or consumer of nursing care.
(3) "Competence" means performing an act in a safe, effective manner.
(4) "Delegator" means a person to whom a nursing task is delegated.
(5) "Delegator" means the nurse delegating a nursing task to another person.
(6) "Delegator" means the nurse delegating a nursing task to another person.
(7) "Nurse" is defined in KRS 314.0113(3).
(8) "Nursing task" means an act included in the definition of registered nursing practice, advanced practice registered nursing, or licensed practical nursing pursuant to KRS 314.011(6), (8), or (10).
(9) "Paramedic" is defined in KRS 311.010.
(10) "Supervision" means the provision of guidance by a qualified nurse for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed according to established standards of practice.

Section 2. Nurse's Responsibility in Delegation. (1) A registered nurse or a licensed practical nurse may delegate a nursing task to an unlicensed person in accordance with this section and Sections 3 and 4 of this administrative regulation.
(2) A registered nurse may delegate a nursing task to a paramedic employed in a hospital emergency department in accordance with KRS 311.010 and Sections 3 and 4 of this administrative regulation.
(3) Prior to delegating a nursing task, the nurse shall determine the nursing care needs of the client. The nurse shall retain responsibility and accountability for the nursing care of the client, including nursing assessment, planning, evaluation and assuring documentation.
(4) The nurse, prior to delegation to an unlicensed person, shall have either instructed the unlicensed person in the delegated task or determined that the unlicensed person is competent to perform the nursing task.
(5) A nursing task shall be delegated directly or indirectly. An indirect delegation shall not alter the responsibility of the nurse for appropriately assigning and supervising an unlicensed person.
(6) A nurse who delegates a nursing task in violation of this administrative regulation or participates in the utilization of an unlicensed person in violation of this administrative regulation shall be considered acting in a manner inconsistent with the practice of nursing.

Section 3. Criteria for Delegation. The delegation of a nursing task shall meet the following criteria:
(1) The delegated nursing task shall be a task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment and practice to delegate.
(2) The delegated nursing task shall be a task that, in the opinion of the delegating nurse, can be competently and safely performed by the delegatee without compromising the client's welfare.
(3) The nursing task shall not require the delegator to exercise independent nursing judgment or intervention.
(4) The delegator shall be responsible for assuring that the delegated task is performed in a competent manner by the delegatee.

Section 4. Supervision. (1) The nurse shall provide supervision of a delegated nursing task.
(2) The degree of supervision required shall be determined by the delegator after an evaluation of appropriate factors involved including the following:
(a) The stability and acuity of the client's condition;
(b) The training and competency of the delegatee;
(c) The complexity of the nursing task being delegated; and
(d) The proximity and availability of the delegator to the delegatee when the nursing task is performed.

Section 5. Nursing Tasks That Shall Not Be Delegated. The following nursing tasks shall not be delegated to an unlicensed person:
(1) The conversion or calculation of a drug dosage;
(2) The administration of medication via a tube inserted in any body cavity except for:
(a) The administration of a Fleet Bisacodyl or Fleet Phospho
Soda enema; and
(b) The administration of medication via a gastrostomy tube to a student in a school setting;
(3) The administration of antineoplastic drugs; and
(4) The administration of medication via any injectable route except as provided in Section 6 of this administrative regulation.

Section 6. Administration of Insulin or Glucagon in a School Setting. (1) The administration of insulin or glucagon may be delegated in the school setting in accordance with the requirements of this section. The selection of the type of insulin and dosage levels shall not be delegated.
(2) The administration of insulin or glucagon shall not be delegated unless:
(a) The parent or guardian of the child has provided a copy of orders signed by a physician or advanced practice registered nurse (APRN) which specify the timing of insulin administration and pro-
vide detailed directions for determining the appropriate dosage of insulin based on blood glucose level, carbohydrate intake and other appropriate factors. These orders shall also provide informa-
tion on the timing and dosage for glucagon administration;
(b) The parent or guardian of the child consents in writing to the administration of insulin or glucagon by the delegatee;
(c) The delegation receives appropriate training as described in this section.
(3) The orders and authorization described in subsections (2)(a) and (2)(b) of this section shall be valid for not more than one (1) year. Updated orders and authorization shall be provided by the parent within one (1) year or at the beginning of the following school year.
(4) Insulin administration by the delegatee shall only occur when the delegatee has followed the orders and any instructions from the delegator.
(5) The delegatee may administer insulin through insulin injections, the use of an insulin pen, the use of an insulin pump, or by any other insulin delivery means used by the child.
(6) Non-routine, correction dosages of insulin may be given by the delegatee only after:
Following the orders and the instructions of the delegator;

and

(b) Consulting with the delegator, parent or guardian, and verifying and confirming the type and dosage of insulin being injected.

(7) The delegatee shall be trained by the delegator, another registered nurse, a physician, or a certified diabetes educator. The person conducting the training shall certify in writing that the delegatee has completed the training and has demonstrated competence in the tasks to be delegated. The delegatee shall receive follow-up training each year.

(b) The board shall develop a standardized initial training program which shall include didactic components and competency validation. The board shall also develop a standardized follow-up training program. A nurse who intends to delegate pursuant to this section shall utilize these training programs.

(8) The delegator may delegate to the delegatee the counting of carbohydrates or other tasks necessary for the determination of an insulin dose. These tasks shall be performed in accordance with the orders. The delegatee may consult the delegator prior to any administration of insulin if the delegatee believes a consult is needed.

(9) If the orders state that the child is capable of self-administration, the delegator may delegate to the delegatee the verification of insulin dosage via pump or injection.

(10) The delegator shall supervise the delegatee in the administration of insulin or glucagon in accordance with Section 4 of this administrative regulation. If the delegator determines that physical presence is not required, the delegatee shall be available by telephone or other electronic means to the delegatee to answer questions or provide instruction.

SALLY BAXTER, President
APPROVED BY AGENCY: February 15, 2013
FILED WITH LRC: June 14, 2013 at 9 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 standards for the delegation of nursing tasks to unlicensed assistive personnel by a nurse.
   (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 standards.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting 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: It sets out those tasks that cannot be delegated. It also provides for the delegation of the administration of insulin to students in a school.
   (b) The necessity of the amendment to this administrative regulation: For safe nursing practice, it is necessary to set out those tasks that are unsafe to delegate. It is also necessary to provide a procedure for the delegation of the administration of insulin in schools. While it would be preferable for insulin to be administered by a nurse, the Board recognizes that there is not a nurse in every school. There needs to be a process whereby the nurse responsible may delegate this activity to a school employee pursuant to KRS 156.502.
   (c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set standards.
   (d) How the amendment will assist in the effective administration of the statutes: By setting standards.

(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: School nurses, school systems, students with diabetes, and school employees, number unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The delegating nurse will have a process to allow a school employee to administer insulin to students in a school setting. The school employee will have to complete a training program developed by the Board. The school system will be responsible for providing the necessary personnel. The student with diabetes that cannot administer insulin himself or herself will have a safe way of obtaining it.
   (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 is unknown.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supervising nurse will have a process to delegate this activity when needed. The students will have a safe mechanism to obtain the administration of their insulin.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: There is no significant cost.
   (b) On a continuing basis: There is no additional cost.
   (c) 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 new 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? The 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? 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? Unknown.
   (d) How much will it cost to administer this program for subsequent years? Unknown.

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:
Section 1. Certification Requirements. (1) An applicant for initial certification as an AEMT shall complete an educational course that:
(a) Meets or exceeds the National Emergency Medical Services Educational Standards-Instructional Guidelines for an AEMT; and
(b) Meets all educational standards established in 202 KAR 7:601.
(2) An applicant for initial certification as an AEMT in Kentucky shall pass the examination required to obtain the National Registry of Emergency Medical Technicians certification for an AEMT.
(3) An applicant for initial certification as an AEMT shall provide proof that the applicant has:
(a) Completed a college degree; or
(b)1. Obtained a high school diploma; or
2. Successfully taken the General Educational Development (GED) test.
(4) An applicant for AEMT shall complete and submit a signed EMS Responder Application.
(5) An applicant for AEMT shall submit valid evidence of completion of the following courses:
(a) HIV/AIDS training required by KRS 311A.110; and
(b) Pediatric Abusive Head Trauma required by KRS 311A.127.
(6) An applicant for AEMT shall pay to KBEMS the fee established in 202 KAR 7:030 for certification as an AEMT.
(7) An applicant for AEMT shall submit to KBEMS an unexpired cardiopulmonary resuscitation (CPR) card or other current evidence of completion of a CPR course that:
(a) Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider course; and
(b) Includes a psychomotor examination component and a cognitive assessment.
(8) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check required shall be
(a) National in scope for an applicant not currently certified at any level in Kentucky;
(b) Statewide in scope for an applicant with current certification in Kentucky;
(c) Less than six (6) months old when the applicant submits to KBEMS all requirements for certification; and
(d) Provided by a vendor that has been contracted through KBEMS or an official federal entity.
(9) An applicant shall not directly submit a background check. The background check shall be submitted to the Kentucky Board of Emergency Medical Services by the company or federal entity that conducts the background check.
(10) An applicant shall have two (2) years from the completion date appearing on the course completion form for the applicant’s AEMT course to:
(a) Pass the National Registry exam for AEMT certification; and
(b) Fulfill all requirements for certification as an AEMT established in this section.

Section 2. Scope of Practice. (1) An AEMT shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model.
(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, KBEMS places within the scope of practice of a Kentucky AEMT the following procedures:
(a) Quantitative and qualitative capnography and capnometry;
(b) Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure (BIPAP/CPAP) devices;
(c) End tidal Carbon Dioxide (ETCO2) Detection;
(d) Acquisition of a non-interpretive twelve (12) lead electrocardiogram (EKG);
(e) Transmission of a non-interpretive twelve (12) lead electrocardiogram (EKG); and
(f) Establish and maintain adult intraosseous infusion.
(3) Eligibility to perform the supplemental procedures shall require an AEMT to complete education on and training for the skill performed. The supplemental curriculum required shall consist of:
(a) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device – Application of 12 lead electrocardiogram electrodes and monitor;
(b) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device – Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring;
(c) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices; and
(d) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult.
(4) An AEMT shall adhere to the protocols the employing service’s medical director submitted to KBEMS for approval. Deviation from the protocols shall only occur if:
(a) The AEMT’s medical director or designated on-line medical control orders otherwise;
(b) Compliance with approved protocols is not in the patient’s medical best interest; or
(c) The AEMT does not have the equipment or medication to adhere to the protocol.
(5) An AEMT shall document deviation from an approved protocol as part of the patient care report.
(6) If providing emergency medical services during a disaster or emergency that qualify as part of the Emergency Management Assistance Compact, pursuant to KRS 39A.050 or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.

Section 3. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.
(2) If an AEMT’s certification lapses or expires, the AEMT shall cease provision of emergency medical services.
(3) If the AEMT has chosen to maintain certification at the EMT level, the AEMT shall apply for renewal of EMT certification prior to the expiration date.
(4) An AEMT who has allowed all levels of certification to lapse or expire shall be required to reinstate certification pursuant to Section 7 of this administrative regulation.

Section 4. Renewal of Certification and Continuing Education Requirements. (1) To be eligible for renewal of certification, an AEMT shall submit to the board:
(a) A completed and signed EMS Responder Application; and
(b) The fee established in 202 KAR 7:030.
(2) The applicant shall maintain written evidence of:
(a) Current training in HIV/AIDS treatment and recognition required by Section 1(5)(a) of this administrative regulation; and
(b) Current training in Pediatric Abusive Head Trauma as required by KRS 311A.127.
(3) An applicant for renewal of certification as an AEMT shall maintain evidence of:
(a) Current certification by the National Registry of Emergency Medical Technician (NREMT); or
(b) Completion of the AEMT continuing education requirement of forty-eight (48) total instructional hours. The forty-eight (48) instructional hours shall be composed of twelve (12) elective hours in subject areas chosen by the AEMT and thirty-six (36) hours that include the following minimum contact hours for the following subject areas:
1. Twelve (12) hours in airway, breathing, and cardiology, with a minimum of one (1) hour in each topic;
2. Six (6) hours in medical emergencies, excluding cardiology;
3. Five (5) hours in trauma;
4. Six (6) hours in obstetrics;
5. Six (6) hours in pediatrics; and
6. One (1) hour in disaster management.
(c) The twelve (12) elective hours required for an AEMT to recertify shall not include more than four (4) hours in a single category in the list provided in paragraphs (b)1. through 6. of this subsection.
(4) To be used for renewal of certification, the AEMT’s continuing education hours shall be certified as valid by:
(a) The course’s instructor, medical director, training officer, coordinator, or provider that offered the hours; or
(b) The medical director, service director, training officer, or training officer of the AEMT’s ambulance service, first response agency, fire department, rescue squad, or other medical employer.
An applicant for AEMT shall not be eligible for renewal of certification if the applicant does not complete all hours required by the end of the AEMT’s certification period.
(5) An applicant’s certification that is based upon completion of continuing education hours that are subsequently proven untrue, inaccurate, or fraudulent through a board audit shall be invalid pursuant to KRS 311A.140(4) and 311A.050(2)(b).
(6) An applicant who is subject to pending administrative action pursuant to KRS 311A.050 through 311A.090 shall be eligible to renew certification unless the applicant:
(a) Is temporarily suspended pursuant to KRS 311A.075;
(b) Has failed to perform an action ordered by the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030;
(c) Is delinquent on fines or fees owed to the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030;
(7) A certified AEMT who is not undergoing disciplinary action and who is a member of a branch of the United States military or a National Guard or military reserve unit shall be eligible for an extension of the time limit to renew certification if the AEMT:
(a)1. Is called to federal active duty by presidential order pursuant to 10 U.S.C. 121 and 673b during the current certification period; or
2. Is called to state active duty for an extended period of time by order of the governor pursuant to KRS 38.030;
(b) Because of the call to active duty, is unable to complete the continuing education hours required for renewal of certification; and
(c) Submits a written request for an extension within thirty (30) days prior to or sixty (60) days after release from active duty.
(8) The extension granted pursuant to subsection (7) of this administrative regulation shall not exceed one (1) year beyond the effective date of release from active duty for the AEMT. The AEMT shall be required to provide a DD 214 or other relevant federal documents as proof of the release date.
(10) If asked by the office of the board to provide the documentation of continuing education hours an AEMT used as a basis for renewal of certification, the AEMT shall submit the documentation within ten (10) business days of receipt of the board’s request.
(11) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.
Section 5. AEMT Reciprocity. (1) An individual who is certified by the NREMT as an AEMT shall be eligible for direct reciprocity for initial certification as an AEMT in Kentucky if the applicant submits a completed and signed EMS Responder Application and
proof of:
(a) The applicant’s unrestricted NREMT certification as an AEMT; and
(b) Completion of current training in:
1. HIV/AIDS training required by KRS 311A.110;
2. Pediatric Abusive Head Trauma training required by KRS 311A.127; and
3. CPR that meets the requirements of Section 1(7) of this administrative regulation; and
(c) Submission of the Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report.
(2) An applicant shall pay the fee required for initial certification through reciprocity pursuant to 202 KAR 7:030.
(3) An applicant for AEMT direct reciprocity shall undergo a national background check and have the results submitted to the board. Background checks that are older than six (6) months shall not be considered current, and the applicant shall be required to undergo another national background check prior to approval of certification through reciprocity.
(4) An AEMT certified pursuant to Section 6 of this administrative regulation shall not perform any procedures or skill on which the AEMT has not been trained. An AEMT who performs a skill for which the AEMT does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.060.
(5) An AEMT certified pursuant to Section 6 of this administrative regulation shall complete the Kentucky supplemental AEMT curricula for the procedures listed in Section 2(3) of this administrative regulation within six (6) months of receiving certification through direct reciprocity.
(6) Verification of competency on the supplemental curricula procedures in Section 2(3) of this administrative regulation shall be submitted to the board within six (6) months of receiving certification. Failure to submit verification shall result in revocation of AEMT certification, and the board shall issue a new certificate at the level of EMT for the remaining certification period.
(7) If an AEMT certified pursuant to this section fails to supply verification of competency as required by subsection (6) of this section and the AEMT’s certificate is reissued at the EMT level of certification, the AEMT shall be ineligible to apply for and receive AEMT reciprocity certification until the applicant has submitted verification of competency in the supplemental procedures in Section 2(3) of this administrative regulation.
Section 6. Exemptions from AEMT Administrative Regulations. Certification requirements for an AEMT shall not apply to:
(1) United States military members, state National Guard personnel, or employees of the United States government if the individual provides emergency medical services;
(a)1. On land owned by the United States government; or
2. In facilities owned by the United States government; or
(b)1. In the performance of official duties under federal law; or
2. As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request; or
(2) An AEMT certified in another state or territory of the United States who:
(a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or
(b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky.
Section 7. Reinstatement of Certification. (1) An AEMT whose Kentucky certification has lapsed shall be eligible for reinstatement of certification if:
(a) The lapse in certification has not exceeded a period of three (3) years; and
(b) The applicant submits:
1. A completed and signed EMS Responder Application; and
2. Evidence of:
(a) Current certification at the AEMT level or higher with the National Registry; or
(b) Current training in:
(i) HIV/AIDS training required by KRS 311A.110;
(ii) Pediatric Abusive Head Trauma as required by KRS 311A.127; and
(iii) Healthcare CPR as required by Section 1(7) of this administrative regulation.
(2) The applicant shall pay the fee pursuant to 202 KAR 7:030.
(3) The applicant shall undergo a national background check and have the results presented to the office of the board. If the background check is older than six (6) months, the applicant shall be required to undergo and have new results submitted to the board.
(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.
(5) An applicant for reinstatement of an AEMT certification shall submit evidence of formal completion of continuing education hours as required in Section 4 of this administrative regulation. Completion of the hours shall have occurred within the twelve (12) months preceding application for reinstatement of the AEMT.
(6) The forty-eight (48) instructional hours as required in Section 4 of this administrative regulation shall be composed of twelve (12) elective hours in subject areas chosen by the AEMT and thirty-six (36) hours that include the following minimum contact hours for the following subject areas:
1. Twelve (12) hours in airway, breathing, and cardiology;
2. Six (6) hours in medical emergencies, excluding cardiology;
3. Five (5) hours in trauma;
4. Six (6) hours in obstetrics;
5. Six (6) hours in pediatrics and
6. One (1) hour in disaster management.
(b) The twelve (12) elective hours required for an AEMT to recently shall not include more than four (4) hours in a single category in the list in this subsection.
(7) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Advanced EMT Skills Verification Report.
(8) An AEMT whose certification has lapsed for longer than three (3) years shall not be eligible for reinstatement but shall be considered an initial certification and shall meet all requirements in Section 1 of this administrative regulation.
(9) An applicant ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 8. AEMT certification through previous pilot projects.
(1) An AEMT who obtained certification as an AEMT through training in a pilot project previously approved by the board shall maintain certification until the end of the current certification period without the completion of additional requirements.
(2) An AEMT certified through a previously approved pilot project who applies for renewal at the end of the current certification period shall meet all requirements for renewal of certification in Section 4 of this administrative regulation.
(3) An applicant certified as an AEMT in a previously approved pilot project and who meets the requirements for renewal of certification as an AEMT in Section 4 of this administrative regulation shall not be limited to the geographic boundaries established in the original pilot project but shall be considered fully certified and geographically unrestricted to practice as an AEMT in the state of Kentucky.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) “EMS Responder Application”, KBEMS E-1, September 2012;
(c) “American Heart Association’s Basic Life Support for Healthcare Providers Course”, American Heart Association, 2011;
(e) “Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device – Application of 12 lead electrocardiogram electrodes and monitor”, KBEMS E-29, March 2013;
(f) “Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using an intravenous monitoring device – Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring”, KBEMS E-30, March 2013;
(g) “Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices”, KBEMS E-32, March 2013;
(h) “Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intravenous infusion in the adult”, KBEMS E-31, March 2013;
(i) “Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report”, KBEMS E-26, March 2013; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, by the Office of the Kentucky Board of Emergency Medical Services, KCTCS, 300 N. Main Street, Versailles, Kentucky 40383, Monday through Friday, 8 a.m. to 4:30 p.m. Definition – “Advanced emergency medical technician” or “AEMT” means the intermediate level of emergency medical technicians.

Section 2. Student Eligibility. Individuals shall be eligible to enroll as a student in an AEMT training program if the applicant:
(1) Is at least eighteen (18) years of age;
(2) Holds a current unrestricted certification as a Nationally Registered Emergency Medical Technician-Basic or unrestricted certification as a Kentucky Emergency Medical Technician – Basic;
(3) Holds a college degree, high school diploma, GED, or equivalent;
(4) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;
(5) Is not subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;
(6) Meets any additional requirements established by the EMS-TEP Board;
(7) Holds a valid motor vehicle operators’ license from a state or territory in the United States.

Section 3. Certification Requirements. (1) Individuals desiring initial certification as an AEMT shall:
(a) Meet all of the requirements of Section 1 of this administrative regulation;
(b) Successfully complete a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician – Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model based curriculum for Advanced Emergency Medical Technician as the curriculum for education;
(c) Obtain National Registry of Emergency Medical Technicians registration as a Registered-EMT Intermediate/BS, Registered-EMT Intermediate/99, or Registered Advanced-EMT Technician;
(d) Submit a signed “Application for Advanced Emergency Medical Technician Initial Certification”;
(e) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
(f) Pay the fee required by 202 KAR 7:030; and
(g) Present written evidence of completion of current training in cardiopulmonary resuscitation that shall:
1. Be taught by an individual who holds one (1) of the following instructor certification approved by the board at an appropriate level from:
a. The American Red Cross;
b. The American Heart Association;
c. The National Safety Council;
d. The American Health and Safety Institute; or
e. Another board approved organization; and
2. Provide instruction and testing in:
   a. One (1) rescuer cardiopulmonary resuscitation;
   b. Two (2) rescuer cardiopulmonary resuscitation;
   c. Techniques of changing rescuers during the performance of cardiopulmonary resuscitation;
   d. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;
   e. Techniques for relief of obstruction of the airway;
   f. Cardiopulmonary resuscitation of infants and small children;
   g. Barrier to mouth, barrier to nose, barrier to stomach resuscitation for adults, small children, and infants;
   h. Use of oral and nasal airways;
   i. Use of bag-valve-mask or other ventilation device;
   j. Use of supplemental oxygen; and
   k. Use and operation of an AED.
(2) An applicant for certification as an Advanced Emergency Medical Technician shall successfully complete all National Registry of Emergency Medical Technicians requirements, which shall include certification as an AEMT, or hold himself or herself out to be an AEMT, in accordance with KRS 311A.050.

Section 5. Recertification and Continuing Education Requirements. (1) A Kentucky-certified AEMT shall be eligible for recertification if the applicant submits to the Board:
   a. A signed “Universal Application for Renewal”;
   b. Written evidence of completion of current training in cardiopulmonary resuscitation, including the requirements as outlined in Section 2 of this administrative regulation;
   c. Written evidence of completion of current training in CPR that meets the requirements as outlined in Section 2 of this administrative regulation;
   d. The fee established in 202 KAR 7:030;
   e. Successful completion of the AEMT continuing education requirement that includes forty-eight (48) total contact hours of which twelve (12) hours may be in subject areas chosen by the AEMT, and the remaining thirty-six (36) hours shall include the following minimum contact hours and topics:
      1. Five (5) hours in preparatory;
      2. Five (5) hours in airway management and ventilation;
      3. Twelve (12) hours in medical, including cardiology;
      4. Eight (8) hours in trauma;
      5. Four (4) hours in special considerations; and
      6. Two (2) hours in operations.
   (2) The training shall be validated by:
      a. The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or
      b. A medical director, service director, or training officer of the AEMT or the corresponding training program.
   (3) An application for renewal of certification shall be denied if:
      a. Prior to the certification expiration date, the AEMT applicant has not met the applicable requirements of this section; or
      b. The applicant has been subjected to disciplinary action that prevents recertification at the time of application.

Section 6. AEMT Reciprocity. (1) A person certified in another state or territory of the United States or member of the United States military who is registered by the NREMT as an Advanced EMT shall be eligible for direct reciprocity for initial Kentucky certification as an AEMT if the individual:
   a. Is at least eighteen (18) years of age;
   b. Holds current unrestricted registration as a NREMT-B;
   c. Has successfully completed a training program which utilized the United States Department of Transportation, National Highway Traffic Administration, 1985 or 1999 National Standard Curriculum for Emergency Medical Technician — Intermediate or the United States Department of Transportation, National Highway Traffic Administration Scope of Practice Model-based curriculum for Advanced Emergency Medical Technician as the curriculum for education, which shall not be satisfied by the completion of refresher or transition courses alone;
   d. Holds a college degree, high school diploma, GED, or equivalent, and
   e. Holds a valid motor vehicle operators license from a state or territory in the United States.
   (2) The individual shall:
      a. Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth-grade of education, otherwise known as Level 4, verified by testing as necessary;
      b. Submit a completed and signed “Application for Advanced Emergency Medical Technician Initial Certification”;
      c. Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
      d. Present written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;
      e. Pay the fee required by 202 KAR 7:030;
      f. Not have been convicted of, or entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program, for a felony offense; and
      g. Not have been subjected to discipline that would prevent reciprocity at the time of application.

Section 7. Exemptions from AEMT Administrative Regulations. Certification requirements for an AEMT shall not apply to:
(1) United States military personnel or state National Guard or employees of the United States government while providing services on a United States government-owned or operated facility, while engaged in the performance of their official duties under federal law or while providing assistance in a mass casualty or disaster-type situation; or
(2) An AEMT certified in another state or territory of the United States who:
   a. Is not a member of any branch of the United States military or a National Guard or a military reserve unit and is called to active duty by presidential order pursuant to 10 U.S.C. 121 and 672b may be given an extension for a period up to one (1) year after release from active duty to meet the applicable requirements for recertification listed in this administrative regulation.

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months preceding the application for reinstatement of the AEMT continuing education requirement as outlined in Section 5(2)(b) of this administrative regulation; and
1. Five (5) hours in preparatory;
2. Five (5) hours in airway management and ventilation;
3. Twelve (12) hours in medical, including cardiology;
4. Eight (8) hours in trauma;
5. Four (4) hours in special considerations; and
6. Two (2) hours in operations; and
(g) Evidence of validation of skills maintenance by completing the “Advanced EMT Recertification Report”;
(h) An AEMT whose certification has lapsed for a period that exceeds five (5) years, may reinstate his or her certificate by complying with Sections 1 and 2 of this administrative regulation.
(3) An application for reinstatement of certification shall not be considered if:
(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;
(b) The application is from an individual who has been convicted of, or entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or
(c) The applicant has been subject to discipline that would prevent reinstatement at the time of application.

Section 9. Public Notice of Negative Action. The KEMS office shall cause to be published in the KEMS News or similar publication of the board, or otherwise disseminate the name of an AEMT that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had his or her certification revoked.

Section 10. Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:
(a) Submits a completed “Application for Temporary Certificate”;
(b) Is at least eighteen (18) years of age;
(c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;
(d) Has completed a diversion program for a felony offense; and
(e) Demonstrates that he or she is a qualified individual.
(2) An AEMT whose certification has lapsed for a period that exceeds five (5) years, may reinstate his or her certificate by completing the “Advanced Emergency Medical Technician, Intermediate/85”. through their scope of practice. The regulation sets the requirements for initial certification, continuing education, renewal, and reciprocity for AEMTs.
(b) The necessity of this administrative regulation: This regulation is mandated by KRS 311A.025 which requires the Kentucky Board of Emergency Medical Services to create levels of certification or licensure for individuals providing EMS to patients in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 311A.025 which authorizes the board to set standards for certification and licensure of EMS personnel and also to promulgate regulations that establish training requirements, eligibility for certification, and also renewal and certification requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: KRS 311A.025 requires the Kentucky Board of EMS to establish levels of certification, including but not limited to, the levels that are listed in KRS 311A.025(1)(a)-i). This administrative regulation creates a level of certification that is an intermediate step for EMS to become paramedics. AEMTs will have an expanded scope of practice from EMTs but shall not be fully capable of performing all procedures available to paramedics through their scope of practice.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment removes student eligibility requirements and temporary certification. It provides for federal reciprocity and other out of state EMS personnel to assist in times of disaster or emergency. Additionally, new standards based on current medical standards for the provision of EMS.
(b) The necessity of the amendment to this administrative regulation: This amendment updates medical standards and educational requirements.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment creates a level of certification that is allowed in the authorizing statute.
(d) How the amendment will assist in the effective administration of the statute: KRS 311A provides a statutory mechanism for the provision of EMS in Kentucky. KRS 311A.030 grants authority for the Board to create levels of certification, and this regulation provides for the requirements of a particular level of certification.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
(a) Any ground ambulance services licensed in Kentucky will...
be able to hire AEMTs based upon their needs for an intermediate level of care. When paramedics are not necessary for a call but a higher level of patient care than an EMT can provide is called for, services may use an AEMT to provide better patient care;

(b) EMS personnel will benefit from this level of certification because those individuals who have not yet satisfied the requirement to become a paramedic may qualify for AEMT and will therefore be employable at a higher level and be capable of providing a higher standard of care for their patients;

(c) County and City Governments who fund EMS will have the benefit of providing services with a reduced overhead because AEMTs will not command the salaries that paramedics must be paid. However, AEMTs, when appropriate to use, will be able to supply a higher level of care than EMTs; and

(d) All residents and citizens who receive EMS in Kentucky will have the benefit of increased numbers of higher skilled EMS 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: EMS Personnel, EMS Ambulance Providers, and County and City Governments will all benefit from the amended regulation because it will provide increased numbers of employable EMS providers, increase the level of care that may be available in geographic areas where providers are in short demand, and allow counties and cities to staff with higher skilled but potentially less expensive EMS providers.

(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: EMS personnel who are already certified as EMTs shall be required to meet the obligations and requirements set forth in this administrative regulation to obtain, maintain, and renew certification as AEMTs. Services have no obligations or standards to meet pursuant to this regulation; nor do counties or cities.

(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 for EMS personnel to obtain, maintain, or renew certification as an AEMT will be the cost of education which is set by individual training institutions and may vary and the fees as outlined in 202 KAR 7:030. County and city governments will actually see a savings in the operation of government run ambulance services because the cost of employing an AEMT is lower than the cost of employing a paramedic. The savings will depend upon the level of service the ambulance service is licensed to provide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potential employment for EMS personnel will expand due to the increased use of AEMTs. Personnel will also have another level of certification that is available to them, giving them higher education, better skills, and greater flexibility in employment. Ambulance Services will have a wider spectrum of employees and certification levels available to meet their staffing requirements. Local ambulance services will have a reduction in personnel costs while still providing high level care for their residents.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: KBEMS will have an increased workload for certifying and licensing more levels of EMS personnel. However, the agency does not foresee a need for increased staffing numbers, increased hours of work, or any increased costs.

(a) Initially: The above paragraph is accurate for initial costs; and

(b) On a continuing basis: The continuing costs will not increase.

(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 and any increased costs associated with this new level of certification will be covered in the allotted 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: AEMTs began as a pilot program and certification was originally through an emergency regulation that later became permanent. However, the certification of AEMTs has not been ongoing. Consequently, the number of AEMTs in Kentucky is extremely low. A fee already appears in 202 KAR 7:030 and applies as is to anyone seeking certification as an AEMT.

(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. The fee for AEMT certification and renewal are in 202 KAR 7:030.

(9) TIERING: Is tiering applied? Tiering was used in this administrative regulation which creates a new level of certification thereby making EMS personnel positions more flexible and more available. Personnel who have previously had no other options but EMT-Basic or EMT-Paramedic shall now have a bridge between the two certification and licensure levels. This bridge shall provide a broader workforce and more highly skilled personnel from which the ambulance services may draw.

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, 311A.035. 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) 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 fiscal effect of this administrative regulation will be positive because the overall personnel costs may be reduced for certain types of ambulance service runs. AEMTs will not command a salary that is as high as paramedics.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the subsequent years? The regulation will supply revenue to the state or local government entities by providing a new level of certification that will operate at a higher level of care and will have a positive impact on budgets as well as ambulance run reimbursements.

(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.

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

KENTUCKY COMMUNITY & TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services

(Amended After Comments)

202 KAR 7:540. Emergency Medical Services data collection, management, and compliance.


STATUTORY AUTHORITY: KRS 311A.190
Section 1. Data Collection and Statewide Compliance Plan. (1) The board shall require each licensed ambulance service to collect and submit a 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.

(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 System (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 development and adoption;
(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 found at www.nemsis.org 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 found at www.nemsis.org.

(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 KEMSIS no later than the fifteenth day of the month following the last day of the prior reporting month. (Example: The day of submission for data collected in January shall be February 15.)

(3) Failure to submit collected data at the rate required by subsection (2) of this section shall subject a service to disciplinary action pursuant to 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 if a service’s rate of incompleteness, 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 pursuant to 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, or its electronic equivalent, to the receiving medical facility prior to departure.

(2) A service that cannot leave a copy of the completed run report, or its electronic equivalent, with the receiving medical facility prior to departure shall leave a continuation of care form that contains at least the following data elements for the patient:

(a) First name;
(b) Last Name;
(c) Date of birth;
(d) Complaint;
(e) Duration of complaint;
(f) Time units of duration of complaint;
(g) Provider’s primary impression;
(h) Current medications;
(i) Medical/surgical history;
(j) Medication allergies;
(k) SBP (Systolic Blood Pressure);
(l) DBP (Diastolic Blood Pressure);
(m) Heart rate;
(n) Respiratory rate;
(o) Date/time medication administered;
(p) Medication given;
(q) Condition of patient at destination;
(r) Unit notified by dispatch date/time;
(s) EMS agency name; and
(t) EMS provider name; (a) Full name;
(u) Date of birth;
(v) Chief complaint;
(w) History of present illness;
(x) Assessment;

JULY 1, 2013
(d) Medications;
(e) Past medical history;
(f) Allergies;
(g) Vital signs;
(h) Treatment;
(l) Response to treatment; and
(i) Time call received.

(3) If a service provides the receiving hospital or other health-care facility with a continuation of care form that meets the requirements of subsection (2) of this section, 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 of similar scope.

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 non-disclosure 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.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 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.

MIKE POYNTER, Executive Director
APPROVED BY AGENCY: June 7, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
CONTACT PERSON: Steve Amato or Anne-Tyler Morgan,
Legal Counsel, McBrayer, McGinnis, Leslie and Kirkland, PLLC,
201 East Main Street, Suite 1000, Lexington, Kentucky 40507,
phone (859) 231-8780, fax (859) 231-6518.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steve Amato or Anne-Tyler Morgan
(1) Provide a brief summary of:
(a) What this administrative regulation does; 202 KAR 7:540 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 requirement for EMS providers to collect data and to submit the data to the board. Additionally, KRS 311A.190 creates a requirement for run reports and proper delivery of patient information to receiving facilities.
(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 does not affect EMS personnel. Cost will be borne by ambulance services and county and city governments that operate EMS services. Much of the data collection will have no cost because the agency has obtained software that is called the "field bridge" and will provide a platform for submitting collected data. The data is currently collected for billing purposes. The same cost analysis applies to city and county governments that operated EMS services. Collection of data 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. At present the agency is part of a federal grant of money that equals nearly half a million dollars and requires progress in data collection requirements such as this administrative regulation.

(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. The federal grant amounts are variable, but the state block grant amounts available to each county is approximately $10,000 and will be tied to providers in data collection pursuant to 202 KAR 7:520.

(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 of approximately $500,000. 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. The agency has provided staff assistance, training sessions, and beta testing sites to assist in bringing state EMS services up to standard, and the costs of such actions will decline as the system is implemented.

(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 by assisting in a federal project for data collection that will essentially funnel data up from smaller geographic areas to the state to the US Department of Transportation. The funneling of this data will then be used to support highway safety, including the provision of EMS and will generate federal grant dollars which will in turn funnel down. Consequently, the participation at the state level negates the need for federal regulations to accomplish this data collection.

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 require or authorize the action taken by the 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 in effect.

(a) KBEMS has purchased a state field site to assist agencies, including those operated by local governments in order to assist EMS services in their compliance with data collection requirements.

(b) 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) In the first year, this administrative regulation will not impose any new need for expenditures or revenue output by the governmental entities involved.

(d) 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 (+/-)
Expenses (+/-)
Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:320. Wastewater Laboratory Certification Program.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-670, 224.70-100, 224.70-110, 40 C.F.R. 136, 33 U.S.C. 1342

STATUTORY AUTHORITY: KRS 224.10-670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-670 authorizes the cabinet to promulgate administrative regulations establishing standards for the operation of laboratories, fees for certification and competency evaluation of laboratories, issuance of certificates of competency, and a certification program for laboratories that submit environmental data as it relates to analyses and laboratory tests for activities subject to 33 U.S.C. 1342. This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

Section 1. Definitions. (1) "Analysis category" means one (1) of the following analyte groups for which an analysis can be performed by a wastewater laboratory:

(a) Inorganic general chemistry;
(b) Inorganic metals;
(c) Organic chemistry volatile;
(d) Organic chemistry semi-volatiles;
(e) Organic chemistry pesticides, herbicides, or PCBs;
(f) Organic chemistry dioxins;
(g) Microbiology;
(h) Whole effluent toxicity; and
(i) Field analysis.

(2) "Certified" means that the cabinet has determined that the wastewater laboratory meets the regulatory performance criteria and the standard of quality established in this administrative regulation and has issued a certification.

(3) "Equivalency of certification" means certification of a wastewater laboratory by an entity, other than the cabinet, whose requirements for certification are determined by the cabinet to meet the requirements of this administrative regulation.

(4) "Field analysis" means a measuring of the following:
(a) Dissolved oxygen;
(b) Residual chlorine;
(c) pH;
(d) Temperature;
(e) Conductivity; and
(f) Turbidity; and
(e) Flow.

(5) "Field only wastewater laboratory" means a wastewater laboratory that performs a measurement for only the parameters identified as field analysis. The measurement may take place outdoors, in an on-site room used as a laboratory, or in an off-site laboratory.

(6) "General wastewater laboratory" means a wastewater laboratory that performs an analysis for at least one (1) analyte category other than field analysis, although the general wastewater laboratory analyses may also perform a field analysis measurement.

(7) "Interim certification" means a certification approved by the cabinet if it determines through documentation review that the wastewater laboratory meets the requirements of Section 10(8) of this administrative regulation. Interim certification is applicable to a method-analyte pairing until the cabinet has completed an on-site...
audit for that method-analyte pairing.

(8)[(6)] “Primary analyst or technician” means an analyst or technician who performs a specific method-analyte pairing analysis more often than any other analyst or technician at that wastewater laboratory.

(9)[(7)] “Wastewater laboratory” means a laboratory that performs an analysis, measurement, or laboratory test for an activity subject to 33 U.S.C. 1342.

Section 2. Effective Date for this Administrative Regulation. The effective date for this administrative regulation shall be: 

(1) January 1, 2014, for a general wastewater laboratory; and 

(2) January 1, 2015, for a field-only wastewater laboratory.

Section 3. Requirement for Acceptance of Environmental Data. (1) In accordance with KRS 224.10-670(2) and the schedule in subsection (2) of this section (beginning July 1, 2014) environmental data from analyses and laboratory tests submitted to the cabinet for activities subject to 33 U.S.C. 1342 shall be performed: 

(a) By a certified wastewater laboratory; and 

(b) In compliance with: 

1. An analytical method in 40 C.F.R. Part 136 or as established in the applicable permit; 

2. This administrative regulation; and 


(2) The requirements in subsection (1) of this section shall begin on: 

(a) January 1, 2015, for a general wastewater laboratory; and 

(b) January 1, 2016, for a field-only wastewater laboratory.

Section 4.[3]. Certification Requirements. The requirements established in this section following requirements shall apply to a wastewater laboratory seeking certification.

(1) Application for certification shall be made on the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App, and shall include all information required by that form, and shall be submitted with the applicable fee as established in Section 8[6] of this administrative regulation as follows: 

(a) If in paper form, to: 

Kentucky Division of Water 
Attn: Laboratory Certification 
200 Fair Oaks Lane, 4th Floor 
Frankfort, Kentucky 40601; or 

(b) If in electronic form, via the cabinet’s Web site: 

www.water.ky.gov.

The wastewater laboratory shall apply for certification for each analysis category and for each method-analyte pairing for which the wastewater laboratory intends to perform an analysis.

Section 5.[4]. Term of Certification Periods for a General Wastewater Laboratory. (1) The initial certification period for a general wastewater laboratory shall be from January 1, 2014 (July 1, 2013), until December 31, 2015 (2014), and subsequent certification periods shall be consecutive two (2) year periods, beginning January 1, 2016 (2015).

(2) If, beginning January 1, 2016 (2015), a general wastewater laboratory applies for initial certification of the wastewater laboratory or for certification for a new method-analyte pairing, the initial certification period shall be the two (2) year period as established in subsection (1) of this section, based upon the date of application receipt by the cabinet.

Section 6. Term of Certification Periods for a Field-Only Wastewater Laboratory. (1) The initial certification period for a field-only wastewater laboratory shall be from January 1, 2015, until December 31, 2016, and subsequent certification periods shall be consecutive two (2) year periods, beginning January 1, 2017.

(2) If, beginning January 1, 2017, a field-only wastewater laboratory applies for initial certification of the wastewater laboratory or for certification for a new method-analyte pairing, the initial certification period shall be the two (2) year period as established in subsection (1) of this section, based upon the date of application receipt by the cabinet.

Section 7[5]. Due Date for Certification Renewal Applications. (1) If an application, the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App, for certification renewal is received by the cabinet by November 15 of the odd-numbered (even-numbered) year of the current certification period for a general wastewater laboratory, or November 15 of the even-numbered year of the current certification period for a field-only wastewater laboratory, the application shall be considered timely submitted, and the wastewater laboratory’s certification shall continue in effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

(2) If an application, the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App, for certification renewal is received by the cabinet after November 15 but on or before December 15 of the odd-numbered (even-numbered) year of the current certification period for a general wastewater laboratory, or after November 15 but on or before December 15 of the even-numbered year of the current certification period for a field-only wastewater laboratory, the application shall not be considered timely submitted, and shall be subject to the surcharge established in Section 8[6](4) of this administrative regulation. The wastewater laboratory’s certification shall continue in effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

(3) If an application, the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App, for certification renewal is received by the cabinet after December 15 of the odd-numbered (even-numbered) year of the current certification period for a field-only wastewater laboratory, the application shall not be considered timely submitted, and shall be subject to the surcharge established in Section 8[6](5) of this administrative regulation. The wastewater laboratory’s certification shall expire after December 31 of that odd-numbered (even-numbered) year for a general wastewater laboratory, or after December 31 of that even-numbered year for a field-only wastewater laboratory, and shall not be valid until the cabinet acts upon the renewal application.

Section 8[6]. Annual Certification Fees. (1) The annual certification fees for wastewater laboratory certification shall be established in Table 1 of subsection (2) of this section and shall include: 

(a) A nonrefundable administrative fee; and 

(b) A fee for each applicable analysis category.

(2) If a follow-up audit is performed to verify the correction of a deficiency identified by an audit pursuant to Section 10[8] of this administrative regulation, an additional audit fee, established in Table 1, shall be assessed.

Table 1: Wastewater Laboratory Certification Fee

<table>
<thead>
<tr>
<th>Fee Category</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Fee</td>
<td>$1,000</td>
</tr>
<tr>
<td>Analysis Category Fee</td>
<td></td>
</tr>
<tr>
<td>Inorganic general chemistry</td>
<td>$500</td>
</tr>
<tr>
<td>Inorganic metals</td>
<td>$500</td>
</tr>
<tr>
<td>Organic chemistry volatiles</td>
<td>$500</td>
</tr>
<tr>
<td>Organic chemistry semi-volatiles</td>
<td>$500</td>
</tr>
<tr>
<td>Organic chemistry pesticides, herbicides, PCBs</td>
<td>$500</td>
</tr>
<tr>
<td>Organic chemistry dioxins</td>
<td>$750</td>
</tr>
<tr>
<td>Microbiology</td>
<td>$500</td>
</tr>
<tr>
<td>Whole effluent toxicity</td>
<td>$1,000</td>
</tr>
<tr>
<td>Field analysis only</td>
<td>$250</td>
</tr>
<tr>
<td>Follow-up Audit Fee</td>
<td>$500</td>
</tr>
</tbody>
</table>

(3) The applicable certification fee shall be due by November
15 of each year. In odd-numbered[even-numbered] years of the certification period for a general wastewater laboratory, or in even-numbered years of the certification period for a field-only wastewater laboratory, the applicable certification fee shall be submitted in accordance with the renewal certification application or the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App.

(4)(a) If a fee is received by the cabinet after November 15 but on or before December 15, the wastewater laboratory shall incur a surcharge of fifteen (15) percent of the applicable certification fee (administrative fee plus analysis category fee).

(b) Payment of the surcharge shall be due thirty (30) days after notice is provided by the cabinet.

(5) If a fee is received by the cabinet after December 15, the wastewater laboratory shall incur a surcharge of twenty-five (25) percent of the applicable certification fee.

(a) The wastewater laboratory’s certification shall expire after December 31 of that year and shall not be valid until the applicable certification fee and the surcharge are received by the cabinet.

(b) Payment of this fee and surcharge shall not reinstate certification for failure to timely submit an application for certification renewal pursuant to the expiration established in Section 7(5) of this administrative regulation.

(6) A wastewater laboratory seeking or obtaining equivalency of certification shall receive a twenty (20) percent reduction of the certification fee.

(7) An in-state laboratory that is also certified for drinking water analysis, as established in 401 KAR 8:040, shall receive a twenty (20) percent reduction of the certification fee.

(8) A wastewater laboratory that provides only field analysis shall be exempt from the annual administrative fee established in Table 1 of subsection (2) of this section.

(9) A wastewater laboratory operated by a facility that has been issued a Kentucky Pollutant Discharge Elimination System permit and that is providing only field analysis for only its own facility shall be exempt from all fees established in this administrative regulation.

(10) A wastewater laboratory operated by a municipality that provides analysis for only its own facility shall receive the following reduction to the administrative fee established in Table 1 of subsection (2) of this section, based on its maximum permitted flow value:

(a) Less than or equal to 0.10 million gallons per day (MGD), a 100 percent reduction (no administrative fee);

(b) Less than or equal to 0.50 MGD but greater than 0.10 MGD, a seventy-five (75) percent reduction;

(c) Less than or equal to one and zero tenths (1.0) MGD but greater than zero and five tenths (0.5) MGD, a fifty (50) percent reduction;

(d) Less than or equal to two and zero tenths (2.0) MGD but greater than one and zero tenths (1.0) MGD, a twenty-five (25) percent reduction; and

(e) Greater than two and zero tenths (2.0) MGD, a ten (10) percent reduction.

(11) If more than one (1) reduction pursuant to subsections (6) through (10) of this section applies, only the greatest reduction shall be taken.

Section 9(7). Interim Certification. (1) If a wastewater laboratory demonstrates that the following requirements are met for a method-analyte pairing, the cabinet shall approve interim certification for that method-analyte pairing:

(a) All information required by the Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App. shall be submitted to the cabinet;

(b) The appropriate fee shall be submitted to the cabinet;

(c) A method, including instrumentation, established in 40 C.F.R. Part 136 or the applicable permit shall be used; and

(d) A proficiency test study sample shall be analyzed by the primary analyst or technician within the last year and the result shall be within the acceptance limits specified by a proficiency test study provider approved by the American Association for Laboratory Accreditation.

(2) A wastewater laboratory with interim certification may analyze samples for that method-analyte pairing for compliance pur-

poses.

Section 10(8). Audits. (1) A certified wastewater laboratory shall allow a cabinet auditor to conduct, and shall participate in, an on-site audit during normal business hours [without prior notification].

(2) Wastewater laboratory certification records and supporting documentation shall be retained for five (5) years or until the next on-site audit, whichever is longer.

(3) If the cabinet identifies a deficiency, the certified laboratory shall correct or otherwise address the deficiency within thirty (30) days of receipt of notice of the deficiency.

(a) If an on-site audit of a wastewater laboratory located outside of Kentucky is conducted by the cabinet, the wastewater laboratory shall bear the reasonable cost of the audit.

(b) Payment shall be due thirty (30) days after notice of this cost is provided by the cabinet.

Section 11(9). Full Certification Requirements. (1) If, after an on-site audit and submission of information, all requirements of this administrative regulation for a method-analyte pairing have been met, the cabinet shall approve full certification for that method-analyte pairing.

(2) To maintain full certification for the method-analyte pairing, the wastewater laboratory shall:

(a) Maintain compliance with the requirements of this administrative regulation, based on the cabinet’s review of requested documentation, on-site audit inspection, or both;

(b) Analyze a proficiency test study sample at least annually by the primary analyst or technician and the results shall be within the acceptance limits specified by a proficiency test study provider approved by the American Association for Laboratory Accreditation. If the wastewater laboratory fails a proficiency test study, the wastewater laboratory shall, within ninety (90) days after receiving notice of the failed proficiency test study, analyze a second proficiency test study with the results within the acceptance limits specified by an approved proficiency test study provider;

(c) Notify the cabinet within thirty (30) calendar days of a change in the personnel, equipment, analytical method, or laboratory location identified in its application, Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification, KWLCP Form App.;

(d) Submit documentation or data required by this administrative regulation; and

(e) Submit to the cabinet all fees by the deadlines established in this administrative regulation.

Section 12(40). Provisional Certification. (1) The cabinet shall, when becoming aware of a failure of a wastewater laboratory to comply with one (1) or more of the requirements established in Section 11(9)(2) of this administrative regulation, provide written notice to the wastewater laboratory of the deficiency and of the cabinet’s intent to change the certification status to provisional certification.

(2) If the deficiency relates to a specific method-analyte pairing, the cabinet may change the status of the wastewater laboratory’s certification to provisional certification. If the status is changed to provisional certification, this changed status shall be for only the analyte that failed to meet the requirements of Section 11(9)(2) of this administrative regulation, unless the cabinet had certified a group of related analytes based on a limited number of analytes in the group.

(3) The wastewater laboratory shall submit to the cabinet a written corrective action plan to address this deficiency within thirty (30) days of receipt of the notice of intent from the cabinet, specifying the immediate and long-term corrective actions that shall be taken.

(4) The wastewater laboratory shall correct this deficiency as soon as reasonably possible. If the deficiency is not corrected within thirty (30) days of receipt of the notice of intent, the cabinet shall change the certification status to provisional certification, and shall provide written notice to the wastewater laboratory of this action.

(5) A wastewater laboratory with provisional certification may continue to analyze a sample for compliance purposes, but shall
notify its client of the wastewater laboratory’s provisional certification status prior to conducting an analysis for that client and shall provide that information in writing to the client.

(6) A wastewater laboratory with provisional certification shall correct the deficiency as soon as is reasonably possible, but within three (3) months of written notification from the cabinet of the change to provisional certification status.

(7) The cabinet shall restore the wastewater laboratory’s provisional certification status to full certification upon making a determination that the deficiency resulting in the provisional certification status has been corrected and shall provide written notice to the wastewater laboratory of this action.

Section 13[14]. Certification Revocation. (1) The cabinet may immediately revoke a wastewater laboratory’s certification for any of the following reasons:

(a) Failure to use an analytical method established in 40 C.F.R. Part 136 or in the applicable permit;

(b) Reporting proficiency test study data from another laboratory as its own data;

(c) Engaging in falsification of data or another deceptive practice;

(d) Endangering public health or the environment through an operation associated with the wastewater laboratory;

(e) Refusal to allow or participate in an on-site audit conducted by the cabinet; or

(f) Persistent failure to report accurate compliance data to the cabinet.

(2) If the cabinet revokes a wastewater laboratory’s certification pursuant to subsection (1) of this section, the cabinet shall immediately notify the wastewater laboratory of this action and provide written notice to the wastewater laboratory of this action.

(3) If a wastewater laboratory has not corrected the deficiency resulting in the provisional certification status within three (3) months of written notification from the cabinet of the change to provisional certification, the cabinet shall provide written notice to the wastewater laboratory of the cabinet’s intent to revoke the wastewater laboratory’s certification for any method-analyte pairing involved in the deficiency.

(4) The wastewater laboratory may request, in writing, a redetermination of the cabinet’s intent to revoke certification pursuant to subsection (3) of this section.

(a) If a redetermination is requested, the request shall be made within thirty (30) days of receipt of the notice of intent to revoke.

(b) This request shall be submitted to the cabinet and shall explain the basis for the redetermination request and, if appropriate, include a written corrective action plan to address the deficiency identified in the cabinet’s notice of intent to revoke.

(2) The request shall be signed by a responsible official of the wastewater laboratory.

(5) The cabinet, having received a request for redetermination pursuant to subsection (4) of this section, shall make a final determination whether or not to continue provisional certification, approve certification, or revoke certification, and shall provide written notice to the wastewater laboratory of this action.

(6) If, within thirty (30) days of receipt of the notice of intent to revoke pursuant to subsection (3) of this section, the wastewater laboratory does not request a redetermination, the cabinet shall revoke the wastewater laboratory’s certification and provide written notification to the wastewater laboratory of this action.

Section 14. Cabinet to Develop Templates. (1) The cabinet shall develop templates to assist wastewater laboratories in preparing a quality assurance plan (QAP) and standard operating procedures (SOPs) applicable for field analysis measurements.

(2) The templates developed by the cabinet shall address all applicable requirements for a QAP and common device SOPs, but will require the inclusion of site-specific information to be provided by the wastewater laboratory.

(3) The cabinet shall provide public notice and at least a thirty (30) day opportunity for public review and comment on the proposed templates before finalizing these templates.

(4) These templates may be used by a field-only wastewater laboratory or for the field analysis portion by a general wastewater laboratory. A wastewater laboratory is not required to use these templates, and may independently develop its own QAP and SOPs.

(5) The cabinet shall make the final templates available on its Web site.

Section 15[12]. Incorporation by Reference. (1) The following material is incorporated by reference:


(b) “Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification”, KWLCF Form App, March 2013.


(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water’s Web site at http://water.ky.gov.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: June 13, 2013
FILED WITH LRC: June 14, 2013 at noon
CONTACT PERSON: Jon Trout, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Jon.Trout@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Trout

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

(b) The necessity of this administrative regulation: KRS 224.10-670 authorizes the cabinet to promulgate administrative regulations to implement this statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-670 which requires the cabinet to consider national and state wastewater laboratory certification programs. The requirements reflect the already-applicable requirements in 40 C.F.R. Part 136 established by the U.S. Environmental Protection Agency.

(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 statute by providing the structure of a wastewater laboratory certification program and the specific criteria required for a wastewater laboratory to become certified. The statute requires that, one (1) year after the effective date of this administrative regulation, water quality samples be analyzed by a wastewater laboratory that is certified by the cabinet for the resulting data to be deemed valid.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to
approximately ninety-seven (97) municipal laboratories, sixteen (16) industrial laboratories, 110 commercial laboratories, and fifty-nine (59) field service laboratories.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To continue to analyze wastewater samples for permit compliance purposes after one (1) year after the effective date of this administrative regulation, each laboratory will be required to submit an application, required laboratory and analysis information, and a fee and comply with the laboratory analysis requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for each wastewater laboratory will vary, depending upon what types of analyses will be performed and other factors. The annual fee will range from zero dollars (all fees are waived) for some small municipal laboratories to $4,125 for full service laboratories. Because the required laboratory analysis protocols and documentation are already required by federal regulations, there should be no additional significant cost to comply with the substantive laboratory analysis requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By statute, data from samples analyzed by an uncertified wastewater laboratory will be deemed invalid. Thus, obtaining certification will allow the wastewater laboratory to generate data from samples to be submitted for the purpose of demonstrating compliance.

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

(a) Initially: The initial cost the Division of Water will be a maximum of approximately $475,000 for the first year, comprised mostly of the salary for seven (7) staff members.

(b) On a continuing basis: The continuing annual cost will remain approximately the same, a maximum of $475,000 to retain the seven (7) staff members.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The cost of implementing and enforcing this administrative regulation will be funded by fees assessed to the participating wastewater laboratories. Program fees were authorized by the statute.

(7) Provide an assessment of whether an 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 fees to fund the implementation and enforcement of this administrative regulation will be new fees assessed to the participating wastewater laboratories.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees to fund implementation and enforcement.

Tiering: Is tiering applied? Yes, tiering is applied in this administrative regulation. Municipal wastewater laboratories that provide only service for their own facilities have a sliding-scale reduction in the administrative fee, from a 100 percent reduction (no fee) to a 10 percent reduction, based upon the permitted maximum permitted flow value. Wastewater laboratories pay an analysis category fee for only the analysis categories for which they seek certification.

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?

Municipalities that operate a wastewater treatment plant and perform their own wastewater laboratory analyses would be impacted by this administrative regulation if they choose to continue to operate their wastewater laboratory. It is anticipated that this will affect approximately 97 municipal wastewater laboratories.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The substantive requirements for wastewater laboratory analyses are federal regulations in 40 C.F.R. Part 136. KRS 224.10-670 establishes statutory authority for the cabinet to promulgate 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? Implementation of the fee portion of this administrative regulation during the first year, will generate approximately $432,000 to $475,000, depending upon how many of the existing wastewater laboratories decide to become certified.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Implementation of the fee portion of this administrative regulation during subsequent years, will generate approximately $432,000 to $475,000, depending upon how many of the existing wastewater laboratories decide to become certified.

(c) How much will it cost to administer this program for the first year? It is estimated that the first year cost to administer this program will be a maximum of $475,000.

(d) How much will it cost to administer this program for subsequent years? It is estimated that the cost to administer this program for subsequent years will be a maximum of $475,000.

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

Revenues (+/−)
Expenditures (+/−)
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Although the substantive requirements for wastewater laboratory analyses are federal regulations in 40 C.F.R. Part 136, these regulations do not require the states to develop and implement a wastewater laboratory certification program.

2. State compliance standards. KRS 224.10-670 establishes statutory authority for the cabinet to promulgate this administrative regulation. The substantive requirements from 40 C.F.R. Part 136, along with the certification program and fees, are included in 40 KAR 5:320.

3. Minimum or uniform standards contained in the federal mandate. Wastewater laboratory analyses, for the purpose of demonstrating compliance for activities subject to 33 U.S.C. 1342, are required to meet the analytical methods, including instrumentation, required by 40 C.F.R. Part 136.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? The substantive wastewater laboratory analysis requirements are the same as those in 40 C.F.R. Part 136. 401 KAR 5:320 adds to those the requirements for becoming certified by Kentucky and an administrative fee. These provisions are established pursuant to statutory authority in KRS 224.10-670.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The certification requirements and fee provisions of 401 KRS 224.10-670 are established pursuant to statutory authority in KRS 224.10-670.
ELECTRONIC AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

702 KAR 4:160. Capital construction process.

RELATES TO: KRS Chapter 45A, 156.074, 156.076, 156.496, 156.670(156.651)(a) and (m), 157.420(4), 157.450, 157.455, 160.160, 160.476, 160.082, 162.083, 162.070, 322.010, 323.010, 323A.010, 371.405(7), 371.410, 424.226(160.160, 322.360(1)).

STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.160, 156.420, 162.060, 162.065, 322.360, 323.033.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 establishes the general powers and duties of the Kentucky Board of Education. KRS 156.160 authorizes[requires] the Kentucky Board of Education [KBED] to promulgate administrative regulations establishing standards that school districts shall meet in operational performance, including construction of public school buildings and the use of uniform forms [KRS 157.420 requires each school district's capital outlay to be utilized in accordance with the district's facility plan]. KRS 162.060 requires that the chief state school officer shall examine or cause to be examined all plans and specifications for public school buildings in accordance with administrative regulations promulgated by the Kentucky Board of Education. KRS 160.160 requires [KBE] to prescribe administrative regulations governing construction managers. KRS 162.070 requires school construction contracts to be awarded to the lowest and best responsible bidder. KRS 322.360 and 323.033 requires a school district, when engaged in the construction of any public work involving architecture or engineering, to utilize an architect or engineer to directly supervise the preparation of plans and specifications, estimates, and the execution of construction. [KRS 323.033 requires the services of an architect for new buildings and additions or alterations to existing buildings classified as educational use group, including the administration of construction contracts.]

This administrative regulation establishes the procedures and criteria for the construction of public school buildings.

Section 1. Definitions. (1) "AIA" means the American Institute of Architects.

(2) "Architect" means any design professional licensed in the Commonwealth of Kentucky under KRS Chapter 322, 323, or 323A, which includes architects, engineers, and landscape architects.

(3) "Board" means the local board of education.

(4) "Change event" means a continuous or similar action regarding a change order.

(4) "Construction documents" means the written and graphic documents prepared or assembled for communicating the project design for construction and for administering the construction contract, and consists of bidding requirements, contract forms, contract conditions, contract modifications, addenda, specifications, and drawings, and record documents.

(5) "Construction manager" or "CM" means a qualified and experienced contracting organization which provides the services of construction management and possesses a general trades workforce, staff and equipment, financial base, insurance coverage, bonding capability, a minimum of three (3) years of experience, construction management experience on projects of $2,000,000 or more, and the ability to provide the services required.

(6) "Contractor" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity performing construction and having a contract with a board.

(7) "Design professional" means a person licensed in the Commonwealth of Kentucky under KRS Chapter 322, 323, or 323A, which includes architects, engineers, and landscape architects providing services within their respective practice areas.

(8) "Emergency" means a situation which creates a threat or impending threat to public health, welfare, or safety that may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, theft, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar unforeseen events, and results in the loss of use of the physical facilities.

(9)(5) "Contract documents" means the owner-contractor agreement conditions of the contract (general, supplementary, and other conditions), purchase orders, drawings, specifications, addenda issued prior to execution of the owner-contractor agreement, other documents listed in the owner-contractor agreement, and modifications issued after the execution of the agreement.

(10) Division means the Division of Facilities Management, Kentucky Department of Education (KDE).

(11) "Emergency" means the loss of use of physical facilities resulting from an unforeseen occurrence which requires prompt action.

(12) "Fixed equipment" means furnishings or equipment that:

(a) Are secured to the wall, floor, or ceiling to operate or function in the manner intended by the product manufacturer; and

(b) May include bleachers, student lockers, casework with sinks, or plumbing fixtures.

(13) "Guaranteed energy savings contract" or "GESC" is defined by KRS 45A.345(28).

(14) "KBE" means the Kentucky Board of Education.

(15) "Large renovation" means a project at a permanent center involving three (3) or more buildings or systems that is within fifteen (15) years of its original installation, or required by a change in regulation or code:

(a) The restructuring of an open space school for conventional classrooms or

(b) The replacement of one (1) of the following single building systems that is within fifteen (15) years of its original installation, or if required by a change in regulation or code:

1. Heating, ventilation, and air conditioning systems and controls;

2. Systems to provide full use of a facility by the physically handicapped and to bring a facility into compliance with state and federal law;

3. Life safety and security systems;

4. Roofing systems, flashings, and accessories.

(16) "Minor project" means a project for expansion of a permanent center to include a maximum of four (4) classrooms, campus enlargement, renovation of buildings and building systems with a budget of less than $25,000, or construction of support space at permanent centers or required by a change in regulation or code:

(a) Are secured to the wall, floor, or ceiling to operate or function in the manner intended by the product manufacturer; and

(b) May include bleachers, student lockers, casework with sinks, or plumbing fixtures.

(17) "Owner" means the local board of education or financing established for the purpose of financing school construction.

(18) "Qualified provider" is defined by KRS 45A.345(29).

(19) "Record documents" means: (a) "Record drawings" means a set of reproduce drawings or electronic digital files revised to indicate significant changes in the work during construction, including addenda, change orders, and construction change directives.

(20) "Superintendent" means the superintendent of the local school district or an authorized designee of the superintendent [KBE] selected to represent the board regarding construction issues.

Section 2. Construction Project Application. (1) The board shall submit an application on the [BG-1 Form BG-1 Project Application Form (BG-1 Form), to the department (Division)] for approval of a proposed construction project.

(2) An application shall be submitted for each project that is:

(a) Funded by Support Education Excellence in Kentucky (SEEK) capital outlay funds, Facility Support Program of Kentucky (FSPK) funds as provided by KRS 157.620, School Facilities Construction Commission (SFCC) funds, or building funds as provided
(b) Proposing construction of a new building, addition, or alteration of an existing building that requires design by a design professional
architect for a building or building system;

(c) Proposing a guaranteed energy savings contract;

(d) Proposing a minor project; or

(e) Proposing a major renovation.

(3) To initiate a project listed in its facility plan or a minor project permitted in subsection (8) of this section, a vote by the board approving the project shall be required.

(4)(a) If SFCC funds are included in the financing plan, projects shall be selected in prioritized order from the District Facility Plan created pursuant to 702 KAR 4:180.

(b) If restricted funds other than SFCC are funding is not included in the financing plan, the board may select any project in any priority used to determine district need.

(c) Projects not used to determine district need shall only be funded as defined by the General Assembly.

(4) The Form BG-1 shall be approved by the board.

(5) The department shall take action on the BG-1 Form within thirty (30) calendar days of receipt.

(6) If an emergency occurs, impacting an activity for which a BG-1 Form is required:

(a) The superintendent shall:

1. Proceed with corrective actions, as needed;

2. Notify the department of the emergency and request approval to continue with the plans and corrective action;

3. Advise the board to declare an emergency in accordance with the district’s officially adopted procurement method under KRS 424.260 or 45A.380; and

4. Submit to the department:

   a. BG-1 Form; and
   
   b. The board order declaring the emergency; and

5. The department shall process the emergency BG-1 Form request within seven (7) calendar days of receipt.

6. If the Form BG-1 shall be accompanied by:

   (a) A copy of the board’s action, either by official board minutes or an unofficial excerpt signed by the board secretary verifying authenticity, approving the application; and

   (b) Narrative justification for the construction project selection, including its priority over other projects relative to district goals and maximization of funding and benefits to students.

7. Within sixty (60) days of receiving the completed application documents, the Form BG-1 shall be approved by the division, if justified pursuant to the following criteria:

(a) The proposed project is on the facility plan or conforms to the minor project criteria established in subsection (8) of this section;

(b) The SFCC funding does not exceed the SFCC maximum budget established for the project;

(c) The application has original signatures;

(d) A board order was issued; and

(e) The narrative justification was submitted as required by subsection (3) of this section.

(7) The Division of District Operations, KDE, may give tentative approval based on a review of the board’s ability to support the financing plan for the proposed construction budget.

(8) The board may submit a Form BG-1 for minor projects not listed in the facility plan if the project meets the following criteria:

(a) Expansion of a permanent center or functional center to include a maximum of four (4) classrooms if documentation to support the request is provided for either student population growth or curriculum changes;

(b) Campus enlargement, minor renovation of buildings and building systems, or construction of an additional support space at permanent or functional centers if its need can be documented and justified; or

(c) Projects to comply with statutes and administrative regulations of other agencies having jurisdiction.

(9) If action is not taken by the board within one (1) year from the date of Form BG-1 approval, the approval shall no longer be effective.

(10) If the division considers the architect, CM, or board to be nonresponsive or causing undue delays in the design schedule, it may request the chief state school officer to revoke the Form BG-1 approval.

(11) If an emergency requiring the submission of a Form BG-1 occurs:

(a) The emergency shall be declared in accordance with KRS 424.260 or 45A.380, whichever is applicable; and

(b) The board shall:

1. Notify the division and request approval to proceed with the plans and corrective action;

2. Submit to the division:

   a. Form BG-1;
   
   b. Copy of the board order declaring the emergency; and
   
   c. Copy of the written determination as required by KRS 45A.380 for those districts that have adopted the Model Procurement Code.

Section 3. Local Board Oversight Responsibilities. (1) Site acquisition for new sites shall be conducted in compliance with 702 KAR 4:050.

(2) An easement, property lease, property lease purchase or property lease with an option to purchase by a board for fixed equipment, capital construction, or an alteration to an existing building or building system shall require the submittal of plans and specifications and lease documents to the department for review and approval based on compliance with the requirements in 702 KAR 4:090.

(3) Construction files and records shall be maintained by the superintendent, organized by project, and accessible for review. Construction files and records shall include:

(a) Board orders;

(b) Proposals (bids);

(c) Contracts, construction documents, and record documents;

(d) Copy of each certificate of required liability insurance for the design professional, the design professional’s consultants, and the CM or qualified provider of GESC services, if used;

(e) Correspondence; and

(f) Financial documents.

(4) The board shall provide oversight of the design professional services as established in this subsection.

(a) The board’s attorney shall review the design professional’s proposed contract for compliance with the law;

(b) The board shall submit the proposed board-approved design professional contract to the department for approval;

(c) The board shall submit to the department for review:

   1. Copy of each KDE Non-Collusion Affidavit for the design professional and the design professional’s consultants;
   
   2. Copy of each required certificate of liability insurance; and
   
   3. Copy of the signed design professional contract.

(5) The board shall provide oversight of the CM services as established in this subsection.

(a) The board’s attorney shall review the CM’s proposed contract for compliance with the law;

(b) The board shall submit the proposed board-approved CM contract to the department for approval;

(c) The board shall submit to the department for review:

   1. Copy of the CM’s KDE Non-Collusion Affidavit;
   
   2. Copy of each required certificate of liability insurance;
   
   3. Copy of the performance and payment bond; and
   
   4. Copy of the signed CM contract.

(6) The board shall provide oversight of the qualified provider of GESC services as established in this subsection.

(a) The board’s attorney shall review the qualified provider’s proposed contract for compliance with the law;

(b) The board shall submit the proposed board-approved GESC contract to the department for approval.

(c) The board shall submit to the department for review:

   1. Copy of the qualified provider’s KDE Non-Collusion Affidavit;
   
   2. Copy of each required certificate of liability insurance;
   
   3. Copy of the performance and payment bond; and
   
   4. Copy of the signed GESC contract.

(7) The board shall prepare an educational specification which complies with 702 KAR 4:170, Facility Programming and Construction Criteria, and 702 KAR 4:180, Implementation Guidelines —
Kentucky School Facilities Planning Manual

(8) During the design phases of a new school building project, areas shall comply with the model program of spaces established in 70 KAR 4:180.

(9) If the design professional for general contractor delivery projects or the design professional and CM for CM delivery projects determine additional funding is justified or a reduction of physical scope of the project is needed and the board concurs, the board shall forward a revised board-approved BG-1 Form to the department for approval.

(10) During the bidding phase of the construction project, the board shall:
- Conduct the bid process in accordance with the district's officially adopted procurement method under KRS 424.260 or Chapter 45A.
- Prior to advertising, receive written approval from the department of the construction[bidding] documents;
- Hold possession of the construction[bidding] documents;
- Approve and submit each successful bidder's documents to the department for review and approval of each proposed contract and the financial plan;
- Submit a revised board-approved BG-1 Form for funding changes after bidding; and
- Have in its possession prior to signing the construction contract:
  - Owner and Architect, Construction Manager as Adviser Edition
  - AIA Document B101
  - Guideline for Basic Services;
  - AIA Document A312

Section 4. Architectural Services. (1) The board shall advertise for architectural services utilizing the KDE Request for Proposals for Architectural/Engineering Services or shall evaluate and select a minimum of three (3) architectural firms who have submitted a letter of interest. Advertisement and evaluation of three (3) firms shall not be required if:
- The total construction cost of the project is estimated at less than $1,000,000; or
- The project is the continuation of phased construction at the same site;
- The board and design professional shall negotiate a contract for services required, using either:
- A letter of agreement stating services, terms, and conditions that have been approved by the board shall be acceptable in lieu of AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version for a project with an estimated construction cost of less than $50,000.
- The design professional shall:
  - Provide professional liability insurance;
  - Complete a KDE Non-Collusion Affidavit;
  - Provide construction documents and cost estimates, as required by the contract;
  - If requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request; and
  - Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.
- The department shall review and approve the board-approved design professional's contract based on the following criteria:
  - Compliance of the fee to KDE Architect/Engineer Fee Guidelines for Basic Services;
  - Compliance with applicable laws for modifications to the contract; and
  - Consistency with the scope of work and anticipated cost approved on the BG-1 Form.
- The CM shall provide all documents and services required by contract, laws, and AIA documents incorporated by reference in
this administrative regulation. The department shall request clarification, as needed, on documentation which does not comply.

Section 6. Project Documents for General Construction and Construction Management. (1) After the department has issued written approval of the BG-1 Form, the department shall notify the board of required submissions for the project.

(a) The design professional shall prepare schematic design documents of the proposed construction from written educational program specifications which are in compliance with 702 KAR 4:170 and 702 KAR 4:180.

(b) The board shall submit the board-approved schematic design documents and a copy of the educational program specifications to the department for review and approval.

(c) The department shall review and approve the schematic design documents based on:

1. The schematic design documents and a copy of the educational program specifications, approved by board order;

2. The site plan demonstrating compliance with 702 KAR 4:170;

3. Proposed floor elevation which is a minimum of one (1) foot above the 100-year flood plain elevation for new construction and the proposal of no state funds for renovation below the 100-year flood plain elevation;

4. Floor plans demonstrating:

   a. The number, type, and size of the planned spaces, including support spaces;

   b. The educational program specifications;

   c. Maximum gross areas in compliance with 702 KAR 4:170 and 702 KAR 4:180, with:

      (i) An elementary school limited to 115 percent of the total gross area of the model program of spaces; or

      (ii) A middle or high school limited to 120 percent of the total gross area of the model program of spaces; and

   d. Building efficiency (the percent of net program area to gross building area) meeting or exceeding the guidelines of 702 KAR 4:180;

5. Functional aspects demonstrating:

   a. The distribution of functions;

   b. Program space educational suitability; and

   c. The appropriateness for the needs of the facility; and

6. The budget documenting the estimated construction cost (gross building area multiplied by the cost per square foot, plus site development costs) in relation to the BG-1 Form total construction cost. If the estimated construction cost exceeds the BG-1 Form total construction cost, the board shall approve either an increase in the budget or a decrease in the physical scope of the project.

(a) AIA Document G701/CMa 1992, Application and Certification for Payment, Construction Manager-Adviser Edition; and

(b) AIA Document G704/CMa 1992, Certificate of Substantial Completion.

(c) The department shall review and approve design development documents, which incorporate all previous schematic design documents review comments, based on:

1. Site plan (proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction, and site drainage, with details appropriately developed);

2. Floor plan (number, type, and size of the planned spaces consistent with each approved schematic plan);

3. Enlarged plans and details (appropriate to describe the design intention);

4. Budget (the total project cost on the BG-3 Form is within the approved BG-1 Form total project cost budget; if the BG-3 Form total project cost exceeds the BG-1 Form total project cost, the board shall approve an increase in the budget or a decrease in the physical scope of the project); and

5. BG-2 Form (properly completed and conforms to the educational program specifications);

(a) After receiving the board’s written approval of design development documents, the design professional, and the CM if utilized, shall prepare the completed construction documents for bidding.

(b) The board shall submit to the department:

1. Board-approved completed drawings and project manual; and

2. Proof of submission of completed construction bidding documents to other agencies having jurisdiction.

(b) The department shall review and approve the completed construction documents based on:

1. Compliance with state laws regarding the seal, signature, and date of the documents by design professionals;

2. Compliance with the requirement that documents be of sufficient detail and complexity that they may be used:

   a. To obtain a building permit;

   b. As instruments in the competitive bidding process; and

   c. By contractors to construct the project;

3. Compliance with the requirement that BG-3 Form total project cost be less than or equal to 110 percent of the approved BG-1 Form total project cost;

4. Compliance with the requirement that documents be appropriate to industry standards for general construction or construction management, including:


   b. KDE Form of Proposal;

   c. AIA Document A310-2010, Bid Bond;

   d. KDE Purchase Order;

   e. AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum - KDE Version;


   g. AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition - KDE Version;


   i. AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version;


   l. AIA Document G701-2001, Change Order;


   n. KDE Change Order Supplemental Information Form;

   o. AIA Document G704-2000, Certificate of Substantial Completion;


   q. AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of Retainage;

   r. AIA Document G706-1994, Contractor’s Affidavit of Payment of Debts and Claims;

   s. AIA Document G706A-1994, Contractor’s Affidavit of Release of Liens; and

   t. AIA Document G707-1994, Consent of Surety to Final Payment; and

5. Inclusion of letter of transmittal to state and local agencies having jurisdiction over issues related to construction projects, including:

   a. Department of Housing and Buildings Construction;

   b. Division of Building Codes Enforcement; and

   c. Division of Plumbing;

   d. Division of Water;

   e. Division of Air Quality;
d. Local health department; and
e. Local building inspector;
(4) The board shall receive written approval of the completed construction documents and authorization to advertise from the department prior to advertisement for bids.

Section 7. Guaranteed Energy Savings Contracts. (1) The board shall submit to the department a letter of intent to issue a request for proposal for a GESC.
(2) The department shall notify the board of required submissions for the GESC project;
(3) The board shall advertise for qualified providers to propose energy conservation measures utilizing the KDE Request for Proposals for Guaranteed Energy Savings Contracts in compliance with KRS 45A.352(1) and (5) for a GESC.
(4) The board and qualified provider shall negotiate a contract for services required using:
(a) AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-Builder - KDE Version;
(b) AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version;
(c) AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version; and
(d) Other exhibits as required to define the agreement.
(5) The qualified provider shall:
(a) Complete a KDE Collusion Affidavit;
(b) Provide each required certificate of liability insurance; and
(c) Provide a 100 percent performance and payment bond. AIA Document 312-2010, Performance Bond and Payment Bond - KDE Version, in compliance with KRS 45A.435.
(6) The board shall submit to the department:
(a) A board-approved proposal from the selected provider; and
(b) BG-1 Form.
(7) The department shall review and approve the project based on compliance with KRS 45A.352(9) and (10).
(8) After written approval of the project is received from the department, the qualified provider shall incorporate review comments and prepare the project scope documents. The board shall submit to the department for review and approval:
(a) Board-approved project scope documents;
(b) BG-2 Form; and
(c) Proposed contract.
(9) After written approval of the project scope is received from the department, the qualified provider shall incorporate review comments and complete the project documents, including drawings and specifications. The board shall submit to the department:
(a) Board-approved project documents, including final drawings and specifications;
(b) Proposed board-approved contract with financing documentation;
(c) Confirmation that the proposed contract complies with KRS 45A.352(3); and
(d) Revised BG-1 Form to conform to the proposed contract and financing.
(10) The department shall review and provide written approval of the proposed GESC based on:
(a) Financing documentation; and
(b) KRS 45A.352(9) and (10).

Section 8. Construction Bids, Contracts, and Bond Sales. (1) Negotiation of the bid price shall not be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.
(2) The board shall submit to the department for review and approval:
(a) Each proposed contract;
(b) A completed KDE Purchase Order Summary Form, if owner direct purchase orders are utilized;
(c) The revised financial page of the BG-1 Form to coincide with the proposed project costs;
(d) Preliminary official statement;
(e) Notice of revenue bond sale;
(f) Official terms and conditions; and
(g) Plans of financing.
(3) The board shall submit to the department for review and approval the following documentation for projects that are bid:
(a) Each bid tabulation;
(b) Bid security;
(c) KDE Form of Proposal for each successful bidder;
(d) Written recommendation of the design professional and CM, if utilized, regarding the awarding of the contract; and
(e) Written rationale for the additional cost if the accepted bid exceeds the BG-3 Form by ten (10) percent or more.
(4) If a bond sale is pending, the documents required by subsections (2) and (3) of this section shall be submitted to the department a minimum of ten (10) working days prior to the scheduled bond sale date.
(5)(a) Discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.
(b) Approval of the proposed contract by the department shall not indicate the contract is the best or the most reasonable.
(6) If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.
(7) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of the department if school revenue bonds are proposed for sale.
(8) The department shall issue the written approval for the financial plan, authorize the bond sale, and issue the approval letter for the chief state school officer or a designee.
(9) The board shall submit to the department:
(a) A copy of each signed contract and purchase order;
(b) Each contractor’s insurance certificate required by law and by contract to hold the board safe from loss until the project is completed or until an occupancy permit is received by the board; and
(c) A copy of each 100 percent performance and payment bond in compliance with KRS 45A.435.

(2) Board-approved change orders under $25,000 per change event and within the construction contingency amount shall be submitted to the department.
(3) Board-approved change orders which equal or exceed $25,000 per change event and within the construction contingency amount shall be submitted, prior to execution, to the department for review and approval.
(4) The department may approve a change order only if the change order amount is less than the available construction contingency amount on the BG-1 Form and is in accordance with subsections (1) and (3) of this section.

Section 10. Construction Contract Retainage and Payments. (1)(a) Retainage shall be governed by KRS 371.410(1).
(b) Payments shall be governed by KRS 371.405(7).
(2) The investment earnings resulting from an agreement entered into by a board involving the construction account, including the construction contract retainage for an approved project, shall be invested in a manner so that additional income from the investment shall accrue only to the construction account.

Section 11. Construction Dispute Resolution. Owners shall utilize the construction dispute resolution processes defined in the signed contracts for the project.

Section 12. Construction Contract Closeout Process. (1) The applicable design professional, CM, or qualified provider shall furnish the board a completed BG-4 Contract Closeout Form, 2012 (BG-4 Form) and record documents, with applicable information requesting approval of:
(a) Each contract, including change orders; and
(b) A reconciliation of the summary of all purchase orders, if utilized, including change orders, for each contract.

(2) The board agrees the construction contract is complete and all accounts are reconciled. It shall approve the BG-4 Form and forward it to the department for review and approval.

(3) When all construction contracts are complete, if the board agrees the project is complete, it shall approve the BG-5 Project Closeout Form, 2012 (BG-5 Form) and forward it to the department for review and approval.

Section 13. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the department of malfeasance or nonfeasance shall be forwarded to the chief state school officer.

(2) The chief state school officer may make a recommendation to the KDE to determine that the offending firm is ineligible to provide professional services on school construction projects for a period not to exceed five (5) years.

(3) If the KDE may prescribe alternative penalties.

(4) If the principals of the offending firm become associated with another firm during the penalty period, upon recommendation by the chief state school officer, the KDE may determine that the penalty invoked shall also apply to that firm.

Section 14. Incorporation By Reference. (1) The following material is incorporated by reference:

(b) "AIA Document A201-2007, General Conditions of the Contract for Construction - KDE Version", 2013;
(c) "AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum - KDE Version", 2013;
(h) "AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-Build - KDE Version", 2013;
(l) "AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version", 2013;
(m) "AIA Document A310-2010, Bid Bond", 2010;
(n) "AIA Document G701-2001, Change Order", 2001;
(r) "AIA Document G704-2000, Certificate of Substantial Completion", 2000;
(t) "AIA Document G706-1994, Contractor’s Affidavit of Payment”, 1994;
(v) "AIA Document G707-1994, Consent of Surety to Final Payment”, 1994;
(w) "AIA Document G707A-1994, Consent of Surety to Reduc-
the financial plan; and
(i) Have in its possession prior to executing the construction contract:
1. Contractor's performance and payment bond; 
2. Certificate of required insurance; 
3. Property insurance policy; 
4. Written approval from the division; and 
5. Bids accepted for the bond sale, if applicable.
(ii) During the construction administration of the project, the board shall:
(a) Name the superintendent or his or her representative, known as the owner's representative, to speak on behalf of the board as owner in the contract documents and set the parameters of that responsibility;
(b) Seek the superintendent's recommendation relative to proposed board actions;
(c) Approve all expenditures from the contract account;
(d) Seek SFCC approval of expenditures as applicable;
(e) At least once per month receive and review written on-site observation and progress reports provided by the architect;
(f) Review the need for changes to the contract;
(g) Assign partial or full responsibility to the proper party if additional costs are due to an oversight or omission;
(h) Monitor the administration of the project by its architect and CM to ensure no prepayment is made for their services;
(i) After noticing the division, hire a professional services firm experienced in architectural, engineering, accounting, or construction management services to provide an audit of the construction project if the board suspects nonfeasance or malfeasance;
(j) Secure all required inspections and close out documents for submittal to the appropriate agencies;
(k) Receive a certificate of occupancy from the Department of Housing, Buildings, and Construction or local building code authority having expanded jurisdiction prior to occupying the facility;
(l) Retain a minimum five (5) percent retention of the construction contract until substantial completion of the work as defined in AIA Document A201-2007, General Conditions of the Contract for Construction, and the KDE Amendment to AIA B101-2007;
(m) Require the superintendent or the owner's representative to participate in the year-end inspection and report results of the inspection to the board;
(n) Contact the contractor's bonding company each month if the contractor is more than two (2) weeks behind schedule or is not performing in accordance with the contract; and
(o) Not hire additional architectural services outside the architect's contract without approval from the division.
(i) If federal funds or federal agencies are involved, the board may request approval from the chief state school officer to waive or condense procedures to expedite the construction design process.
(j) If a lien is filed with a court and the board is given notice of the lien, the board shall stop partial payments on the contract in the amount of the lien and contact the division. Payments shall begin after:
(a) The lien has been released;
(b) The division has approved a payment schedule which provides for retaining the lien amount being contested; or
(c) The division has approved a payment schedule after a surety bond has been provided to pay the lien.

Section 4. Architectural Services. (1)(a) The board and architect shall negotiate a contract for services required:
(b) The board shall either advertise for architectural services or select a minimum of three (3) architectural firms that shall be evaluated through the request for proposal (RFP) process, giving consideration during the review process to businesses owned by minorities and women.
(c) Advertising or RFP evaluation of three (3) firms shall not be required if:
(1) The total construction cost of the project is estimated at less than $1,000,000;
(2) The project is the continuation of phased construction at the same site.
(2) The architectural services shall be negotiated using the following documents:
(a) Request for Proposals for Architectural/Engineering Services, if utilized;
(b) 1. AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect, with the KDE Amendment to AIA B101-2007, or
2. AIA B141/Cma, Standard Form of Agreement Between Owner and Architect, Construction Manager – Adviser Edition, with the KDE Amendment to AIA B141/Cma-1992;
(c) KDE Non-Collusion Affidavit; and
(d) Architect/Engineer Fee Guidelines as a percentage of the cost of construction, or a lump sum fee.
(3) A letter of agreement stating services, terms, and conditions that have been approved by the board shall be acceptable in lieu of the AIA B101–2007 for projects with an estimated construction cost of less than $50,000.
(4) The division shall review and approve the proposed architect's contract based on the following criteria:
(a) Copy of the board action approving the terms of the proposed contract;
(b) Scope and fee conforms to Form BG-1; and
(c) Submittal of required forms.
(5) The division shall advise the board of:
(a) Apparent deficiencies in completion of the contract;
(b) Discrepancies related to the scope of work and anticipated cost approved on the Form BG-1;
(c) Compliance of fees and the required fee schedule; and
(d) Concerns regarding modifications to the contract.
(6) The architect shall:
(a) Provide on-site visitation and shall report on the construction project to the board;
(b) Certify, to the best of his ability, professional judgment, and with due diligence, that all phases of the project have been completed in conformance with the approved plans and specifications and any authorized changes by signing the BG-4 Project Closeout Form;
(c) Provide professional liability insurance in the following minimum amounts:
1. If the project is $1,000,000 or less, $500,000 per claim and $1,000,000 aggregate per annum; or
2. If the project exceeds $1,000,000, per claim and $2,000,000 aggregate per annum;
(d) Require his consultants to retain professional liability insurance in the minimum amount of $250,000 aggregate, except structural design and mechanical-electrical-plumbing consultants shall carry a minimum amount of $1,000,000 aggregate for projects $1,000,000 or less, and $2,000,000 aggregate for projects exceeding $1,000,000;
(e) Provide copies of certificates of insurance to the division;
(f) Assist in preparing the bid advertisement for the board;
(g) List projects estimated in excess of $1,000,000 with a minimum of two (2) Kentucky construction reporting services;
(h) Submit to the board a written report that includes a status of the project, dates and times architect was on site, conditions of the job, problems, delays, and concerns at least monthly after construction begins;
(i) Request payment of construction administration phase fee at the same proportionate percentage as the construction's completion;
(j) Request approval by the owner's representative for any reimbursement or additional service prior to the service being rendered or expenditure being made;
(k) If requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;
(l) Request additional payment for construction time or services extending beyond the scheduled completion date, if the additional costs were incurred through no fault of the architect and are documented due to the delay of the contractor, subcontractors, material suppliers, or vendors;
(m) Utilize his consultants listed on the contract form for design, construction administration and observation of the work;
(n) Pay his consultants the same percentage proportion of their fee as he has received from the board;
(o) Pay his consultants eighty (80) percent of the architect's fee based on the construction cost of the consultant's work. If the arc-
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The architect's fee is a lump sum, the consultant shall receive the same proportionate amount;

(p) If a joint venture, list on the contract form the prime architectural firm accountable to the board and provide the board with a copy of the joint venture contract indicating each party's responsibilities and fees; and

(q) Provide independent contract administration over construction contracts awarded to the project's CM.

(7) The board shall provide oversight of the architectural services in the following manner:

(a) The architect's proposed contract shall be reviewed by the board's attorney for compliance with the Act; and

(b) The board shall submit to the division for approval:

1. The proposed architect contract;
2. A copy of the board order approving the contract;
3. A narrative of the selection and evaluation process;
4. A copy of each certificate of required liability insurance; and
5. A copy of each KDE Non-Collusion Affidavit.

Section 5. Construction Management Services. (1) A CM shall not be employed on any project estimated at less than $2,000,000 or without the approval of the division if the number of work categories negate the need for full-time, on-site supervision for projects in excess of $2,000,000. The division may approve exceptions as follows:

(a) If the project is a phase of a phased project and the CM is to be employed on all subsequent phases; or

(b) If the project's complexity or fiscal soundness requires it.

(2) In hiring a CM, the board shall either advertise for CM services or select a minimum of three (3) construction management firms that shall be evaluated through the RFP process. Advertisement or RFP evaluation of three (3) firms shall not be required if the project is the continuation of phased construction at the same site.

(3) The board shall negotiate a contract using the following:

(a) Request for Proposals for Construction Management Services, if utilized;

(b) AIA Document B801/CM. Standard Form of Agreement Between Owner and Construction Manager, and the KDE Amendment to AIA B801/CMA 1992; or

(c) KDE Construction Manager Fee Guidelines;

(d) KDE Non-Collusion Affidavit;

(e) Projected number of months construction;

(f) On-site services fee per month; and

(g) Fee scale for additional construction cost and months.

(4) The number of months in the CM contract for the construction phase shall not be altered unless:

(a) There is a change in the scope of the work; and

(b) The owner, architect, and CM agree to the revised number of months during the evaluation of construction bids.

(5) The preconstruction phase payment shall be a maximum of ten (10) percent of the total proposed fee.

(6) The CM shall:

(a) Provide a 100 percent performance and payment bond prior to the construction contracts being executed by the board in the amount of the CM fee from an insurance firm authorized to do business in Kentucky and listed in and written within the terms and limits established in 31 C.F.R. 223;

(b) Provide professional liability insurance in the following minimum amounts:

1. Projects of $10,000,000 or less, insurance in the amount of $500,000 or
2. For projects in excess of $10,000,000, insurance in the amount of $1,000,000;

(c) Develop bid packaging to ensure at least five (5) known potential bidders are notified on each bid package;

(d) Not transport any bidder's proposal to the bid opening;

(e) Provide independent contract administration over construction contracts awarded to the project's CM.

(7) The board shall provide oversight of the CM services by:

(a) Retaining an attorney to:

1. Review the contract as negotiated to ensure compliance with the Act;

2. Request modifications to the contract as needed; and

3. Sign the contract form attesting to review;

(b) Taking action approving the contract terms and conditions; and

(c) Forwarding to the division for review and approval:

1. A copy of the proposed contract;

2. The board order;

3. A narrative of the selection and evaluation process;

4. The certificate of required liability insurance; and

5. The KDE Non-Collusion Affidavit.

(8) The CM contract shall be reviewed and approved by the division based on the following criteria:

(a) A copy of board order of approval;

(b) The fee is based on a lump sum amount or fee guideline established in the document titled Construction Manager Fee Guidelines;

(c) Any modifications to the contract comply with applicable laws; and

(d) Submission of required forms is made in a timely fashion.

Section 6. Plans and Specifications. (1) After approval of the Form BG.1 application by the division, the division shall provide a procedural checklist to the board that indicates required submissions for the project.

(a) The architect shall prepare schematic plans of the proposed construction from written educational program specifications supplied by the board.

(b) The schematic plans and a copy of the educational program specifications, approved by board action with a copy of the minutes, shall be submitted by the board to the division for review and approval.

(c) The division shall review and approve the schematic plan submittal based on:

1. Site plan: proper siting of the building footprint provides appropriate access, vehicular and pedestrian circulation, separation of on-site service and utility connections and drainage; 2. Floor plan: number, type, and size of the planned spaces, including support spaces, agree with the programmed spaces listed on the Form BG.1, the educational specifications, and are in compliance with 702 KAR 4:160 and 702 KAR 4:170;

3. Functional aspects: review of the distribution of functions, program space and the appropriateness for the needs of the facility;

4. Compliance with the Model Program Space requirements established in 702 KAR 4:180, with the maximum gross area of:

a. An elementary school limited to 110 percent of the Total Gross Area of the Model Program Space; or
b. A middle or high school limited to 116 percent of the Total Gross Area of the Model Program Space;

5. Building efficiency: review of the percent of net program area to gross building area to meet or exceed the guidelines of 702 KAR 4:180; and

6. Budget review of the estimated construction cost (gross area multiplied by the cost per square foot, plus site development costs) in relation to the Form BG.1 Total Construction Cost. If the estimated construction cost exceeds the Form BG.1 Total Construction Cost, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board.

(2) After written approval of the schematic plans, is received from the division, the architect shall prepare the design development plans.
(a) The board shall submit to the division for review and approval:
1. Design development plans;
2. Board order approving plans;
3. BG-1, Outline Specification; and
4. BG-3, Statement of Probably Cost.
(b) The division shall review and approve design development plans submittals based on:
1. Site plan: proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction and site drainage, with details appropriately developed;
2. Floor plan: number, type, and size of the planned spaces consistent with the schematic plan;
3. Enlarged plans and details: appropriate to describe the design intention;
4. Compliance with the Model Program Space requirements established in 702 KAR 4:180, with the maximum gross area of:
   a. An elementary school limited to 110 percent of the Total Gross Area of the Model Program Space; or
   b. A middle or high school limited to 115 percent of the Total Gross Area of the Model Program Space;
5. Building efficiency: the percent of net program area to gross building area meets or exceeds the guidelines of 702 KAR 4:180;
6. Design development plans incorporate all previous schematic design review comments.
3. Revised BG-3, Statement of Probably Cost; and
4. Proof of submission of completed plans and details: appropriate to describe the design intention.
5. At least 60 days prior to the scheduled construction contract date, the board shall submit to the division for review and approval:
   a. Completed plans and specifications and project manual;
   b. Board order approving plans and specifications;
   c. Deed, certificate of title insurance to the property; and
   d. AIA Document G704, Certificate of Substantial Completion.
   e. AIA Document G704, Certificate of Substantial Completion, 1992 Construction Manager-Adviser edition;
   f. AIA Document G706, Contractor’s Affidavit of Payment of Debts and Claims;
   g. AIA Document G706, Contractor’s Affidavit of Payment of Debts and Claims, 1992 Construction Manager-Adviser edition;
   h. AIA Document G707, Consent of Surety to Final Payment; and
6. A 100 percent performance and payment bond shall be required for any contract in excess of $25,000 and on all contracts using the CM process from an insurance firm authorized to do business in Kentucky. The insurance firm shall be listed in and the performance and payment bond shall be written within the terms and limits established by the United States Department of the Treasury, Financial Management Service, and available at http://fms.treasury.gov/c570/c570.htm;
7. A contractor shall carry all insurance required by law and by contract to hold the board safe from loss until the project is completed or an occupancy permit is received by the board. Unless otherwise provided in the bidding documents, the board shall purchase and maintain property insurance written on a builder’s risk “all-risk” or equivalent policy in the amount of the initial Total Construction Cost plus value of subsequent contract modifications and the cost of materials supplied and installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles; and
8. Notification of other state and local agencies having jurisdiction, including:
   a. Department of Housing, Buildings and Construction;
   b. Division of Building Codes Enforcement;
   c. Division of Plumbing.
9. The board shall receive written approval of the construction bidding documents and authorization to bid from the division prior to advertisement for bids.
10. Performance specification procedures may be used by the board for proposed capital construction projects. The proposed performance specifications as prepared by the board shall be approved in writing by the division prior to advertisement for bids.
11. Leases, lease purchases, or leases with an option to purchase by a board for fixed equipment, capital construction, or alteration to existing buildings and building systems shall require the submittal of plans and specifications and lease documents to the division for review and approval.

Section 7. Construction Bidding, Bond Sale, and Contracting.
(1) A minimum of ten (10) working days prior to the scheduled bond sale date, the board shall submit to KDE for review and approval:
   a. To the division:
1. Each bid tabulation;
2. Bid security;
3. The proposal form for each successful bidder;
4. Each proposed contract or purchase order (unsigned);
5. The revised financial form (Form BG-1, page 3) to coincide with the proposed construction costs; and
6. The architect’s written recommendation regarding the awarding of the contract; and

(b) To the Division of District Operations, KDE:
1. Preliminary official statement;
2. Notice of bond sale;
3. Official terms and conditions; and
4. Plans of financing.

(2) If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.

(3) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the proceeds of the bond issue. The completion of the approval of KDE when school revenue bonds are proposed for sale.

(a1) Bids for school revenue bond sales shall be received in Frankfort, Kentucky, at
1. Kentucky Department of Education, Office of District Support Services, 15th Floor, Capitol Plaza Tower, or
2. 2000 or AIA Document G701/CMa issued in connection with the project shall be signed by the appropriate parties as a recommendation and shall be subject to approval by the board.

(2) Any additive or deductive change order proposal in excess of $7,500 shall be subject to approval by the division prior to execution.

(3) Approval of proposed change orders over $7,500 shall be based upon:
(a) Completed supplemental information form, board order, and cost breakdown;
(b) Cost calculated according to contract unit prices or alternative method with documentation provided to support cost;
(c) The change order scope and cost are considered within the norm based upon the information submitted; and
(d) Cumulative cost of contract and all change orders are within the approved budget.

(4) The division approval shall not indicate the change order cost is the best cost or the requested change order is the most appropriate action.

Section 9. Construction Contract Retainage. (1)(a) The board shall retain ten (10) percent from each application for payment up to fifty (50) percent completion of the work. If the work is on schedule and satisfactory, and upon written request of the contractor, the change order scope and cost are considered within the norm based upon the information submitted; and
(b) No part of the five (5) percent retainage shall be paid until after substantial completion of the work, as defined in AIA A201-2007. General Conditions of the Contract for Construction, and the KDE Amendment to AIA A201-2007.

(2) Vicinity of the change order, or may be regarded as incidental to or which relate to an integral part of the original contract and specifications, may be approved by the division.

(3) A copy of any change order using the forms AIA Document G701-2000 or AIA Document G701/CMa issued in connection with the project shall be signed by the appropriate parties as a recommendation and shall be subject to approval by the board.

Section 10. Construction Dispute Resolution. (1)(a) Unresolved claims between parties arising out of or relating to any contract subject to this administrative regulation shall not utilize arbitration or the American Arbitration Association unless agreed to by all parties.

(2) Prior to the initiation of legal proceedings, unresolved claims arising out of or relating to any contract shall be subject to mediation, which shall be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of the contract and, if the parties fail to resolve their disputes through mediation, to binding dispute resolution.

(3) Mediation may be initiated by written request filed by any party.

Section 11. Construction Contract Closeout Process. (1) The architect shall furnish the board a completed BG-4, Project Closeout Form, with applicable information requesting final approval.

(2) If the board agrees the construction contract is complete, it shall approve the BG-4 and forward it to the division for review and approval.

Section 12. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the division of malfeasance or nonfeasance by the architect or CM shall be forwarded to the chief
state school officer.

(2) The chief state school officer may make a recommendation to the KBE to determine that the offending firm is ineligible to provide professional services on school construction projects for a period not to exceed five (5) years.

(3) The KBE may prescribe alternative penalties.

(4) If the principals of the offending firm become associated with another firm during the penalty period, upon recommendation by the chief state school officer, the KBE may determine that the penalty invoked shall also apply to that firm.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) BG-1, Project Application Form, 2008;
(b) Non-Collusion Affidavit, December 2008;
(c) Request for Proposals for Architectural/Engineering Services, May 1993;
(d) Architect/Engineer Fee Guidelines, May 1993;
(e) KDE Amendment to AIA B101-2007, Standard Form of Agreement Between Owner and Architect;
(f) KDE Amendment to AIA B101-2007, December 2008;
(g) KDE Amendment to AIA B141/CMA, Standard Form of Agreement Between Owner and Architect, 1992 Construction Manager-Adviser Edition;
(h) KDE Amendment to AIA B141/CMA-1992, May 1993;
(i) Request for Proposals for Construction Management Services, May 1993;
(j) KDE Document B801/CMA, Standard Form of Agreement Between Owner and Construction Manager, 1992 edition;
(k) KDE Amendment to KDE B801/CMA-1992, May 1993;
(l) KDE Document A201-2007, General Conditions of the Contract for Construction;
(m) KDE Amendment to AIA A201-2007, December 2008;
(o) KDE Amendment to AIA A201/CMA, 1992, May 1993;
(p) KDE Document A101-2007, Standard Form of Agreement Between Owner and Contractor;
(q) KDE Amendment to AIA A101-2007, December 2008;
(r) KDE Document A101/CMA, Standard Form of Agreement Between Owner and Contractor, 1992 Construction Manager-Adviser edition;
(s) KDE Amendment to KDE A101/CMA-1992, May 1993;
(t) KDE Document A701-1997, Instructions to Bidders;
(u) KDE Amendment to KDE A701-1997, April 2000;
(v) KDE Document A704, Bid Bond, 1970;
(w) KDE Document A312, Performance Bond and Payment Bond, 1984;
(x) KDE Amendment to KDE A312-1984, May 1993;
(y) KDE Purchase Order, May 1993;
(z) KDE Material Supplier Authorization, May 1993;
(cc) KDE Change Order Supplemental Information Form, April 2000;
(dd) KDE Document G701-2000, Change Order;
(hh) KDE Document G706, Contractor's Affidavit of Payment of Debts and Claims, 1994;
(ii) KDE Document G708A, Contractor's Affidavit of Release of Liens, 1994;
(jj) KDE Document G707, Consent of Surety to Final Payment, 1994;
(kk) KDE Document G707A, Consent of Surety to Reduction in or Partial Release of Retainage, 1994;
(1) KDE CM Fee Guideline, May 1993;
(mm) BG #2, 2008, Outline Specifications;
(nn) BG #3, 2008, Statement of Probable Construction Cost;
(oo) KDE G702-1992, Application and Certificate for Payment, and
(pp) BG #4, 2008, Project Closeout Form.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The AIA documents may be purchased from the American Institute of Architects by calling 1-800-365-2724.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (5).

TERRY HOLLIDAY, Commissioner of Education

DAVID KAREM, Chairperson

APPROVED BY ADOPTION: June 14, 2013

FILED WITH LRC: June 14, 2013 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Office of Guidance Support Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, 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 standards that school districts shall meet in operational performance and execution of school construction, including the use of uniform forms.
(b) The necessity of the administrative regulation: This administrative regulation was necessary to establish standards that districts shall meet in operational performance and execution of school construction.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the authorizing statute: This administrative regulation is necessary to establish standards that districts shall meet in operational performance and execution of school construction.

(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 provides an update to streamline the school construction process by aligning the agency's business processes with the current construction environment and by removing the agency's role of guidance and oversight. The School Facilities Work Group Report, issued on August 5, 2011, documented recommendations for improving the school construction process. The agency construction forms were revised in conjunction with the administrative regulation revision. In addition to improving the overall construction process, the agency included a section in the administrative regulation for the Guaranteed Energy Savings Contract delivery method. Local board oversight activities were identified along with required submissions for the agency's oversight.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish standards that districts shall meet in operational performance and execution of school construction and align standards and incorporate regulations with the authorizing statute: This administrative regulation was necessary to implement provisions of KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033 that set forth the Kentucky Board of Education's responsibility to establish standards that districts shall meet in operational performance and execution of school construction.
(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the content of the authorizing statute.
(d) How the amendment will assist in the effective administr-
The amendment provides specifics for the school construction process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the agency, design consultants, and contractors.

(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 amendment will provide a comprehensive set of uniform construction documents for use by school districts, design consultants, and contractors.

(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, design consultants, and contractors will abide by the standards and requirements set forth. Agency staff will continue to review all construction projects for compliance with the amendments 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): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have updated regulations that support and incorporate the standards and recommendations from the School Facilities Work Group and will have the guidance establishing standards that districts shall meet in operational performance and execution of school construction.

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

(a) Initially: The amendment does not result in additional costs.
(b) On a continuing basis: The 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: No additional funding is necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding is 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? All school districts and the agency 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. This administrative regulation provides specifics for the school construction process required in KRS 156.070, 156.160, 162.060, 162.065, 322.360 and 323.033.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation does not directly affect expenditures or revenues.

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

(c) How much will it cost to administer this program for the first year? The amendment of this administrative regulation does not result in additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment of this administrative regulation does not result in additional costs in subsequent years.

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

Revenues (+/-): Not applicable
Expenditures (+/-): Not applicable
Other Explanation: Not applicable

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services
Division of Provider Operations

(Amended After Comments)

907 KAR 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.


NECESSITY, FUNCTION, AND CONFORMITY [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) 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 funding for the provision of medical assistance to Kentucky’s indigent citizenry. 42 U.S.C. 1396a(a) establishes requirements for federalally-qualified health centers and rural health clinics.] This administrative regulation establishes the Department for Medicaid Services’ reimbursement policies for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.

Section 1. Definitions. (1) “Advanced practice registered nurse” or “APRN” is defined by KRS 314.011(7).

(2) “Allowable costs” means costs that are incurred by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center or clinic that are reasonable in amount and proper and necessary for the efficient delivery of services.

(3) “Audit” means an examination, which may be full or limited in scope, of a federally-qualified health center’s, federally-qualified health center look-alike’s, rural health clinic’s, or primary care center’s:
(a) Financial transactions, accounts, and reports; and
(b) Compliance with applicable Medicare and Medicaid regulations, manual instructions, and directives.

(3) “Center” means a federally-qualified health center or a primary care center.

(4) “Change in scope of service” means a change in the type, intensity, duration, or amount of service.

(5) “Clinical psychologist” is defined by 42 C.F.R. 410.71(a)“Clinic” means a rural health clinic.

(6) “Department” means the Department for Medicaid Services.

(7) “Enrollee” means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

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(8) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(9) "Federally-qualified health center" or "FQHC" is defined in 42 C.F.R. 400.204.

(10) "Federally-qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration to be a federally-qualified health center look-alike.

(11) "Qualifications" for a primary care center:

(a) A licensed physician means:

1. (1a) A licensed physician;

2. (1b) A licensed osteopathic physician;

3. (1c) A licensed podiatrist;

4. (1d) A licensed optometrist;

5. (1e) A licensed and certified advanced practice registered nurse(practitioner);

6. (1f) A licensed dentist or oral surgeon;

7. (1g) A certified physician assistant;

8. (1h) For an FQHC:

1. A licensed clinical social worker;

9. (1i) A(n)

2. A licensed clinical psychologist;

(b) An FQHC, FQHC look-alike, or RHC means:

1. A provider or practitioner listed in paragraph (a) of this subsection;

2. Contingent upon approval of a state plan amendment by the Centers for Medicare and Medicaid Services, a:

(a) Licensed professional clinical counselor; or

(b) Licensed marriage and family therapist; or

(c) An FQHC, FQHC look-alike, or RHC means:

1. A resident in the presence of a teaching physician; or

2. A resident without the presence of a teaching physician if:

a. The services are furnished in an FQHC, FQHC look-alike, or RHC; or

b. The resident furnishing the service is located at a distant site for the purpose of improving a patient's health or condition or the resident has management responsibility for an acceptable beneficiary or patient that:

i. Is at a different location than the parent facility; and

ii. Directs care from a proximity that constitutes immediate availability; and

iii. Ensures that the services furnished are appropriate;

(iv) Reviews with the resident during or immediately after each visit by a recipient, the recipient's medical history, physical examination, diagnosis, and record of tests or treatments; and

(v) Documents the extent of the teaching physician's participation in the review and direction of the services furnished to each recipient.

(12) "Interim rate" means a reimbursement amount established by the department to pay an A FQHC, FQHC look-alike, RHC, or a PCC primary care center for covered services prior to the establishment of a PPS rate.

(13) "Licensed clinical social worker" means an individual who is currently licensed in accordance with KRS 335.100.

(14) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(15) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(16) "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. 458.2.

(17) "Medical Group Management Association Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association which:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

(18) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(19) "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

(20) "Parent facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:

(a) Licensed and operating with a unique Kentucky Medicaid program provider number;

(b) Operating under the same management as a satellite facility; and

(c) The original facility which existed prior to the existence of a satellite facility.

(21) "PCC" or "primary care center" means an entity that is currently licensed as a PCC in accordance with KAR 902 KAR 20:058.

(22) "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

(23) "Physician assistant" is defined by KRS 335.840(3).

(24) "PPS" means prospective payment system.

(25) "Rate year" means, for the purposes of the MEI, the twelve (12) month period beginning July 1 of each year for which data is established for an FQHC, FQHC look-alike, RHC, or a PCC primary care center under the prospective payment system.

(26) "Reasonable cost" means a cost as determined by the:

(a) Applicable Medicare cost reimbursement principles established in 42 C.F.R. Part 413, 45 C.F.R. 74.27, and 48 C.F.R. Part 31; and

(b) Medical Group Management Association Physician Compensation and Production Survey Report for the applicable year and region.

(27) "Recipient" is defined by KRS 305.8451(9).

(28) "RHC" or "rural health clinic" is defined in 42 C.F.R. 405.2401(b).

(29) "Satellite facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:

(a) Is at a different location than the parent facility; and

(b) Operates under the same management as the parent facility.

(30) "Telehealth" means two (2) or more, real-time, interactive communication between a patient and a physician or practitioner located at a distant site for the purpose of improving a patient's health through the use of interactive telecommunication equipment that includes, at a minimum, audio and video equipment.

(31) "Visit" means a face-to-face encounter or encounter which occurs via telehealth between a recipient or enrollee and a health care provider during which an A FQHC, FQHC look-alike, or RHC, or PCC primary care center is delivered.

Section 2. Provider Participation Requirements. (1)(a) A participating FQHC, FQHC look-alike, RHC, or PCC satellite facility of an FQHC, satellite facility of an FQHC look-alike, or satellite facility of a PCC center or clinic shall be currently:

1. Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

2. Participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(b) A satellite facility of an FQHC, an FQHC look-alike, or a PCC shall:

1. Be currently listed on the parent facility's license in accordance with 902 KAR 20:058;

2. Comply with the requirements regarding extensions
established in 902 KAR 20:058; and
3. Comply with 907 KAR 1:671;
   (2)(a) To be initially enrolled with the department, an FQHC, FQHC look-alike, or RHC shall:
   1. Enroll in accordance with 907 KAR 1:672; and
   2. Submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC;
   (b) To remain enrolled and participating in the Kentucky Medicaid program, an FQHC, FQHC look-alike, or RHC shall:
   1. Comply with the enrollment requirements established in 907 KAR 1:672;
   2. Comply with the participation requirements established in 907 KAR 1:671; and
   3. Annually submit proof of its certification by (upon recertification with) the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC; submit proof of its continued certification to the department upon obtaining recertification.
   (c) The requirements established in paragraph (a) and (b) of this subsection shall apply to a satellite facility of an FQHC or FQHC look-alike.
   (3)(a) An FQHC, FQHC look-alike, or PCC that operates multiple satellite facilities shall:
   1. Enroll each facility on the parent facility's license in accordance with 902 KAR 20:058; and separately enroll each satellite facility with the department in accordance with 907 KAR 1:672;
   (b) (An FQHC, FQHC look-alike, or PCC that operates multiple satellite facilities shall) be authorized to consolidate claims and cost report data of its satellite facilities.
   (An FQHC, FQHC look-alike, or PCC shall not submit a claim for a service provided at a satellite facility if the satellite facility is not currently:
   1. Enrolled with the department in accordance with 907 KAR 1:672; and
   2. Participating with the department in accordance with 907 KAR 1:671.
   (5) An FQHC, FQHC look-alike, RHC, or PCC that has been terminated from federal participation shall be terminated from Kentucky Medicaid program participation.
      (5)(6)(2) An FQHC shall be enrolled as a primary care center.
   (3) A participating:
   (a) FQHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC;
   (b) FQHC look-alike and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC look-alike;
   (c) RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an RHC;
   (d) PCC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a PCC;
   (6)(7) An FQHC, FQHC look-alike, RHC, or PCC (center or clinic) and staff shall comply with all applicable federal, state, and local regulations concerning the administration and operation of a PCC, FQHC, or an RHC.
   (4) A center or clinic performing laboratory services shall meet the requirements established in 907 KAR 1:028 and 907 KAR 1:575.

Section 3. Standard Reimbursement for an FQHC, FQHC look-alike, or RHC for a Visit by a Recipient Who is not an Enrollee and that is Covered by the Department [-or-PCC].
   (1) For a visit by a recipient who is not an enrollee and that is covered by the department for services provided on and after July 1, 2001, the department shall reimburse:
      (a) An FQHC, FQHC look-alike, or RHC an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(aa); or
      (b) A satellite facility of an FQHC, FQHC look-alike, or RHC a prospectively determined all-inclusive rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(aa);
   (2) Except for drugs or pharmacy services. Costs related to outpatient drugs or pharmacy services shall be excluded from the all-inclusive encounter rate per patient visit referenced in subsection (1) of this section.
   (3)(4) The department shall calculate a PPS [base] rate for:
      (a) An existing center or clinic in accordance with Section 4 of this administrative regulation or
      (b) a new FQHC, FQHC look-alike, or RHC (RHC) in accordance with Section 4(5) of this administrative regulation.
   (4) The department shall adjust a PPS rate per visit:
      (a) By fifty (50) percent of the percentage increase in the MEI applicable to primary care services on January 1, 2002;
      (b) By the percentage increase in the MEI applicable to FQHC, FQHC look-alike, or RHC (RHC) on the last day of each year (beginning July 1, 2002) and
      (c) In accordance with Section 8(1)(2) of this administrative regulation:
         1. Upon receipt and documentation by an FQHC, FQHC look-alike, RHC, or PCC (center or clinic) that there has been a change in scope of services; or
         2. Upon review and determination by the department that there has been a change in scope of services.
   (5) (A) A rate established in accordance with this administrative regulation shall not be subject to an end of the year cost settlement.

Section 4. Establishment of a PPS Base Rate for an Existing Provider.
   (1) The department shall establish a PPS base rate to reimburse an existing PCC, FQHC, and RHC 100 percent of its average allowable cost of providing Medicaid covered services during a center’s or clinic’s fiscal years 1999 and 2000. A center’s or clinic’s fiscal year that ends on January 31 shall be considered ending the prior year.
   (2) A center or clinic shall complete MAP 100601 annually and submit it to the department by the last calendar day of the third month following the center’s or clinic’s fiscal year end.
   (3) The department shall:
      (a) Use a center’s or clinic’s desk reviewed or audited cost reports for fiscal years ending February 1999 through January 2000 and February 2000 through January 2001;
      (b) Trend the cost from the second base year forward to July 1, 2001, by the percentage increase as measured by the HICFA hospital market basket index; and
      (c) Calculate the average cost by dividing the total cost associated with FQHC, PCC, and RHC services for the total visits associated with the FQHC, PCC, and RHC services.
   (4) If a center or clinic has only one (1) full year of cost report data, the department shall calculate a PPS base rate using a single audited cost report.
   (5) The department shall adjust a PPS base rate determined in accordance with this section to account for an increase or decrease in the scope of services provided during fiscal year 2001 in accordance with Section 6 of this administrative regulation.
   (6) Until the establishment of a PPS base rate by the department, a center or clinic shall be paid for services at an interim rate.
   (7) Except for a center that has been receiving an incentive payment and the interim rate shall be the rate on file on June 30, 2001.
   (8) A center that has been receiving an incentive payment shall have an interim rate based upon the average costs of providing services for fiscal years 1999 and 2000. The average shall be calculated in accordance with this section using unaudited cost report data.

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Section 5. Reimbursement for Services or Drugs Provided to an Enrollee by a PCC That Is Not an FQHC, FQHC Look-Alike, or RHC and that are Covered by a MCO. (1) For a service or drug provided to an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC, the department shall reimburse the rate or reimbursement established pursuant to an agreement between the PCC and the managed care organization with whom the enrollee is enrolled.

(2) The department shall not supplement the reimbursement referenced in subsection (1) of this section.

Section 6. Reimbursement for Services or Drugs Provided to aRecipient by a PCC That Is Not an FQHC, FQHC Look-Alike, or RHC and that are Covered by the Department. (1) For a service or drug provided to a recipient that is not an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC, the PCC’s reimbursement shall be the reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service of drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

Section 7. Supplemental Reimbursement for FQHC Visits. (a) For a visit by a PCC to a recipient that is not an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC, the payment to the PCC shall be based on the Medicaid physician fee schedule established pursuant to 907 KAR 3:010.

(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.

The department shall adjust the rate or reimbursement established pursuant to Sections 3 and 4 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(a) Ensures that total reimbursement does not exceed the federal upper payment limit established in 42 U.S.C. 1396a(bb)(5)(A); and
(b) If a Medicare coverage provision or requirement exists with respect to a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, this provision or requirement shall not preclude reimbursement.
(a) Estimates of Medicaid allowable costs to be incurred by the center or clinic during the initial reporting period of at least twelve (12) months; and
(b) The number of Medicaid visits a center or clinic expects to provide during the reporting period.
(5) An interim payment shall be based on an annual budgeted or projected average cost per visit that shall be subject to reconciliation after a Medicaid cost report with twelve (12) months of actual operating data has been received.

Section 8(7). Change in Scope and PPS Rate Adjustment. [VOLUME 40, NUMBER 1 – JULY 1, 2013]
(1)(a) If an FQHC, FQHC look-alike, or RHC[1, or PCC[2] changes its scope of services after the base year, the department shall adjust the FQHC’s, FQHC look-alike’s, or RHC’s[s] center or clinic’s PPS rate.
(b) An adjustment to a PPS rate resulting from a change in scope that occurred after an FQHC’s, FQHC look-alike’s, or RHC’s[s] last report in a base year shall be prospectively effective to the date that the FQHC, FQHC look-alike, or RHC applied for the change in scope by dividing a center or clinic’s total Medicaid costs by total Medicaid visits. A provider shall submit a MAP 100501 to request a rate adjustment after a change in service.
(2) A change in scope of service shall be restricted to:
(a) Adding or deleting a covered service;
(b) Increasing or decreasing the intensity of a covered service pursuant to subsection (5) of this section or
(c) A statutory or regulatory change that materially impacts the costs of visits of an FQHC, FQHC look-alike, or RHC[1, or PCC[2].
(3) The following individually shall not constitute a change in scope:
(a) A general increase or decrease in the costs of existing services;
(b) An expansion of office hours;
(c) An addition of a new site that provides the same Medicaid covered services;
(d) A wage increase;
(e) A renovation or other capital expenditure;
(f) A change in ownership; or
(g) An addition or deletion of a service provided by a non-licensed professional or staff member who can perform a Medicaid covered service that is not currently being performed within the FQHC, FQHC look-alike, or RHC by a licensed professional employed or contracted by the facility.
(4) An addition or deletion of a covered service shall be restricted to the addition or deletion of a licensed professional staff member who can perform a Medicaid covered service that is not currently being performed within the FQHC, FQHC look-alike, or RHC by a licensed professional employed or contracted by the facility.
(5) A change in intensity shall:
(a) Include a material change;
(b) Increase or decrease the existing PPS rate by at least five (5) percent; and
(c) Last at least twelve (12) months.
(6) The department shall consider a change in scope request due to a statutory or regulatory change that materially impacts the costs of visits of an FQHC, FQHC look-alike, or RHC[1, or PCC[2] if:
(a) A government entity imposes a mandatory minimum wage increase and the increase was not included in the:
1. Calculation of the final PPS rate; or
2. Subsequently included in the MEI applied yearly; or
(b) A new licensure requirement or modification of an existing requirement by the state results in a change that affects all facilities within the class. A provider shall document that an increase or decrease in the cost of a visit occurred as a result of a licensure requirement or policy modification.
(7) A requested change in scope shall:
(a) Increase or decrease the existing PPS rate by at least five (5) percent; and
(b) Last at least twelve (12) months.
(8) For a change in scope that is effective during a base year for determining the FQHC’s, FQHC look-alike’s, or RHC’s[1, or PCC[2]’s final PPS rate, the base year costs associated with the change in scope shall not be duplicated when determining the revised PPS rate due to the change in scope.
(9) The following documents shall be submitted to the department within six (6) months of the effective date of a change in scope:
(a) A narrative describing the change in scope;
(b) A projected cost report containing twelve (12) months of data for the interim rate change; and
(c) A completed MAP 100501, Prospective Payment System Rate Adjustment.
(10) The department shall:
(a) Review the documentation listed in subsection (9) of this section and specially:
(b) Notify the FQHC, FQHC look-alike, or RHC in writing of the approval or denial of the request for change in scope within ninety (90) business days.
(11) If the department requests additional documentation to calculate the rate for a change in scope, the FQHC, FQHC look-alike, or RHC shall:
1. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation;
or
2. Request an extension beyond thirty (30) days to provide the additional documentation.
(b) The department shall grant no more than one (1) extension.
2. An extension shall not exceed thirty (30) days.

Section 9(8). Regions. The following shall be the regions used to determine a PCC’s regional location for the purpose of determining new PCC’s regional rate:
(1) Region one (1) shall be the region containing Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, and Magoffin Counties;
(2) Region two (2) shall be the region containing Christian, Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Todd, Trigg, Union, and Webster Counties;
(3) Region three (3) shall be the region containing Breckinridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties;
(4) Region four (4) shall be the region containing Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, McCreary, Metcalfe, Monroe, Pulaski, Russell, Simpson, Taylor, Warren, and Wayne Counties;
(5) Region five (5) shall be the region containing Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jackson, Jessamine, Lincoln, Madison, Mercer, Montgomery, Nicholas, Owen, Powell, Rockcastle, Scott, and Woodford Counties;
(6) Region six (6) shall be the region containing Boone, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties;
(7) Region seven (7) shall be the region containing Bath, Boyd, Bracken, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Morgan, Robertson, and Rowan Counties; and
(8) Region eight (8) shall be the region containing Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, Owen, Perry, Pike, Whitley, and Wolfe Counties. Total Medicaid costs shall be determined in accordance with the following:
(a) The Medicaid costs of existing services shall be determined by multiplying a center’s or clinic’s current Medicaid PPS rate by the number of Medicaid visits used to calculate the base Medicaid PPS rate; and
(b) The Medicaid costs of a new service shall be determined by:
1. Adding: a. The projected annual direct cost of a new service as determined from a center’s or clinic’s budgeted report; and
b. The administrative cost of a new service which shall be equal to the ratio of administrative costs to direct costs determined from the base year costs associated with a center’s or clinic’s projected direct cost of a new service; and
2. Multiplying the sum derived in subparagraph 1 of this paragraph by a center’s or clinic’s projected Medicaid utilization percentage for the change in service.
3. The amount determined in subsection (2)(a) of this section...
shall be added to the amount determined in subsection (2)(b) of this section.

(4) The amount determined in subsection (3) of this section shall be divided by total visits to derive a center’s or clinic’s new PPS rate.

(5) Total Medicaid visits shall include:

(a) The annual number of Medicaid visits used in the calculation of the PPS base rate; and

(b) The projected annual number of Medicaid visits for a new service.

(6) The department shall adjust the PPS rate determined under this section to a final rate upon completion of:

(a) A Medicaid comprehensive desk review of a center’s or clinic’s cost report.

(b) A Medicaid audit of a center’s or clinic’s cost report in accordance with 45 C.F.R. 74.27 and 48 C.F.R. Part 31; or

(c) A Medicare audit that has been reviewed and accepted by Medicaid of a center’s or clinic’s cost report.

**Section 9.** Limitations. (1) Except for a case in which a recipient or enrollee (patient), subsequent to the first encounter, suffers an illness or injury requiring additional diagnosis or treatment, an encounter with more than one (1) health care provider and multiple encounters with the same health care provider which take place on the same day and at a single location shall constitute a single visit.

(2) A vaccine available without charge to an [a] FQHC, FQHC look-alike, RHC, or PCC through the department’s Vaccines for Children Program and the administration of the vaccine shall not be reported as a cost to the Medicaid Program.

Section 10.[8] Out-of-State Providers. Reimbursement to an out-of-state FQHC, FQHC look-alike, or RHC shall be the rate on file with the FOHC’s, FQHC look-alike’s, or RHC’s [their] state Medicaid agency.

Section 11. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

1. Denies federal financial participation for the policy; or

2. Disapproves the policy.

Section 12.[9] Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

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

(3) An [A] FQHC, FQHC look-alike, PCC, or RHC may appeal a department decision (decisions) as to the application of this administrative regulation as it impacts the facility’s reimbursement rate in accordance with 907 KAR 1:671.

Section 13[12]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “MAP 100501, Prospective Payment System Rate Adjustment”, February 2013 [November 2008 edition] November, 2001 edition]; and

(b) “Instructions for Completing the MAP 100501 Form”, February 2013 edition [MAP 100601, Scope of Services Survey Base-line Documentation, November 2001 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.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 13, 2013

FILED WITH LRC: June 13, 2013 at 1 p.m.

CONTACT PERSON: Tricia Orme, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by a federally-qualified health center (FQHC), rural health clinic (RHC), or primary care center (PCC) that is not an FQHC, FQHC look-alike, or RHC. An FQHC or FQHC look-alike is a federally-recognized entity that serves a population that is medically underserved. An RHC is a federally-recognized entity that is designated or certified by the secretary of the Department of Health and Human Services as being located in an area that is a health professional shortage area or medically underserved area. A PCC is an entity whose licensure requirements are established by the Cabinet for Health and Family Services Office of Inspector General pursuant to 902 KAR 20:058 and are not federally-recognized as being equivalent to an FQHC.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by an FQHC, RHC, or PCC (that is not an FQHC, FQHC look-alike, or RHC.)

(c) How this administrative regulation conforms to the content of the authorizing statute(s): The administrative regulation conforms to the content of the authorizing statutes by reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will align the effective administration of the authorizing statutes by reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.

(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 filed March 1, 2013, eliminated supplemental payments (in addition to payments that PCCs receive from managed care organizations) to PCCs for services provided to Medicaid recipients enrolled with a managed care organization. Additional amendments included eliminating the provider enrollment/participation process and related requirements; establishing that DMS will reimburse a new FQHC, FQHC look-alike, or RHC on an interim basis — until a full year of cost report data has been submitted, reviewed, and finalized to establish the prospective payment system (PPS) rate — the per diem rate paid by Medicare to the new facility; establishing that DMS would reimburse a new PCC an interim rate equal to the average rate to PCCs in the region in which the PCC is located (currently DMS pays an interim rate based on projected costs submitted to DMS by the PCC); elaborating on reimbursement requirements such as cost report requirements; clarifying policy; inserting criteria for what constitutes a change in scope; and eliminating obsolete statements. The amendment after comments alters reimbursement for services provided by a PCC that is not an FQHC, FQHC look-alike, or RHC to a Medicaid recipient that is not enrolled with a managed care organization from the prospective payment system (PPS) rate — which is currently in place — to the Medicare fee schedule rate/reimbursement for the service or drug established for Kentucky; clarifies that the interim reimbursement for an FQHCs, FQHC look-alikes, or RHCs will be the all-inclusive per visit rate paid by Medicare to the facility; altogether eliminates interim reimbursement for PCCs that are not FQHCs, FQHC look-alikes, or RHCs; eliminates the requirement that FQHC/FQHC look-alike/RHC/PCC satellite facilities have to enroll with the Medicaid program independently of the parent facility; replaces the requirement that an FQHC, FQHC look-alike, or RHC submit proof of federal recertification upon recertification with the requirement that the facility annually submit proof of its certification; better clarifies that the reimbursement policies in Section 3 apply to services provided by an FQHC, FQHC look-alike, RHC, or PCC to a Medicaid recipient or enrollee (patient) for the first time.
recipient who is not enrolled in a managed care organization; clarifies that costs related to outpatient drugs or pharmacy service are excluded from an FQHC’s, FQHC look-alike’s, or RHC’s prospective payment system (PPS) rate; clarifies that Section 7(5) establishes what constitutes a change in intensity for the purpose of determining a change in scope of service; eliminates the section establishing eight (8) regions for interim reimbursement purposes; inserts a section stating that policies are contingent upon the receipt of federal funding (federal financial participation) for the policy; adds licensed professional clinical counselors and licensed marriage and family therapists as authorized health care providers for FQHCs, FQHC look-alikes, and RHCs contingent upon approval of a corresponding state plan amendment by the Centers for Medicare and Medicaid Services. Additionally, the amendment after comments corrects the edition date of the “MAP 100501, Prospective Payment System Rate Adjustment” and adds the “Instructions for Completing the MAP 100501.”

(b) The necessity of the amendment to this administrative regulation:

The proposed amendments are necessary to prevent a loss of federal funding for services provided by primary care centers (PCCs) that are not federally qualified health centers (FQHCs), FQHC look-alikes, or rural health clinics (RHCs). The Centers for Medicare and Medicaid Services (CMS) issued letters to the Department for Medicaid Services “deferring” (declining to provide federal matching funds) for payments made by DMS to PCCs (that are not FQHCs, FQHC look-alikes, or RHCs) that supercede the PCC’s reimbursement from managed care organizations (MCOs). CMS cited federal law and regulation - 42 U.S.C. 1396a(bb)(5)(A) and 42 C.F.R. 438.60 – as authorizing such payments to the federally-recognized entities (FQHCs, FQHC look-alikes, and RHCs) entitled to such reimbursement but not to PCCs as they are not recognized by CMS as qualifying for the reimbursement. PCCs were not recognized by CMS as qualifying for the reimbursement. Therefore, the amendments were necessary to prevent DMS from reimbursing PCCs. CMS also issued letters deferring (not providing) federal funds to DMS for payments DMS made to the aforementioned PCCs for services provided to “fee-for-service” or (not via managed care) Medicaid recipients that exceed the federal upper payment limit for those services. For years DMS has reimbursed such PCCs in the same manner as FQHCs, FQHC look-alikes, and RHCs. That methodology is a prospective payment system (PPS) rate based on reasonable cost at a point in time. CMS does not view such PCCs as comparable to FQHCs, FQHC look-alikes, or RHCs, but, rather, views them as comparable to physicians’ practices and, thus, has stated that the upper payment limit for such PCCs is the Medicare fee schedule rather than the PPS rate based on reasonable cost. To date, CMS has issued deferral letters (no longer providing federal funds) to DMS in the amount of $16,681,223 for payments to PCCs which exceed the federal upper payment limit. As CMS will not provide federal matching funds for the supplemental payments or for the PPS rate reimbursement (fee-for-service claims) which exceeds the federal upper payment limit, DMS is amending the regulation to protect Kentucky taxpayer funds from being used to offset the federal upper payment limit. DMS is amending the regulation to protect Kentucky taxpayer funds from being used to offset the federal upper payment limit. It is necessary to prevent DMS from operating within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.)

Thus, the amendment a policy without federal funding. Therefore, the amendment after comments conform to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by preventing a loss of federal funds for reimbursement to PCCs, by protecting Kentucky taxpayer funds from being used to offset the loss of federal fund, and by ensuring that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.) (c) How the amendment will assist in the effective administration of the authorizing statutes by clarifying policies and ensuring that policies are contingent upon approval and funding by/from the Centers for Medicare and Medicaid Services’ requirements.

(d) How the amendment will assist in the effective administration of the authorizing statutes:

The amendment will assist in the effective administration of the authorizing statutes by preventing a loss of federal funds for reimbursement to PCCs, by protecting Kentucky taxpayer funds from being used to offset the loss of federal fund, and by ensuring that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.) The amendments after comments regarding requirements that DMS won’t implement a policy without federal funding. Therefore, the amendment after comments conform to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by preventing a loss of federal funds for reimbursement to PCCs, by protecting Kentucky taxpayer funds from being used to offset the loss of federal fund, and by ensuring that DMS operates within the fiscal parameters established by the Kentucky General Assembly and Governor via the biennium budget (in accordance with the Kentucky Constitution.) The amendments after comments conform to the content of the authorizing statutes by clarifying policies and ensuring that policies are contingent upon approval and funding by/from the Centers for Medicare and Medicaid Services’ requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation:

DMS has identified ninety-five (95) primary care centers that do not qualify as FQHCs, FQHC look-alikes, or RHCs and; therefore, will no longer receive payments which supplement their reimbursement from managed care organizations nor receive a reimbursement methodology for “fee-for-service” claims that is based on reasonable cost.

(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. Any primary care center (PCC) that is not a federally-qualified health center (FQHC) or FQHC look-alike and wishes to be reimbursed in the same manner as an FQHC or FQHC look-alike will have to apply to the United States Department of Health and Human Services (USDHHS), Health Resources and Services Administration (HRSA) and be designed by HRSA as an FQHC or FQHC look-alike. Similarly, any PCC that wishes to be reimbursed in the same manner as an RHC must complete the steps necessary to be federally certified as an RHC.

(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, but any PCC who does not become an FQHC, FQHC look-alike, or RHC will no longer receive payments supplemental reimbursement they receive from managed care organizations nor will they receive “prospective payment system” or “PPS” reimbursement for services provided to Medicaid recipients in the “fee-for-service” (or non-managed care) reimbursement system. Therefore, claims will be reimbursed on the Medicare fee schedule specific to Kentucky for the service or drug associated with the claim.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A PCC which applies and is approved by HRSA as an FQHC or FQHC look-alike is certified as

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an RHC will benefit by receiving a higher reimbursement for services provided. A PCC that does not take the steps to become an FQHC, FQHC look-alike, or RHC will receive a lower reimbursement than to which they’ve been accustomed. The taxpayers of Kentucky will benefit by ensuring that DMS receives federal funds for Medicaid program reimbursement to PCCs that are not FQHCs, FQHC look-alikes, or RHCs.

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

(a) Initially: The amendments are necessary to prevent DMS from continuing to not be granted federal funds for reimbursement to PCCs (that are not FQHCs, FQHC look-alikes, or RHCs) that exceed the respective limits allowed by the Centers for Medicare and Medicaid Services (CMS). In February 2013 CMS did not provide federal funds for the December 2012 quarter for reimbursement to the aforementioned PCCs (in excess of the federally-allowed amounts) totaling $8,977,945 ($8,698,208 for payments supplementing MCO reimbursement and $279,737 for fee.

(b) On a continuing basis: As DMS ended the payments to PCCs (that are not FQHCs, FQHC look-alikes, or RHCs) that supplement their reimbursement from managed care organizations (MCOs) earlier this year, DMS anticipates no additional loss of federal funds related to those payments. As this amendment after contracts will not be renewed and it has completed the ordinary administrative regulation promulgation process (perhaps in September 2013), DMS anticipates a loss of federal funds from CMS in July 2013 for payments to the aforementioned PCCs for “fee-for-service” Medicaid claims (that exceed the federally-recognized upper payment limit) corresponding to the quarters of January 2013 through March 2013, April 2013 through June 2013, and July 2013 through part of September 2013.

(6) What is the source of the funding to be upper limit? In April 2013 CMS did not provide federal funds for the October 2012 through December 2012 quarter for reimbursement to the aforementioned PCCs (in excess of the federally-allowed amounts) totaling $8,564,289 ($7,983,015 for payments supplementing MCO reimbursement and $581,274 for fee.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation:

(a) Initially: The amendments are necessary to prevent DMS from continuing to not be granted federal funds for reimbursement to PCCs (that are not FQHCs, FQHC look-alikes, or RHCs) that exceed the respective limits allowed by the Centers for Medicare and Medicaid Services (CMS). In February 2013 CMS did not provide federal funds for the December 2012 quarter for reimbursement to the aforementioned PCCs (in excess of the federally-allowed amounts) totaling $8,977,945 ($8,698,208 for payments supplementing MCO reimbursement and $279,737 for fee.

(b) On a continuing basis: As DMS ended the payments to PCCs (that are not FQHCs, FQHC look-alikes, or RHCs) that supplement their reimbursement from managed care organizations (MCOs) earlier this year, DMS anticipates no additional loss of federal funds related to those payments. As this amendment after contracts will not be renewed and it has completed the ordinary administrative regulation promulgation process (perhaps in September 2013), DMS anticipates a loss of federal funds from CMS in July 2013 for payments to the aforementioned PCCs for “fee-for-service” Medicaid claims (that exceed the federally-recognized upper payment limit) corresponding to the quarters of January 2013 through March 2013, April 2013 through June 2013, and July 2013 through part of September 2013.

(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 applied in the sense that a primary care center that is not a federally-qualified health center (FQHC), FQHC look-alike, or rural health clinic (RHC) will not be reimbursed in the same manner as those entities as the Centers for Medicare and Medicaid Services (CMS), citing federal law and regulation, has indicated that such PCCs are not entitled to the same reimbursement as those facilities

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(bb)(5)(A), and 42 C.F.R. 438.60, and 42 C.F.R. 447.321 mandate the amendments.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky’s indigent citizen.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(bb)(5)(A) authorizes federally-qualified health centers (FQHCs), FQHC look-alikes, or rural health clinics (RHCs) - but not primary care centers (PCCs) - to receive Medicaid reimbursement in addition to reimbursement they receive pursuant to a contract between the FQHC, FQHC look-alike, or RHC and a managed care organization. 42 C.F.R. 438.60 establishes that no Medicaid reimbursement may be made to a provider who is a provider of a managed care organization in addition to what the provider receives from the managed care organization except for delineated exceptions (PCCs are not included in the exceptions but FQHCs, FQHC look-alikes, and RHCs are included.) Payments to PCCs who are not FQHCs, FQHC look-alikes, or RHCs do not qualify as any of the exceptions. 42 C.F.R. 447.321(b) establishes that the upper payment limit (maximum Medicaid program reimbursement) authorized for clinics is what the Medicare program would pay the clinic for services. Following is the text from 42 C.F.R. 447.321(b):

"(1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

In the event as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section."

Additionally, the Centers for Medicare and Medicaid Services (CMS) – the federal agency which provides federal matching funds to Kentucky’s Medicaid program and establishes Medicaid program requirements via rules and regulations in February of this year began refusing to provide federal matching funds to DMS related to reimbursement of PCCs that do not qualify as federally qualified health centers (FQHCs), FQHC look-alikes, or RHCs. CMS cited federal law, 42 U.S.C. 1396a(b)(5)(A), which only authorizes Medicare programs to supplement an FQHC’s or RHC’s reimbursement if the FQHC/RHC received from a managed care organization) if necessary to elevate FQHC and RHC reimbursement to the mandated prospective payment system (PPS) level required in federal law for FQHCs and RHCs. The aforementioned PPS reimbursement is initially based, pursuant to 42 U.S.C. 1396a(bb)(3) and (4), on reasonable cost experienced by the FQHC or RHC. The federal law only recognizes FQHCs and RHCs as being eligible for the supplementation and CMS noted that Kentucky’s PCCs that had been receiving the supplemental payments “do not appear to have been approved as FQHC or FQHC look-alikes by Health Resources and Services Administration (HRSA), nor do they appear to have an approved RHC certification.” CMS views services provided by a PCC that is not an FQHC, FQHC look-alike, or RHC as comparable to services provided via a physician’s practice. CMS understands that the Medicare program reimburses PCCs (that are FQHCs, FQHC look-alike, or RHC) based on the Medicare program physician fee schedule. DMS notes that a key federal criterion to becoming an FQHC, FQHC look-alike, or RHC (and the key reason for the federally-recognized enhanced reimbursement) is that the facility provides services in a medically underserved area or to a medically underserved population. To be eligible for the supplemental payment a PCC must take the steps necessary to be federally recognized as an FQHC, FQHC look-alike, or RHC and CMS will supplement the PCC’s reimbursement accordingly. That option is available to PCCs. In addition to no longer providing federal matching funds for supplements to managed care organization payments, CMS is no longer providing federal matching funds for payments to PCCs (that are not FQHCs, FQHC look-alikes, or RHCs) for Medicaid "fee-for-service" claims (non-managed care) that exceed the Medicare fee schedule rate. CMS cited 42 C.F.R. 447.321 in correspondence to DMS regarding DMS’s reimbursement to the aforementioned PCCs.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.
1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 438.60, 42 C.F.R. 447.321, and this administrative regulation authorize the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS projects no revenue will initially be generated by the amendment to this administrative regulation.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.
   (c) How much will it cost to administer this program for the first year? The amendments are necessary to prevent DMS from continuing to not be granted federal funds for reimbursement to PCCs (that are not FQHCs, FQHC look-alikes, or RHCs) that exceed the respective limits allowed by the Centers for Medicare and Medicaid Services (CMS.) In February 2013 CMS did not provide federal funds for the July 2012 through September 2012 quarter for reimbursement to the aforementioned PCCs (in excess of the federally-allowed amounts) totaling $8,977,945 ($8,698,208 for payments supplementing MCO reimbursement and $279,737 for fee-for-service payments exceeding the federal upper limit.) In April 2013 CMS did not provide federal funds for the October 2012 through December 2012 quarter for reimbursement to the aforementioned PCCs (in excess of the federally-allowed amounts) totaling $8,564,289 ($7,983,015 for payments supplementing MCO reimbursement and $581,274 for fee-for-service payments exceeding the federal upper limit.) The loss of federal funds thus far totals $17,542,234.
   (d) How much will it cost to administer this program for subsequent years? As DMS ended the payments to PCCs (that are not FQHCs, FQHC look-alikes, or RHCs) that supplement their reimbursement from managed care organizations (MCOs) earlier this year, DMS anticipates no additional loss of federal funds related to those payments. As this amendment after comments will not become effective until it has completed the ordinary administrative regulation promulgation process (perhaps in September 2013), DMS anticipates a loss of federal funds from CMS in July 2013 for payments to the aforementioned PCCs for “fee-for-service” Medicaid claims (that exceed the federally-recognized upper payment limit) corresponding to the quarters of January 2013 through March 2013, April 2013 through June 2013, and July 2013 through part of September 2013.

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
11 KAR 3:100. Administrative wage garnishment.


NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 U.S.C. 1071 through 1087-2. 20 U.S.C. 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(10) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(20) authorizes the authority to conduct administrative hearings, except from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower’s default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor’s disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;
(b) The amount of the debt determined by the authority to be due;
(c) Information sufficient to identify the basis for the debt;
(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;
(e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);
(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;
(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;
(h) A statement that, unless there is good cause determined by the authority for the debtor’s failure to timely request a hearing, the debtor’s acquiescence to the withholding of disposable pay shall be presumed; and
(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) The hearing shall be held during regular business hours: Monday through Friday between the hours of 9 a.m. and 4 p.m. Eastern Standard Time.

(e) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding;

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(f) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(g) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(h) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer’s decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor’s liability, if any, for repayment of the debt and the amount to be withheld from the debtor’s disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer’s decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor’s disposable pay.

(c) A person, upon request, shall receive a copy of the official
record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:
1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proffers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and
8. The hearing officer’s decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer’s decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed to the board within twenty (20) calendar days after the date of the hearing officer’s decision. A petition for review of the hearing officer’s decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer’s decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer’s decision shall not stay a final order pending the outcome of the review. If the debtor’s liability is established by the hearing officer’s decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer’s decision. If the debtor petitions the board to review the hearing officer’s decision and obtains reversal, modification, or remand of the hearing officer’s decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition for review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer’s decision shall contain the following information:
1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying, or remanding the hearing officer’s decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying, or remanding the hearing officer’s decision pursuant to paragraph (g) of this subsection; and
3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer’s decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer’s decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer’s decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:
1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and
2.a. Uphold the hearing officer’s decision unless it is clearly unsupported by the evidence and the applicable law;
b. Reject or modify, in whole or in part, the hearing officer’s decision;
c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer’s final order is:
   (i) In violation of constitutional or statutory provisions;
   (ii) In excess of the statutory authority of the agency;
   (iii) Without support of substantial evidence on the whole record;
   (iv) Arbitrary, capricious, or characterized by abuse of discretion; or
   (v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.
3. A statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying, or remanding the hearing officer’s decision, whichever first occurs.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer’s decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:
1. Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and
2. Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue a subpoena for the production of a document or attendance of a witness.

(b)1. Not more than ten (10) business days after the date of filing, the debtor or the authority shall notify the party requesting a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.
2. Not less than fifteen (15) business days prior to the hearing, the parties shall:
   a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;
   b. Discuss the possibility of informal resolution of the dispute;
   c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and
   d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.
3. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue that is not identified in the proposed stipulation of issues.

4. The party is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

5. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

6. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in this subsection.

7. If the debtor requests a hearing, but the debtor’s written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority’s claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

8. Facts recited in the Authority’s notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(a) Either party, without leave of the hearing officer, may
depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.
2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.
3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.
(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:
1. Noncompliance with this subsection;
2. Failure of the authority to:
   a. Timely appoint a hearing officer; or
   b. The hearing officer may inspect of records; or
3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.
(3) Order of proceeding.
(a) The hearing officer shall:
1. Convene an in-person or telephonic hearing;
2. Identify the parties to the action and the persons participating;
3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;
4. Solicit from the parties and dispose of any objections or motions;
5. Accept into evidence any documentary evidence not objected to;
6. Solicit opening statements; and
7. Proceed with the taking of proof.
(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.
(4) Rules of evidence.
(a) All testimony shall be made under oath or affirmation.
(b) A hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth.
2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.
3. The hearing officer may receive evidence deemed reliable and competent, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.
4. A copy of a document shall be admissible if:
   a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
   b. It is admitted without objection.
5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.
(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.
(c) The hearing officer:
1. May take official notice of:
   a. Statutes and administrative regulations;
   b. Facts which are not in dispute; and
   c. Generally-recognized technical or scientific facts;
2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and
3. Shall give each party an opportunity to contest facts officially noticed.
(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.
(e) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.
(f) Burden of proof.
(a) The authority shall have the burden to establish the existence and amount of the debt.
(b) The debtor shall have the burden to establish an affirmative defense.
(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.
(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).
(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.
(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:
(a) Shall:
   1. Consider the matter; and
   2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and
(b) May reverse the prior decision if the debtor presents evidence that:
   1. Circumstances have changed or new information is available; or
   2. The prior decision:
      a. Substantially disregarded or ignored the defense; or
      b. Was arbitrary, capricious, not supported by the facts, or made through fraud.
(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:
(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;
(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or
(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.
(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:
(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or
(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the presumptions established in this paragraph.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:
   a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,450 ($11,170)</td>
</tr>
<tr>
<td>2</td>
<td>$15,510 ($15,130)</td>
</tr>
<tr>
<td>3</td>
<td>$19,530 ($19,090)</td>
</tr>
<tr>
<td>4</td>
<td>$22,550 ($22,050)</td>
</tr>
<tr>
<td>5</td>
<td>$27,570 ($27,010)</td>
</tr>
<tr>
<td>6</td>
<td>$31,590 ($30,970)</td>
</tr>
<tr>
<td>7</td>
<td>$35,610 ($34,930)</td>
</tr>
<tr>
<td>8</td>
<td>$39,630 ($38,980)</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $4,020 ($3,960)</td>
</tr>
</tbody>
</table>

2. If the debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor is receiving a public assistance benefit and the sum of the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$13,230 ($12,860)</td>
</tr>
<tr>
<td>2</td>
<td>$17,850 ($17,440)</td>
</tr>
<tr>
<td>3</td>
<td>$22,470 ($21,960)</td>
</tr>
<tr>
<td>4</td>
<td>$27,090 ($26,510)</td>
</tr>
<tr>
<td>5</td>
<td>$31,710 ($31,060)</td>
</tr>
<tr>
<td>6</td>
<td>$36,330 ($35,640)</td>
</tr>
<tr>
<td>7</td>
<td>$40,950 ($40,160)</td>
</tr>
<tr>
<td>8</td>
<td>$45,570 ($44,710)</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $4,620 ($4,550)</td>
</tr>
</tbody>
</table>

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$14,350 ($13,920)</td>
</tr>
<tr>
<td>2</td>
<td>$19,380 ($18,920)</td>
</tr>
<tr>
<td>3</td>
<td>$24,410 ($23,970)</td>
</tr>
<tr>
<td>4</td>
<td>$29,440 ($28,620)</td>
</tr>
<tr>
<td>5</td>
<td>$34,470 ($33,720)</td>
</tr>
<tr>
<td>6</td>
<td>$39,500 ($38,720)</td>
</tr>
<tr>
<td>7</td>
<td>$44,530 ($43,620)</td>
</tr>
<tr>
<td>8</td>
<td>$49,560 ($48,620)</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $5,030 ($4,950)</td>
</tr>
</tbody>
</table>

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$13,230 ($12,860)</td>
</tr>
<tr>
<td>2</td>
<td>$17,850 ($17,440)</td>
</tr>
<tr>
<td>3</td>
<td>$22,470 ($21,960)</td>
</tr>
<tr>
<td>4</td>
<td>$27,090 ($26,510)</td>
</tr>
<tr>
<td>5</td>
<td>$31,710 ($31,060)</td>
</tr>
<tr>
<td>6</td>
<td>$36,330 ($35,640)</td>
</tr>
<tr>
<td>7</td>
<td>$40,950 ($40,160)</td>
</tr>
<tr>
<td>8</td>
<td>$45,570 ($44,710)</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $4,620 ($4,550)</td>
</tr>
</tbody>
</table>

2a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwellings</td>
<td>1,068</td>
<td>1,170</td>
<td>1,589</td>
<td>2,789</td>
<td>3,390</td>
<td>4,494</td>
<td>4,962</td>
<td>7,108</td>
<td>13,516</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>4,530</td>
<td>3,803</td>
<td>3,778</td>
<td>3,854</td>
<td>4,191</td>
<td>4,581</td>
<td>4,265</td>
<td>3,984</td>
<td>2,670</td>
</tr>
<tr>
<td>Other lodging</td>
<td>343</td>
<td>54</td>
<td>248</td>
<td>92</td>
<td>338</td>
<td>321</td>
<td>358</td>
<td>607</td>
<td>1,488</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,642</td>
<td>1,862</td>
<td>2,086</td>
<td>2,794</td>
<td>3,136</td>
<td>3,390</td>
<td>3,759</td>
<td>4,222</td>
<td>5,913</td>
</tr>
<tr>
<td>Household operations</td>
<td>288</td>
<td>330</td>
<td>3,001</td>
<td>488</td>
<td>586</td>
<td>778</td>
<td>696</td>
<td>957</td>
<td>2,143</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>286</td>
<td>255</td>
<td>293</td>
<td>362</td>
<td>389</td>
<td>362</td>
<td>464</td>
<td>547</td>
<td>1,042</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>463</td>
<td>452</td>
<td>380</td>
<td>540</td>
<td>793</td>
<td>940</td>
<td>1,071</td>
<td>1,666</td>
<td>2,563</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>657</td>
<td>870</td>
<td>161</td>
<td>1,562</td>
<td>1,118</td>
<td>1,723</td>
<td>2,345</td>
<td>2,622</td>
<td>4,074</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>693</td>
<td>711</td>
<td>647</td>
<td>962</td>
<td>1,442</td>
<td>1,678</td>
<td>2,229</td>
<td>2,357</td>
<td>3,313</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>217</td>
<td>264</td>
<td>245</td>
<td>426</td>
<td>435</td>
<td>572</td>
<td>783</td>
<td>846</td>
<td>1,301</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>751</td>
<td>584</td>
<td>437</td>
<td>519</td>
<td>630</td>
<td>826</td>
<td>722</td>
<td>1,287</td>
<td>1,386</td>
</tr>
<tr>
<td>Vehicle rental, lease, license and other changes</td>
<td>148</td>
<td>1137</td>
<td>87</td>
<td>166</td>
<td>314</td>
<td>350</td>
<td>439</td>
<td>469</td>
<td>1,130</td>
</tr>
<tr>
<td>Public transportation</td>
<td>269</td>
<td>263</td>
<td>215</td>
<td>269</td>
<td>320</td>
<td>470</td>
<td>512</td>
<td>569</td>
<td>1,274</td>
</tr>
</tbody>
</table>

- 61 -
b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Metropolitan Area</th>
<th>New York</th>
<th>Philadelphia</th>
<th>Boston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwellings</td>
<td>9,312</td>
<td>8,158</td>
<td>8,280</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>6,360</td>
<td>5,218</td>
<td>5,399</td>
</tr>
<tr>
<td>Other lodging</td>
<td>807</td>
<td>691</td>
<td>710</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>4,273</td>
<td>3,452</td>
<td>3,577</td>
</tr>
<tr>
<td>Household operations</td>
<td>1,384</td>
<td>1,201</td>
<td>1,569</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>610</td>
<td>701</td>
<td>641</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,408</td>
<td>1,460</td>
<td>1,859</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,891</td>
<td>2,289</td>
<td>3,382</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>2,006</td>
<td>2,147</td>
<td>2,489</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,813</td>
<td>2,457</td>
<td>2,579</td>
</tr>
<tr>
<td>Public transportation</td>
<td>1,133</td>
<td>444</td>
<td>678</td>
</tr>
</tbody>
</table>

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debitor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,201</td>
<td>1,145</td>
<td>1,519</td>
<td>2,324</td>
<td>2,744</td>
<td>4,265</td>
<td>4,905</td>
<td>6,570</td>
<td>10,685</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>3,164</td>
<td>2,675</td>
<td>2,880</td>
<td>2,816</td>
<td>2,807</td>
<td>2,477</td>
<td>2,079</td>
<td>1,669</td>
<td>1,140</td>
</tr>
<tr>
<td>Other lodging</td>
<td>439</td>
<td>248</td>
<td>113</td>
<td>135</td>
<td>296</td>
<td>341</td>
<td>270</td>
<td>542</td>
<td>1,295</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,525</td>
<td>1,705</td>
<td>2,074</td>
<td>2,540</td>
<td>2,999</td>
<td>3,297</td>
<td>3,576</td>
<td>3,761</td>
<td>4,587</td>
</tr>
<tr>
<td>Household operations</td>
<td>286</td>
<td>220</td>
<td>305</td>
<td>490</td>
<td>471</td>
<td>539</td>
<td>720</td>
<td>834</td>
<td>1,739</td>
</tr>
</tbody>
</table>
### VOLUME 40, NUMBER 1 – JULY 1, 2013

<table>
<thead>
<tr>
<th>Household and miscellaneous supplies</th>
<th>264</th>
<th>257</th>
<th>280</th>
<th>404</th>
<th>407</th>
<th>497</th>
<th>613</th>
<th>590</th>
<th>1,037</th>
</tr>
</thead>
<tbody>
<tr>
<td>Household furnishings and equipment</td>
<td>537</td>
<td>355</td>
<td>380</td>
<td>585</td>
<td>709</td>
<td>856</td>
<td>1,085</td>
<td>1,555</td>
<td>2,556</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>922</td>
<td>1,166</td>
<td>444</td>
<td>543</td>
<td>1,209</td>
<td>2,070</td>
<td>2,214</td>
<td>2,748</td>
<td>4,871</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,024</td>
<td>988</td>
<td>1,080</td>
<td>1,267</td>
<td>1,792</td>
<td>2,109</td>
<td>2,395</td>
<td>2,683</td>
<td>3,501</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>212</td>
<td>245</td>
<td>349</td>
<td>432</td>
<td>589</td>
<td>582</td>
<td>798</td>
<td>819</td>
<td>1,213</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>316</td>
<td>62</td>
<td>367</td>
<td>687</td>
<td>672</td>
<td>680</td>
<td>1,060</td>
<td>789</td>
<td>1,277</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>140</td>
<td>99</td>
<td>137</td>
<td>160</td>
<td>251</td>
<td>280</td>
<td>324</td>
<td>325</td>
<td>755</td>
</tr>
<tr>
<td>Public transportation</td>
<td>139</td>
<td>147</td>
<td>151</td>
<td>184</td>
<td>191</td>
<td>219</td>
<td>225</td>
<td>364</td>
<td>943</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,301</td>
<td>1,195</td>
<td>1,733</td>
<td>2,253</td>
<td>3,080</td>
<td>4,311</td>
<td>5,139</td>
<td>6,839</td>
<td>10,987</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>2,815</td>
<td>2,851</td>
<td>2,906</td>
<td>2,810</td>
<td>2,629</td>
<td>2,348</td>
<td>1,978</td>
<td>1,698</td>
<td>1,022</td>
</tr>
<tr>
<td>Other lodging</td>
<td>241</td>
<td>192</td>
<td>123</td>
<td>193</td>
<td>268</td>
<td>282</td>
<td>331</td>
<td>540</td>
<td>1,452</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,460</td>
<td>1,704</td>
<td>2,404</td>
<td>2,468</td>
<td>2,993</td>
<td>3,956</td>
<td>3,464</td>
<td>2,762</td>
<td>4,668</td>
</tr>
<tr>
<td>Household operations</td>
<td>257</td>
<td>220</td>
<td>286</td>
<td>364</td>
<td>381</td>
<td>507</td>
<td>612</td>
<td>788</td>
<td>1,592</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>301</td>
<td>293</td>
<td>365</td>
<td>396</td>
<td>517</td>
<td>453</td>
<td>572</td>
<td>624</td>
<td>1,046</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>538</td>
<td>449</td>
<td>488</td>
<td>531</td>
<td>808</td>
<td>896</td>
<td>1,134</td>
<td>1,465</td>
<td>2,548</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>424</td>
<td>753</td>
<td>425</td>
<td>702</td>
<td>1,249</td>
<td>2,248</td>
<td>2,120</td>
<td>3,172</td>
<td>4,898</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>850</td>
<td>845</td>
<td>888</td>
<td>1,075</td>
<td>1,451</td>
<td>1,769</td>
<td>2,044</td>
<td>2,356</td>
<td>2,980</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>214</td>
<td>236</td>
<td>333</td>
<td>482</td>
<td>551</td>
<td>587</td>
<td>768</td>
<td>782</td>
<td>1,162</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>251</td>
<td>250</td>
<td>374</td>
<td>499</td>
<td>655</td>
<td>739</td>
<td>844</td>
<td>845</td>
<td>1,484</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>138</td>
<td>141</td>
<td>118</td>
<td>172</td>
<td>273</td>
<td>302</td>
<td>371</td>
<td>435</td>
<td>782</td>
</tr>
<tr>
<td>Public transportation</td>
<td>89</td>
<td>123</td>
<td>123</td>
<td>269</td>
<td>489</td>
<td>214</td>
<td>206</td>
<td>349</td>
<td>903</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Chicago</th>
<th>Detroit</th>
<th>Minneapolis St. Paul</th>
<th>Cleveland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>8,770</td>
<td>6,455</td>
<td>7,407</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>3,156</td>
<td>2,240</td>
<td>2,174</td>
</tr>
<tr>
<td>Other lodging</td>
<td>1,137</td>
<td>646</td>
<td>671</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,981</td>
<td>4,036</td>
<td>3,315</td>
</tr>
<tr>
<td>Household operations</td>
<td>1,332</td>
<td>891</td>
<td>1,260</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>666</td>
<td>631</td>
<td>883</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,478</td>
<td>1,368</td>
<td>1,877</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>2,624</td>
<td>2,705</td>
<td>2,908</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>2,445</td>
<td>2,606</td>
<td>2,538</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,412</td>
<td>2,956</td>
<td>2,818</td>
</tr>
<tr>
<td>Public transportation</td>
<td>861</td>
<td>523</td>
<td>545</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>[Chicago</th>
<th>Detroit</th>
<th>Minneapolis St. Paul</th>
<th>Cleveland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>9,404</td>
<td>6,664</td>
<td>7,846</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,760</td>
<td>2,230</td>
<td>2,343</td>
</tr>
<tr>
<td>Other lodging</td>
<td>1,054</td>
<td>771</td>
<td>856</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>2,999</td>
<td>3,941</td>
<td>3,336</td>
</tr>
<tr>
<td>Household operations</td>
<td>1,075</td>
<td>958</td>
<td>1,187</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>676</td>
<td>618</td>
<td>754</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,598</td>
<td>1,326</td>
<td>1,968</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,025</td>
<td>3,414</td>
<td>2,173</td>
</tr>
</tbody>
</table>
4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rented dwelling</td>
<td>2.631</td>
<td>2.682</td>
<td>2.599</td>
<td>2.785</td>
<td>3.047</td>
<td>2.876</td>
<td>2.888</td>
<td>2.301</td>
</tr>
<tr>
<td>Other lodging</td>
<td>117</td>
<td>264</td>
<td>61</td>
<td>99</td>
<td>204</td>
<td>191</td>
<td>288</td>
<td>397</td>
</tr>
<tr>
<td>Household operations</td>
<td>301</td>
<td>308</td>
<td>340</td>
<td>456</td>
<td>547</td>
<td>696</td>
<td>755</td>
<td>957</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>235</td>
<td>348</td>
<td>342</td>
<td>461</td>
<td>424</td>
<td>481</td>
<td>502</td>
<td>632</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>534</td>
<td>612</td>
<td>513</td>
<td>704</td>
<td>849</td>
<td>1.166</td>
<td>1.104</td>
<td>1.382</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>831</td>
<td>846</td>
<td>421</td>
<td>1,000</td>
<td>1,446</td>
<td>2,344</td>
<td>2,237</td>
<td>2,726</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1.115</td>
<td>1.098</td>
<td>1.206</td>
<td>1.625</td>
<td>1.944</td>
<td>2.188</td>
<td>2.625</td>
<td>2.878</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>268</td>
<td>348</td>
<td>305</td>
<td>376</td>
<td>469</td>
<td>480</td>
<td>649</td>
<td>752</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>351</td>
<td>443</td>
<td>562</td>
<td>854</td>
<td>750</td>
<td>821</td>
<td>1,116</td>
<td>1,263</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>128</td>
<td>83</td>
<td>105</td>
<td>132</td>
<td>153</td>
<td>219</td>
<td>261</td>
<td>263</td>
</tr>
<tr>
<td>Public transportation</td>
<td>125</td>
<td>86</td>
<td>100</td>
<td>116</td>
<td>148</td>
<td>147</td>
<td>213</td>
<td>276</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Metropolitan Areas</th>
<th>Washington, D.C.</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Dallas Fort Worth</th>
<th>Houston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>10,724</td>
<td>8,829</td>
<td>7,301</td>
<td>5,245</td>
<td>6,407</td>
<td>6,487</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>4,309</td>
<td>2,921</td>
<td>2,879</td>
<td>2,813</td>
<td>3,371</td>
<td>2,853</td>
</tr>
<tr>
<td>Other lodging</td>
<td>1,596</td>
<td>1,196</td>
<td>502</td>
<td>334</td>
<td>470</td>
<td>585</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>4,254</td>
<td>4,424</td>
<td>4,348</td>
<td>3,496</td>
<td>4,461</td>
<td>4,472</td>
</tr>
</tbody>
</table>
VOLUME 40, NUMBER 1 – JULY 1, 2013

<table>
<thead>
<tr>
<th>Household operations</th>
<th>1,740</th>
<th>1,024</th>
<th>1,166</th>
<th>701</th>
<th>1,237</th>
<th>1,483</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>720</td>
<td>687</td>
<td>724</td>
<td>458</td>
<td>739</td>
<td>620</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,247</td>
<td>1,615</td>
<td>1,528</td>
<td>865</td>
<td>1,557</td>
<td>1,788</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,176</td>
<td>1,962</td>
<td>2,761</td>
<td>1,149</td>
<td>3,175</td>
<td>2,542</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>2,479</td>
<td>2,401</td>
<td>2,645</td>
<td>2,268</td>
<td>2,918</td>
<td>3,050</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>4,009</td>
<td>1,877</td>
<td>2,060</td>
<td>2,205</td>
<td>2,833</td>
<td>2,975</td>
</tr>
<tr>
<td>Public transportation</td>
<td>1,224</td>
<td>366</td>
<td>533</td>
<td>418</td>
<td>388</td>
<td>578</td>
</tr>
</tbody>
</table>

| Utilities, fuels, and public services | 4,193 | 4,276 | 4,078 | 2,737 | 4,346 | 4,639 |
| Household operations | 1,709 | 930  | 4,142 | 928 | 1,294 | 1,494 |
| Housekeeping and miscellaneous supplies | 791  | 613  | 243  | 452 | 704  | 618  |
| Household furnishings and equipment | 2,366 | 1,530 | 1,120 | 1,016 | 1,744 | 1,770 |
| Vehicle purchases (net outlay) | 3,363 | 1,932 | 2,230 | 1,585 | 2,257 | 3,351 |
| Gasoline and motor oil | 2,139 | 2,123 | 2,249 | 2,149 | 2,452 | 2,471 |
| Other vehicle expenses (repairs, insurance, lease, license, and other charges) | 3,411 | 2,036 | 2,148 | 2,419 | 2,905 | 3,058 |
| Public transportation | 1,155 | 471  | 438  | 417 | 403  | 531  |

5a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>3,393</td>
<td>1,433</td>
<td>1,892</td>
<td>2,070</td>
<td>2,634</td>
<td>4,211</td>
<td>5,089</td>
<td>7,039</td>
<td>13,133</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>3,532</td>
<td>4,804</td>
<td>4,693</td>
<td>4,584</td>
<td>4,640</td>
<td>4,640</td>
<td>5,061</td>
<td>4,510</td>
<td>3,421</td>
</tr>
<tr>
<td>Other lodging</td>
<td>502</td>
<td>195</td>
<td>128</td>
<td>153</td>
<td>242</td>
<td>378</td>
<td>438</td>
<td>527</td>
<td>1,541</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>2,139</td>
<td>1,558</td>
<td>1,843</td>
<td>2,331</td>
<td>2,516</td>
<td>2,958</td>
<td>3,237</td>
<td>3,604</td>
<td>4,453</td>
</tr>
<tr>
<td>Household operations</td>
<td>989</td>
<td>442</td>
<td>518</td>
<td>723</td>
<td>818</td>
<td>783</td>
<td>953</td>
<td>1,008</td>
<td>2,253</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>384</td>
<td>356</td>
<td>359</td>
<td>362</td>
<td>438</td>
<td>420</td>
<td>574</td>
<td>642</td>
<td>913</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>692</td>
<td>596</td>
<td>671</td>
<td>696</td>
<td>764</td>
<td>1,166</td>
<td>1,094</td>
<td>1,708</td>
<td>2,803</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,111</td>
<td>65</td>
<td>524</td>
<td>993</td>
<td>1,331</td>
<td>1,807</td>
<td>1,410</td>
<td>2,374</td>
<td>4,667</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,100</td>
<td>1,121</td>
<td>1,157</td>
<td>1,323</td>
<td>1,655</td>
<td>2,097</td>
<td>2,203</td>
<td>2,735</td>
<td>3,269</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>402</td>
<td>460</td>
<td>411</td>
<td>577</td>
<td>515</td>
<td>664</td>
<td>746</td>
<td>941</td>
<td>1,425</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>587</td>
<td>277</td>
<td>416</td>
<td>618</td>
<td>531</td>
<td>946</td>
<td>834</td>
<td>1,259</td>
<td>1,410</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>195</td>
<td>158</td>
<td>168</td>
<td>234</td>
<td>221</td>
<td>373</td>
<td>373</td>
<td>471</td>
<td>849</td>
</tr>
<tr>
<td>Public transportation</td>
<td>292</td>
<td>196</td>
<td>201</td>
<td>224</td>
<td>229</td>
<td>427</td>
<td>445</td>
<td>539</td>
<td>1,257</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>4,522</td>
<td>1,434</td>
<td>2,178</td>
<td>2,238</td>
<td>3,261</td>
<td>4,075</td>
<td>5,140</td>
<td>7,018</td>
<td>13,565</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,222</td>
<td>4,942</td>
<td>4,240</td>
<td>4,665</td>
<td>4,599</td>
<td>4,686</td>
<td>4,617</td>
<td>4,272</td>
<td>3,318</td>
</tr>
<tr>
<td>Other lodging</td>
<td>388</td>
<td>108</td>
<td>89</td>
<td>159</td>
<td>198</td>
<td>259</td>
<td>340</td>
<td>544</td>
<td>1,426</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>2,046</td>
<td>1,555</td>
<td>1,852</td>
<td>2,286</td>
<td>2,541</td>
<td>2,881</td>
<td>3,195</td>
<td>3,554</td>
<td>4,447</td>
</tr>
</tbody>
</table>
b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Category</th>
<th>Los Angeles</th>
<th>San Francisco</th>
<th>San Diego</th>
<th>Seattle</th>
<th>Phoenix</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>6,808</td>
<td>11,051</td>
<td>8,075</td>
<td>5,557</td>
<td>5,079</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>6,235</td>
<td>6,594</td>
<td>6,694</td>
<td>3,631</td>
<td>2,772</td>
</tr>
<tr>
<td>Other lodging</td>
<td>731</td>
<td>1,537</td>
<td>441</td>
<td>1,424</td>
<td>584</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,150</td>
<td>3,318</td>
<td>3,251</td>
<td>3,630</td>
<td>3,832</td>
</tr>
<tr>
<td>Household operations</td>
<td>1,447</td>
<td>2,201</td>
<td>1,210</td>
<td>1,677</td>
<td>1,098</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>644</td>
<td>604</td>
<td>488</td>
<td>688</td>
<td>762</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,420</td>
<td>1,684</td>
<td>1,480</td>
<td>1,951</td>
<td>1,714</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>2,464</td>
<td>2,351</td>
<td>2,106</td>
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<td>3,046</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
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<td>2,340</td>
<td>2,673</td>
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<td>2,409</td>
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<tr>
<td>Other vehicle expenses (repairs, insurance, license, and other charges)</td>
<td>3,079</td>
<td>3,417</td>
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<td>469</td>
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</tbody>
</table>

6. If the debtor is the only member of the household, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>2,547</td>
<td>2,537</td>
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<td>2,671</td>
<td>2,989</td>
<td>3,535</td>
<td>4,136</td>
<td>4,750</td>
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<td>458</td>
<td>640</td>
<td>632</td>
<td>1,031</td>
<td>1,076</td>
<td>1,433</td>
<td>2,063</td>
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<td>1,024</td>
<td>1,398</td>
<td>1,346</td>
<td>1,429</td>
<td>1,424</td>
<td>1,394</td>
<td>1,608</td>
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<td>Medical services</td>
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<td>186</td>
<td>293</td>
<td>412</td>
<td>460</td>
<td>459</td>
<td>523</td>
<td>555</td>
<td>1,043</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>186</td>
<td>175</td>
<td>325</td>
<td>410</td>
<td>340</td>
<td>367</td>
<td>306</td>
<td>344</td>
<td>392</td>
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</tbody>
</table>
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<table>
<thead>
<tr>
<th>Medical supplies</th>
<th>59</th>
<th>43</th>
<th>80</th>
<th>74</th>
<th>81</th>
<th>99</th>
<th>85</th>
<th>106</th>
<th>170</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal care products and services</td>
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<td>245</td>
<td>210</td>
<td>275</td>
<td>307</td>
<td>406</td>
<td>439</td>
<td>537</td>
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<td>393</td>
<td>390</td>
<td>563</td>
<td>406</td>
<td>268</td>
<td>540</td>
<td>1,314</td>
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<tr>
<td>Life and other personal insurance</td>
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<td>45</td>
<td>89</td>
<td>110</td>
<td>275</td>
<td>142</td>
<td>159</td>
<td>219</td>
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</table>

**Debtor's Available Resources**

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<tr>
<th>Food</th>
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<th>2,640</th>
<th>2,613</th>
<th>2,897</th>
<th>3,286</th>
<th>4,154</th>
<th>4,657</th>
<th>6,484</th>
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<tbody>
<tr>
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<td>712</td>
<td>526</td>
<td>718</td>
<td>762</td>
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<td>1,087</td>
<td>2,202</td>
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<td>1,320</td>
<td>1,535</td>
<td>1,213</td>
<td>1,306</td>
<td>1,601</td>
</tr>
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<td>273</td>
<td>357</td>
<td>472</td>
<td>483</td>
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<td>584</td>
<td>916</td>
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<td>157</td>
<td>324</td>
<td>443</td>
<td>380</td>
<td>400</td>
<td>369</td>
<td>247</td>
<td>377</td>
</tr>
<tr>
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<td>33</td>
<td>47</td>
<td>75</td>
<td>74</td>
<td>94</td>
<td>67</td>
<td>32</td>
<td>436</td>
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<tr>
<td>Personal care products and services</td>
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<td>264</td>
<td>272</td>
<td>304</td>
<td>343</td>
<td>348</td>
<td>564</td>
<td>694</td>
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<td>324</td>
<td>311</td>
<td>403</td>
<td>587</td>
<td>193</td>
<td>614</td>
<td>813</td>
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<tr>
<td>Life and other personal insurance</td>
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<td>93</td>
<td>109</td>
<td>89</td>
<td>119</td>
<td>130</td>
<td>194</td>
<td>324</td>
</tr>
</tbody>
</table>

7. If the debtor’s household consists of two (2) persons, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
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<td>3,993</td>
<td>4,198</td>
<td>4,952</td>
<td>4,911</td>
<td>6,156</td>
<td>8,740</td>
<td></td>
</tr>
<tr>
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<td>617</td>
<td>991</td>
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<td>2,759</td>
<td>2,711</td>
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<td>674</td>
<td>777</td>
<td>829</td>
<td>848</td>
<td>1,268</td>
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</tr>
<tr>
<td>Prescription drugs</td>
<td>296</td>
<td>342</td>
<td>558</td>
<td>483</td>
<td>665</td>
<td>635</td>
<td>746</td>
<td>704</td>
<td>727</td>
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<tr>
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<td>46</td>
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<td>113</td>
<td>128</td>
<td>146</td>
<td>127</td>
<td>238</td>
<td></td>
</tr>
<tr>
<td>Personal care products and services</td>
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<td>317</td>
<td>379</td>
<td>410</td>
<td>446</td>
<td>506</td>
<td>609</td>
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<td>Education</td>
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<td>675</td>
<td>467</td>
<td>412</td>
<td>482</td>
<td>466</td>
<td>551</td>
<td>1,300</td>
<td></td>
</tr>
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<td>165</td>
<td>200</td>
<td>250</td>
<td>253</td>
<td>345</td>
<td>618</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>5,286</td>
<td>4,176</td>
<td>4,640</td>
<td>4,445</td>
<td>5,038</td>
<td>5,607</td>
<td>5,912</td>
<td>6,798</td>
<td>9,922</td>
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<tr>
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<td>1,041</td>
<td>1,104</td>
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<td>1,454</td>
<td>1,700</td>
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<td>895</td>
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<td>1,890</td>
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<td>2,511</td>
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</tr>
<tr>
<td>Medical services</td>
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<td>337</td>
<td>336</td>
<td>536</td>
<td>556</td>
<td>593</td>
<td>815</td>
<td>1,225</td>
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</tr>
<tr>
<td>Prescription drugs</td>
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<td>393</td>
<td>360</td>
<td>491</td>
<td>481</td>
<td>565</td>
<td>547</td>
<td>642</td>
<td></td>
</tr>
<tr>
<td>Medical supplies</td>
<td>73</td>
<td>39</td>
<td>51</td>
<td>78</td>
<td>91</td>
<td>99</td>
<td>108</td>
<td>134</td>
<td>192</td>
<td></td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>371</td>
<td>309</td>
<td>301</td>
<td>357</td>
<td>431</td>
<td>470</td>
<td>495</td>
<td>524</td>
<td>1,006</td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td>1,233</td>
<td>589</td>
<td>518</td>
<td>323</td>
<td>318</td>
<td>466</td>
<td>558</td>
<td>679</td>
<td>2,392</td>
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</tr>
<tr>
<td>Life and other personal insurance</td>
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<td>101</td>
<td>99</td>
<td>135</td>
<td>144</td>
<td>220</td>
<td>236</td>
<td>305</td>
<td>646</td>
<td></td>
</tr>
</tbody>
</table>

8. If the debtor’s household consists of three (3) persons, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
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<td>1,402</td>
<td>1,695</td>
<td>1,238</td>
<td>1,979</td>
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</tr>
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<td>1,839</td>
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<td>2,711</td>
<td></td>
</tr>
<tr>
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<td>155</td>
<td>233</td>
<td>93</td>
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<td>495</td>
<td>491</td>
<td>1,189</td>
<td>1,276</td>
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</tbody>
</table>
Proceed the application, actual annual expenditures by the debtor's family that exceed the applicable resources, shall be presumed unnecessary:

<table>
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<th>Personal care products and services</th>
<th>Less than $6,000</th>
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<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
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<td>9,531</td>
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<td>1,859</td>
<td>1,679</td>
<td>1,896</td>
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</tr>
<tr>
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<td>547</td>
<td>433</td>
<td>523</td>
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<td>1,555</td>
<td>1,578</td>
<td>2,107</td>
<td>2,574</td>
</tr>
<tr>
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<td>525</td>
<td>509</td>
<td>463</td>
<td>722</td>
<td>1,199</td>
</tr>
<tr>
<td>Prescription drugs</td>
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<td>267</td>
<td>263</td>
<td>513</td>
<td>436</td>
<td>401</td>
<td>642</td>
<td>626</td>
</tr>
<tr>
<td>Medical supplies</td>
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<td>99</td>
<td>129</td>
<td>194</td>
</tr>
<tr>
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<td>375</td>
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<td>327</td>
<td>510</td>
<td>599</td>
<td>516</td>
<td>651</td>
<td>994</td>
</tr>
<tr>
<td>Education</td>
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<td>287</td>
<td>339</td>
<td>598</td>
<td>735</td>
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<td>106</td>
<td>150</td>
<td>212</td>
<td>228</td>
<td>293</td>
<td>698</td>
</tr>
</tbody>
</table>

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $10,000</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>5,196</td>
<td>5,175</td>
<td>6,395</td>
<td>5,362</td>
<td>6,796</td>
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<td>7,513</td>
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<td>746</td>
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<td>1,515</td>
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<tr>
<td>Medical services</td>
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<td>134</td>
<td>202</td>
<td>433</td>
<td>449</td>
<td>589</td>
<td>692</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>100</td>
<td>163</td>
<td>358</td>
<td>233</td>
<td>245</td>
<td>341</td>
<td>375</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>37</td>
<td>76</td>
<td>10</td>
<td>49</td>
<td>108</td>
<td>99</td>
<td>103</td>
</tr>
<tr>
<td>Personal care products and services</td>
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<td>280</td>
<td>255</td>
<td>457</td>
<td>422</td>
<td>529</td>
<td>681</td>
</tr>
<tr>
<td>Education</td>
<td>293</td>
<td>264</td>
<td>154</td>
<td>463</td>
<td>469</td>
<td>609</td>
<td>847</td>
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<tr>
<td>Life and other personal insurance</td>
<td>80</td>
<td>36</td>
<td>65</td>
<td>75</td>
<td>120</td>
<td>140</td>
<td>268</td>
</tr>
</tbody>
</table>

10. If the debtor's household consists of five (5) or more persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:
Section 5.(1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than fifteen (15) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6.(1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall provide a rebuttable presumption if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: July 11, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10 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 Wednesday, July 31, 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 40602-7293, phone (502) 696-7298, fax (502) 6960-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Diana L. Barber

1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures to be followed by the Authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt, as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

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<th>Debitors' Available Resources</th>
<th>Less than $10,000</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 and over</th>
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<td>59</td>
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<td>242</td>
<td>209</td>
<td>626</td>
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</tbody>
</table>
tative regulation assists in the effective administration of the statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reflect the most recent poverty level and consumer expenditure figures published by the federal government.
(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a fair and accurate standard for determining the validity of a claim of extreme financial hardship.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the requirements of federal and state law that authorize the Authority to promulgate regulations establishing the procedures for the conducting of hearings regarding administrative wage garnishment by the Authority.
(d) How the amendment will assist in the effective administration of the statute: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers who have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment and who are claiming that such garnishment will cause them extreme financial hardship. During calendar year 2012, approximately 3,681 notices of wage garnishment were sent or received by student loan borrowers. During the same period, 97 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the ninety-seven (97) hearing requests received, eighty-five (85) were requested on the basis of extreme financial hardship.

(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: Each defaulted student loan borrower who objects to the garnishment of his/her wages on the basis of extreme financial hardship will be required to complete a request for hearing form as well as an affidavit of finances in order to establish his/her claim.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities noted above as all costs associated with the hearing request process are borne by the Authority.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those borrowers who complete the hearing request form and affidavit of finances will receive a hearing on the issue of whether garnishment of their wages would constitute an extreme financial hardship.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation.
(b) On a continuing basis: Same as (5)(a) above.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Authority maintains a federally restricted trust fund pursuant to 20 U.S.C. Section 1072b for operation of the insured student loan program.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adopts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower’s assertion that administrative wage garnishment will create an extreme financial hardship.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.
(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or division 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 164.744(1), KRS 164.748(2), (4), (10), and (20), 164.753(2), 20 U.S.C. §1071 through 1087(2), §1095a, 34 C.F.R. §682.410(b)(9) and (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 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate: 20 U.S.C. §1095a, 34 C.F.R. §682.410(b)(10)
2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and establishes the procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower’s last known address a written notice of the
nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower’s pay, and an explanation of the borrower’s rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five days after it was mailed by the Authority. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority. The Authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, if the borrower’s option is exercised in writing or orally, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower’s option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within sixty (60) days after the Authority’s receipt of the borrower’s hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision. If the borrower’s written request is received by the Authority on or before the 15th day following the borrower’s receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision. The hearing officer is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides that a hearing officer may not issue a wage garnishment order without allowing the debtor to consistently construe and apply the concept of “extreme financial hardship.” In order to prove “extreme financial hardship,” a debtor must show that his or her income is above 125 percent of the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the Authority Board on request of either party. An appeal from the hearing officer’s decision shall follow the standard that the Board shall uphold the hearing officer’s decision unless it is clearly unsupported by the evidence. The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least twelve (12) months. Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment. The employer shall deduct and pay to the Authority from a borrower’s wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower’s disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the Authority, as the designated state guarantee Authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 U.S.C.S. §1095a) and the applicable federal regulation (34 C.F.R. §682.410(b)(10)). Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute: At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail an official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision. If the borrower’s written request is received by the Authority on or before the 15th day following the borrower’s receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision. The hearing officer is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides that a hearing officer may not issue a wage garnishment order without allowing the debtor to consistently construe and apply the concept of “extreme financial hardship.” In order to prove “extreme financial hardship,” a debtor must show that his or her income is above 125 percent of the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the Authority Board on request of either party. An appeal from the hearing officer’s decision shall follow the standard that the Board shall uphold the hearing officer’s decision unless it is clearly unsupported by the evidence. The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least twelve (12) months. Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment. The employer shall deduct and pay to the Authority from a borrower’s wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower’s disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from
within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulations do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the Authority, the hearing must be conducted and a decision rendered within sixty (60) days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B which specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe. The Authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a case has already been raised and refused by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the Authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

RELATES TO: KRS 164.740-164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships, as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalent under a trimester or quarter system at a postsecondary education institution.

(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(3) "Authority" is defined by KRS 164.740(1).

(4) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.753 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year;

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course;

(c) Does not include courses from the Kentucky Virtual Campus.

6. "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2.a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution; and

c.1. For purposes of the College Access Program, is a public or private participating institution; or

2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs are not comprised solely of sectarian instruction.

(8) "Eligible institution" is defined by KRS 164.740(3).

(9) "Eligible noncitizen" means an individual who is:

(a) Either:

1. A U.S. national;

2. A U.S. permanent resident with an Alien Registration Receipt Card (I-151 or I-551); or

3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. "Refugee";

b. "Asylum granted";

c. "Indefinite parole" or "humanitarian parole"; or

d. "Cuban-Haitian entrant"; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa; or

3. G series visa.

(10) "Eligible program of study" means an undergraduate program, of a least two (2) academic years duration, offered by an
educational institution which:
(a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or
(b) For purposes of only the CAP Grant Program:
1. Leads to a certificate or diploma while attending a publicly operated vocational-technical institution; or
2. Is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education.
(11) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087vv to the information that the student and his family provided on the application.
(12) "Federal act" is defined by KRS 164.740(7) and means 20 U.S.C. 1001 through 1146a.
(13) "Full-time student" means an enrolled student who is carrying a full-time academic workload:
(a) that may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and
(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:
1. Twelve (12) semester hours or eighteen (18) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;
2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;
3. Twenty-four (24) clock hours per week for an educational program using clock hours;
4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):
   a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or
   b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester or quarter hours per academic year divided by twenty-four (24) and the number of quarter hours per academic year divided by thirty-six (36) and the number of clock hours per week divided by twenty-four (24);
5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or
6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.
(14) "Grant" is defined by KRS 164.740(8).
(15) "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.
(16) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).
(17) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards:
(a) That are made to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution); and
(b) That shall be:
1. Measured in terms of the applicable percentage of the maximum KHEAA grant that would have been disbursed for the academic year to a full-time student and not fully refunded;
2. Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, determined by dividing the net amount of KHEAA grant disbursed for the academic term by the maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant; and
3. Based upon the following applicable percentages representing the aggregate limitation of KHEAA grant awards:
   a. 200/[250] percent for a student enrolled in a two (2) year eligible program of study; or
   b. 400/[450] percent for a student enrolled in a four (4) year eligible program of study.
(18) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(6), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.
(19) "Over award" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:130 through 5:145.
(20) "Participating institution" is defined in KRS 164.740(13).
(21) "Part-time student" means an enrolled student who is carrying an academic workload:
(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and
(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:
1. At least six (6) semester hours per semester;
2. Six (6) quarter hours per quarter; or
3. Half of the academic workload of a full-time student as determined by the educational institution.
(22) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.
(23) "Resident of Kentucky" or "resident" means a person who is determined by the participating institution to be classified as an in-state student in accordance with the criteria established in 13 KAR 2.045.
(24) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
Filed With LRC: June 11, 2013 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing before 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 Wednesday, July 31, 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,
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 defines the terms used in 11 KAR Chapter 5 pertaining to the KHEAA-administered grant programs.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 164.753(4) which requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.
(c) How this administrative regulation conforms to the content of authorizing statutes: This administrative regulation conforms to the content of KRS 164.753(4) by defining terms applicable to the KHEAA-administered grant programs set forth in 11 KAR Chapter 5.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defining terms applicable to the KHEAA-administered grant programs.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will alter the definition of "Resident of Kentucky" to clarify that the participating institution is to determine residency for purposes of grant program eligibility.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure that participating institutions are aware of their obligation to make a residency determination for each student prior to certifying the student's eligibility for a KHEAA grant.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes; that terms applicable to the KHEAA-administered grant programs are clearly and accurately defined.
(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 ensuring that the definitions of those terms relevant to the KHEAA grant programs are accurate and complete.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of sixty-two (62) Kentucky postsecondary institutions are eligible for attendance by recipients of KHEAA grants. In the academic year ending June 30, 2012, there were approximately 305,000 applicants for grant awards. A total of 49,500 individuals received KHEAA-administered grants during this same period.
(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 to comply with this administrative regulation or amendment: As a result of this amendment, all participating institutions, regardless of whether their tuition rates are based upon Kentucky residency, will be required to make a residency determination for each student who wishes to be eligible for a KHEAA-administered grant program award. However, this does not represent a change to this provision. Rather, this determination has been the responsibility of the institution since program inception. The amendment merely clarifies this requirement. There will be additional action required of grant applicants as a result of this amendment.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to either the participating institutions or the grant applicants in compliance with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The grant applicants attending the participating institutions will be eligible for consideration for a grant award upon the institution’s determination that the student is a Kentucky resident provided the student also satisfies the other eligibility criteria applicable to the program.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost initially.
(b) On a continuing basis: No cost on a continuing basis.
(c) How this administrative regulation will result in no additional revenues to the participating institutions, regardless of whether their tuition rates are based upon Kentucky residency, will be required to make a residency determination for each student who wishes to be eligible for a KHEAA-administered grant program award. However, this does not represent a change to this provision. Rather, this determination has been the responsibility of the institution since program inception. The amendment merely clarifies this requirement. There will be additional action required of grant applicants as a result of this amendment.

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 Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.
2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation: KRS 164.740(4), 164.753(4).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is 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 result in no additional revenues to the Authority during the first full year of its effectiveness.
(b) How 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 result in no additional revenues to the Authority during subsequent years of its effectiveness.
(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:
VOLUME 40, NUMBER 1 – JULY 1, 2013

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:140. KTG award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the award determination procedures for the Kentucky tuition grant program.

Section 1. Kentucky Tuition Grant (KTG) Program Awards. An application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination of eligibility for a KTG.

Section 2. KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:

1. Expected Pell grant;
2. Expected family contribution; and
3. CAP grant.

Section 3. KTG Award. (1) If an applicant does not qualify for a CAP grant and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.

(2) If an applicant does not qualify for a CAP grant, and the KTG need is an amount less than $200, an award shall not be made.

(3) If an applicant has received a CAP award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in Section 5 of this administrative regulation except that KTG awards shall be offered only to the extent that funds are available.

(4) A KTG award shall not exceed $3,000 for an academic year.

Section 4. (1) A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award.

(2) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(3) A semester award shall not exceed tuition and fee charges for that semester.

(4) A KHEAA grant award shall not be made for a summer academic term.

Section 5. (1) A KHEAA grant award shall not exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student.

(3) The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his need, the excess (by more than $200, the amount over $200) shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 6. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 7. (1) If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction.

(2) If the grant for the fall academic term has already been disbursed, the reduction shall be made to the spring disbursement.

(3) If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: June 11, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Wednesday, July 31, 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 award determination procedures for the Kentucky Tuition Grant ("KTG") Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the award determination procedures for the KTG Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.

(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 KTG program by establishing the award determination procedures for the program.

(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: The amendment will change the existing regulation by eliminating the $300 overaward tolerance pertaining to the KTG program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to bring the overaward policy concerning KTG grants into alignment with the overaward policies applicable to the other KHEAA-administered state aid programs.

(c) How the amendment conforms to the content of the authorizing statutes: KHEAA is required to promulgate administrative regulations pertaining to the awarding of grants pursuant to KRS 164.753(4). The amendment to this administrative regulation revises the overaward policy pertaining to the KTG grant program.

(d) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute by revising the overaward policy to be consistent with that for the other KHEAA-administered state aid programs.

(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 answer as for 5(a).

(6) What is the source of the funding to be used for the implementation of this administrative regulation, if new, or by the change if it is an amendment: All students who receive a KTG award whose total aid results in an overaward will be impacted by this amendment as any funds representing an overaward will be required to be returned to KHEAA regardless of the amount of said overaward.

(7) Provide an assessment of whether an increase in fees or funding will be necessary:

(a) The amount specified in subsection (1)(a) of this section: $950; or

(b) Not included in the calculation.

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

(9) TIERING: Is tiering applied: Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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 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(4)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will result in no additional revenues to the Authority during the first full year of its effectiveness.

(b) How 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 result in no additional revenues to the Authority during subsequent years of its effectiveness.

(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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Comment)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $5,081 or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) $950; or

(b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) of this section: 1. Divided by twelve (12); and

2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and

(b) Not in excess of the maximum specified in subsection (1)(b) of this section.

(3) For any academic year, a student shall not receive more than $1,900 for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the
KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his need, the excess by more than $300 (any amount over $300) shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant funds:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements, and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement, and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: June 11, 2013 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Wednesday, July 31, 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 prescribes the award determination procedures for the CAP Grant Program.
(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to scholarships and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.789(3) requires the authority to promulgate an administrative regulation that increases the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the award determination procedures for the CAP Grant Program. The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution and by setting the maximum amount that a student may receive in CAP grants for a given academic year.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students applying for a CAP grant meet the required financial need criteria and those students receive the maximum CAP grant allowed for any academic period. The amendment to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate student financial need and sets the ceiling amount of expected family contribution for participation in the CAP grant program and by bringing the overaward policy concerning KTG grants into alignment with the overaward policies applicable to the other KHEAA-administered state aid 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 to this administrative regulation will increase the maximum expected family contribution level necessary to demonstrate financial need for eligibility for the CAP grant program. Further, this amendment will change the existing regulation by eliminating the $300 overaward tolerance pertaining to the KTG program.
(b) The necessity of the amendment to this administrative regulation: The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution for participation in the CAP grant program and by bringing the overaward policy concerning KTG grants into alignment with the overaward policies applicable to the other KHEAA-administered state aid programs.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution under the CAP grant program and by revising the overaward policy pertaining to the KTG grant program.
(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 increasing the maximum expected family contribution level for eligibility for participation in the CAP grant program and by revising the overaward policy to be consistent with that for the other KHEAA-administered state aid programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of sixty-two (62) Kentucky postsecondary
institutions are eligible for attendance by recipients of KHEAA grants. In the academic year ending June 30, 2013, a total of 37,500 students received CAP grant awards.

(4) Provide an assessment of how much will it cost to administer this program for the first year? No costs are associated with this regulation.

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

(a) Initially: The administrative regulation increases the maximum expected family contribution level necessary to demonstrate financial need, making grants available to more students. However, the amount of the grant, the funds available for grants, and in general the overall cost of administering the program will not increase or decrease.

(b) On a continuing basis: Same as (5)(a) above.

(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.

4. What are the sources of funding to be used for the implementation of this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not require or authorize the action taken by the administrative regulation.

5. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Grants for students under the College Access Program are funded through receipts of the authority for grant and scholarship programs and 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: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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 or directly or indirectly increase any fees.

9. TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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 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 164.740(4), 164.753(4), 164.789(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

(11) "Semester" is defined in KRS 164.769(2)(l).
(12) "Summer term" is defined in KRS 164.769(2)(g).
(13) "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate in a position for which regular teacher certification is a prerequisite or during participation in the Kentucky Teacher Internship Program (KTIP), and shall not include substitute teaching.

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)(l).
(12) "Summer term" is defined in KRS 164.769(2)(g).
(13) "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate in a position for which regular teacher certification is a prerequisite 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 achieved 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 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 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 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 disbursement 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 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 165.611, 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 164.768(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.

(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.

(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:

(1) A finding of permanent disability by the Social Security Administration;

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certificate 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:

(a) Change in enrollment status;

(b) Cessation of full-time enrollment in an eligible program of study;

(c) Employment in a qualified teaching service position;

(d) 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.

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 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.

(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: May 16, 2013

FILED WITH LRC: June 11, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10 a.m. at 100 Airport Road, 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 a 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 Wednesday, July 31, 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 revising the definition of "teaching" to provide that a recipient must be serving in a position for which regular teaching certification is required in order to receive service credit cancellation under this program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that recipients are fulfilling the terms of their service commitments by providing actual teaching service as required by the statute.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by further specifying the conditions under which financial obligations incurred under this program can be cancelled through the provision of service, namely through the provision of services in a position for which regular teaching certification is required.

(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 cancellation of indebtedness for recipients who fulfill the purpose of the teacher scholarship program — becoming teachers and providing qualified teaching service within the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Teacher Scholarship recipients who seek to have their scholarship indebtedness cancelled through the rendering of qualified teaching service will be affected by this administrative regulation.

(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: Those recipients who seek to have their scholarship indebtedness cancelled through the rendering of qualified teaching service will be required to render qualified teaching service in a position for which regular teacher certification is a prerequisite.

(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 recipients nor to schools in complying with this amendment.

(c) How much will the amendment change the benefits that accrue to the entities identified in question (3): All Teacher Scholarship recipients who provide qualified teaching service as set forth in this amendment and who otherwise satisfy the requirements of the regulation will receive service credit cancellation of their repayment obligations.

(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 increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees, nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not...
Section 1. Reduction for Part-time Study. (1) If an eligible student is enrolled as a part-time student for an academic term, the maximum award amount to which the student is entitled shall be as follows:
   (a) Fifty (50) percent if enrolled for six (6) semester hours;
   (b) Fifty-eight (58) percent if enrolled for seven (7) semester hours;
   (c) Sixty-seven (67) percent if enrolled for eight (8) semester hours;
   (d) Seventy-five (75) percent if enrolled for nine (9) semester hours;
   (e) Eighty-three (83) percent if enrolled for ten (10) semester hours;
   (f) Ninety-two (92) percent if enrolled for eleven (11) semester hours; and
   (g) 100 percent if enrolled for twelve (12) semester hours or more.

   (2) For quarter hour institutions, in order to determine the maximum award amount to which the student is entitled, the number of quarter hours of the student’s enrollment shall be converted to semester hours on either a semester or academic year basis as follows:

   (a) Quarter to semester hour conversion per semester for periods July 1 - December 31 and January 1 – June 30

<table>
<thead>
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<th>Semester Hours</th>
<th>Award Percentage</th>
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<tr>
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<td>2</td>
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</tbody>
</table>

   (b) Quarter to semester hour conversion per academic year for periods July 1 – June 30

<table>
<thead>
<tr>
<th>Quarter Hours</th>
<th>Semester Hours</th>
<th>Award Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>24</td>
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<tr>
<td>32</td>
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<td>4</td>
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</table>

   [3] The equivalent academic unit of measurement shall be used to correspond to a semester[credit] hour, if the participating institution does not use semester[credit] hours.

   [4] (3) A participating institution shall determine full-time and less than full-time enrollment status for purposes of subsection (1) of this section in the same manner as the participating institution uses to determine enrollment status for Pell Grant eligibility.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: June 11, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Wednesday,
July 31, 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

Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions for KEES eligibility for students enrolled on a part-time basis.

(b) The necessity of this administrative regulation: KRS 164.7881(4)(b) requires KHEAA to promulgate an administrative regulation to proportionally reduce the maximum KEES award amount for an eligible student enrolled on a less than full-time basis. This administrative regulation is necessary in order to establish this reduction scheme.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing a procedure for the proportionally reduction of KEES awards for those attending quarter hour schools.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing a procedure for the proportionally reduction of KEES awards for students enrolled on a part-time basis as required by statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by incorporating conversion tables for the proportional reduction of the maximum KEES award for students attending quarter hour institutions.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to more fully inform stake holders as to the proportional reduction of awards for those attending quarter hour schools.

(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 statute by expanding on the established mechanism for the proportional reduction of KEES awards for those students attending school on a part-time basis.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by more fully informing stakeholders as to the proportional reduction of awards for those attending quarter hour schools.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participating institutions whose academic unit structure is based on quarter-hours will be impacted by this regulation in that the conversion charts to be used in reporting student eligibility to KHEAA will now be set forth in the regulation. However, this same conversion methodology has been utilized by said institutions under administrative policy for a number of years.

(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 to comply with this administrative regulation or amendment: As they have in the past, quarter-hour-based schools will need to convert their student’s enrollment to semester hours in order to report them for KEES part-time award eligibility.

(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 participating institutions in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, the KEES program students attending the participating institutions on a less than full-time basis will be eligible for consideration for a partial KEES award.

(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: See 5(a) above.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.

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

(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 increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equitable opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not conform. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment 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), 164.7881(4)(b), 164.7885(7)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will result in no additional 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 administrative regulation will result in no additional revenues to the Authority during the first full year of its effectiveness.

(b) How 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 result in no additional revenues to the Authority during subsequent years of its effectiveness.

(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:
Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student’s grade point average for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible high school student’s grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an “A”; 3.0 is a “B”; 2.0 is a “C”; 1.0 is a “D”; and 0.0 is an “F”;
2. Adding the total number of points accumulated for an academic year; and
3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned shall be calculated using a 5.0 point scale where 5.0 is an “A”; 4.0 is a “B”; 3.0 is a “C”; 2.0 is a “D”; and 1.0 is an “F”.

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Lineage School that was approved by the student’s local high school shall have the student’s grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1a and b and shall submit the “Home of Record Certification” to the Authority.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student’s eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and
2. Requesting that the local school submit the information to the Authority using the “Curriculum Certification” Form and the “Data Submission” Form.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student’s eligibility.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;
(b) Has completed the KEES curriculum as set forth in subsection 2 of this section;
(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and
(d) Is enrolled in a participating institution in an eligible program.

(2) Except as provided in subsection 4 of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award.
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for that year upon:
(a) Completion of no fewer than three (3) courses of study; and
(b) Satisfying the provisions of KRS 164.7879.
(4) Except as provided in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required academic and career interest standards-based learning experience if:
(a) The course provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR 4:060; or
(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.
(5) Beginning with the 2012-2013 academic year, only one cooperative education course per academic year shall count for purposes of satisfying KEES curriculum requirements.
(6) A high school annually shall provide written documentation to a student on whether the student’s schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority. (2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.
(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:
(a) Landscape architecture (04.0601); and
(4) Pursuant to KRS 164.7881(4)(c)(1), an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:
(a) Has not received eight (8) semesters of a KEES award;
(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:
   1. Pharm. D;
   2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or
   3. A program contained on the Equivalent Undergraduate Programs List; and
   (c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. (1) Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic year:

<table>
<thead>
<tr>
<th>Table C-2</th>
<th>Concordance Between SAT I Recentered V+M Score and ACT Composite Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAT I V+M</td>
<td>ACT Composite</td>
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<tr>
<td>1220 33-36</td>
<td>35-36</td>
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<td>1560 35</td>
<td>1350 30</td>
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<td>1160 25</td>
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<td>1380 31</td>
<td>1150 25</td>
</tr>
</tbody>
</table>

This table can be used to relate SAT I V+M scores to ACT Composite scores. The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students’ actual scores on the ACT could differ significantly from the concordance estimates in the table.
Source: ACT, Inc. Questions about the concordance study may be directed to ACT’s Research Division (319/337-1471).
January 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.
Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from or attends a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:
(a) The student is not a convicted felon;
(b) The student takes the ACT or SAT and achieves a minimum score as established by KRS 164.7879(3); and
(c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3)(c), and
(d) The student enrolls in a participating institution within five (5) years after graduation from high school.
(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:
(a) The student is not a convicted felon;
(b) The student's 18th birthday occurs on or after January 1, 1999;
(c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
(d) The student takes the SAT or CR+M and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.
(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:
(a) The parents meet the provisions of KRS 164.7879(2)(c)1a and b;
(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.
(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.
(5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.
(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c), a supplemental award shall be provided for achievement on Advanced Placement (AP) or International Baccalaureate (IB) examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.
(2)(a) An eligible high school student shall report the status of each AP or IB examination he or she takes and the status of each AP or IB examination the family was eligible for free and reduced price lunch to the Authority on an annual basis.
(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).
(2) The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The Authority shall develop an allotment schedule for the release of the administrative funds.

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

(a) "Home of Record Certification", June 2005;

(b) "Curriculum Certification", June 2005;

(c) "Data Submission", June 2005; and

(d) "Equivalent Undergraduate Programs List", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the 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: May 16, 2013
FILED WITH LRC: June 11, 2013 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Wednesday, July 31, 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 procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for the Kentucky Higher Education Assistance Authority (KHEAA).

(c) Whether this administrative regulation conforms to the content of the authorizing statute: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program. KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study. KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(3) requires KHEAA to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program. KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7535 and 164.7881(4)(e) require KHEAA to identify equivalent undergraduate programs of study. This Administrative regulation established these requirements related to the KEES program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing program eligibility criteria for administration of the KEES Program by KHEAA.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing regulation by further clarifying the grading scales which must be utilized by high schools in calculating and reporting student grade point averages for purposes of the KEES award eligibility.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to further instruct high schools as to the grading scales that must be utilized in calculating and reporting student grade point averages for purposes of the KEES program.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to develop regulations for administration of the KEES program. This amendment enhances the provisions pertaining to high school calculation and reporting of grade point averages for their students to enable KHEAA to determine eligibility for KEES base awards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by further clarifying the grading scales (4.0 and 5.0) which high schools must utilize in calculating and reporting student grade point averages in order to determine student eligibility for KEES base award amounts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation clarifies the grading scales to be utilized by high schools in calculating student grade point averages. However, these scales have been set forth in the regulation since inception and are merely being clarified through this amendment. While the amendment could potentially impact the high schools in their grade point average calculations, there should be no net impact.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(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: As they have since inception of the KEES program, high schools will be required to calculate and report student grade point averages on either a 4.0 or 5.0 scale.

(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 recipients in complying with this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): High schools who comply with the grade point average calculation and reporting requirements will have their students considered for KEES base award eligibility.

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

(a) Initially: None.

(b) On a continuing basis: See 5(a) above.

(c) (a) Is there a method or procedure to be used to be used to calculate and report student grade point averages on either a 4.0 or 5.0 scale.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(7) Provide an assessment of whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or imposing fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherent-
ly result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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 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 164.7874; 164.7877(3); 164.7879(1), (2), (3); 164.7881(4)(a), (c), (6).

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
( Amendment)

11 KAR 16:001. Definitions for 11 KAR Chapter 16.

RELATES TO: KRS 164.518, 164.740
STATUTORY AUTHORITY: KRS 164.518(3), 164.740(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) “Academic term” means the fall, spring, or summer semester or its equivalency under a trimester or quarter system at a postsecondary education institution.

(2) “Authority” is defined in KRS 164.740(1).

(3) “Award year” means a period that begins July 1 of one (1) calendar year and ends June 30 of the next succeeding calendar year.

(4) “Capstone semester” means the culmination semester in an Interdisciplinary Early Childhood Education (IECE)/Early Childhood Program which:

(a) Requires additional hours of direct work with children; and

(b) May be listed as student teaching or a practicum.

(5) “Early childhood facility” means:

(a) A licensed Type I or a Type II child-care center defined in 922 KAR 2:110, Sections 1(14) and (15) that is located in Ken-

tucky;

(b) A certified family child care home pursuant to KRS 199.8982 and 922 KAR 2:100 that is located in Kentucky;

(c) An organization approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer training in early childhood development; or

(d) A developmentally appropriate preschool program defined in KRS 157.3175(2).

(6) “ECDA” means Early Childhood Development Authority.

(7) “Early Childhood Development Facility” means an approved early childhood development facility.

(8) “Eligible institution” is defined in KRS 164.740(3).

(9) “Participating early childhood facility” means an early childhood facility that agrees to provide monetary incentives pursuant to 11 KAR 16:060 to early childhood development scholarship recipients employed by the facility.

(10) “Participating educational institution” means an eligible institution located in Kentucky that:

(a) Actively participates in the federal Pell Grant Program;

(b) Offers a scholarship program curriculum;

(c) Has a contract in force with the authority relating to the administration of the Early Childhood Development Scholarship Program and other programs administered by the authority; and

(d) Is publicly operated; or

2. a. Is licensed by the Commonwealth of Kentucky;

b. Has operated for at least ten (10) years;

c. Offers a program of study not comprised solely of sectarian instruction; and

d. Admits as regular students only:

(i) High school graduates;

(ii) Recipients of a general equivalency diploma; or

(iii) Students transferring from another accredited degree granting institution.

(11) “Preschool associate teacher” means a classified employee who:

(a) Is employed by a local school district in a paraprofessional role to organize, manage, and provide direct instruction to children below primary school age under the supervision of a qualified professional; and

(b) Meets the requirements of 704 KAR 3:420.

(12) “Professional development counselor” means an individual with the responsibilities to recruit candidates, process the applications, and follow as indicated the procedures established in 11 KAR Chapter 16.

(13) “Professional development funds” means state or federal training funds available through the Head Start Program, a public preschool program, or the Kentucky Early Intervention System (First Steps Program).

(14) “Scholarship” means an Early Childhood Development Scholarship.

(15) “Scholarship program curriculum” means an academic course or series of courses that does not lead to a certificate, diploma, or degree in theology, divinity, or religious education offered by a participating educational institution needed to obtain an ECDA-approved early childhood development credential.

(16) “Teaching assistant” means an instructional aide in a public school preschool program as set forth in 704 KAR 3:410.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: June 11, 2013 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013 at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being
heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on Wednesday, July 31, 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 sets forth the definitions of terms used in the administration of the Early Childhood Development Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define or reference certain statutory definitions of terms commonly used in the administration of the Early Childhood Development Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for the administration of the Early Childhood Development Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defining terms applicable to the Early Childhood Development Scholarship 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 will change this existing administrative regulation by updating the references to the administrative body that governs the Early Childhood Development Scholarship Program to the newly established Early Childhood Advisory Council.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to comply with KRS 164.518(3) enacted during the 2013 Regular Session of the General Assembly which abolished the Early Childhood Development Authority as the governing body for the Early Childhood Development Scholarship program and established the Early Childhood Advisory Council to perform the oversight function.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship Program. The amendment to this administrative regulation conforms to the content of those statutes by identifying the newly created Early Childhood Advisory Council as the governing body for this program.

(d) How the amendment will assist in the effective administration of the statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions in order to administer the Early Childhood Development Scholarship program. The amendment to this administrative regulation enhances the administration thereof by correctly identifying the newly created Early Childhood Advisory Council as the governing body for this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Although the statutory amendment ratified an executive order transferring governance of this program to the newly created Early Childhood Advisory Council, the program will continue to operate as it has, so any impact on applicants for this program should be negligible at most.

(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: No action will be required of those individuals impacted by this regulation in order to comply therewith.

(b) In complying with this administrative regulation or amendment, how much will cost each of the entities identified in question (3): No cost will be imposed on those individuals impacted by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals who meet the eligibility criteria for this program and apply therefore will be considered for scholarship awards.

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

(a) Initially: None.

(b) On a continuing basis: See paragraph (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program is provided through money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 2000 Ky. Acts Ch. 549, Part XI.

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

(8) State whether or not this administrative regulation 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 applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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 amendment impacts 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 164.518(3), 164.748(4)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is 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 result in no additional revenues to the Authority during the first full year of its effectiveness.

(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will result in no additional revenues to the Authority during subsequent years of its effectiveness.

(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:

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**
Division of Student and Administrative Services
( Amendment)


RELATES TO: KRS 164.518
STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:

(a) Be:

1. A citizen, national, or permanent resident of the United States;
2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established in 13 KAR Chapter 2 by the Council on Postsecondary Education for the purposes of admission and tuition assessment;
3. A high school graduate or a General Educational Development (GED) recipient;
4. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester:
   a. Employed at least twenty (20) hours per week in a participating early childhood facility;
   b. Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer the training; or
   c. Employed at least twenty (20) hours per week, providing direct instruction to children as a preschool associate teacher or as a teaching assistant in a public preschool program by a participating early childhood facility;
5. Except as provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the participating early childhood facility;
6. Pursuing an ECAC(EDCA) approved early childhood credential, associate degree, or bachelor's degree may be enrolled in a capstone course requiring full-time enrollment, but shall not receive an award amount for more than nine (9) credit hours of enrollment;
7. Ineligible to receive professional development funds from another education program; and
8. Maintaining satisfactory academic progress as determined by the participating institution;

(b) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and
(c) Not be:
1. In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;
2. Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and
3. For one (1) year at a participating early childhood facility;
4. Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.
(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:
(a) Meet the eligibility requirements of subsection (1) of this section; and
(b) For making satisfactory academic progress toward the completion of the ECAC(EDCA) approved early childhood credential as determined by the participating institution.
(3) Appeal of determination.
(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECAC(EDCA);
(b) A student shall submit a written statement of appeal to the ECAC(EDCA) within fifteen (15) calendar days after the date of notification of denial.
(c) If a student appeals a scholarship denial, the ECAC(EDCA) shall ensure that:
1. A hearing officer or committee appointed by ECAC(EDCA) shall consider the student's appeal and make a decision on the issues involved; and
2. The student's due process rights, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel, are protected.
(4) Commitment of service. A scholarship applicant shall commit that he or she shall subsequently render service:
(a) For six (6) months at a participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;
(b) For one (1) year at a participating early childhood facility upon obtaining the early childhood credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship; or
(c) For six (6) months at a participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood credential of a baccalaureate degree, paid for in part by a scholarship.

(2) The applicant shall:
(a) Print the employer verification page from the completed application;
(b) Have this page certified by an authorized representative of the participating early childhood facility; and
(c) Submit the certified page to the professional development counselor on or before:
1. July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
2. November 15, or the next regular business day if November 15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; and
3. April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.
(3) The applicant shall also complete and submit to the United States Department of Education the Free Application for Federal Student Aid ("FAFSA") set forth in 11 KAR 4:080, Section 1(4)(a).
This application shall be completed either in paper format or electronically via the Internet.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:
   (a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is submitted.
   (b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

(3) The professional development counselor shall forward to the ECAC[ECDA] the applications of those persons recommended to receive a scholarship and ensure that the applications are reviewed by the ECAC[ECDA] no later than:
   (a) July 22, or the next regular business day if July 22 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
   (b) November 22, or the next regular business day if November 22 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or
   (c) April 22, or the next regular business day if April 22 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(4) The employer signature page shall be received by the ECAC[ECDA] no later than August 1, December 1, and May 1 of the appropriate semester.

(5) ECAC[ECDA] shall certify the eligibility determination of approved applicants.

Section 4. (1) Award amount. The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient’s enrollment status, but shall not exceed:
   (a) The amount of tuition charged for enrollment in nine (9) credit hours; and
   (b) The award maximum.

(2) Award maximum. The maximum scholarship amount awarded to an eligible applicant for an academic year shall be $1,800.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: June 11, 2013 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10:00 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Wednesday, July 31, 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) 696-6298, 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 applicant selection process for the Early Childhood Development Scholarship program as authorized by KRS 164.518(3).
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the selection process for the Early Childhood Development Scholarship program.
   (c) How this administrative regulation conforms to the content of the authorizing statute(s): KRS 164.518(3) requires the authority to promulgate administrative regulations pertaining to the Early Childhood Development Scholarship program.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the applicant selection process for the Early Childhood Development Scholarship 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 will change the existing administrative regulation by updating the references to the administrative body that governs the Early Childhood Development Scholarship Program to the newly established Early Childhood Advisory Council.
   (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to comply with the amendment to KRS 164.518(3) enacted during the 2013 Regular Session of the General Assembly which abolished the Early Childhood Development Authority as the governing body for the Early Childhood Development Scholarship program and established the Early Childhood Advisory Council to fill the role.
   (c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by identifying the newly created Early Childhood Advisory Council as the governing body for this program.
   (d) How the amendment will assist in the effective administration of the statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions in order to administer the Early Childhood Development Scholarship program. The amendment to this administrative regulation enhances the administration thereof by correctly identifying the newly created Early Childhood Advisory Council as the governing body for this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Although the statutory amendment ratified an executive order transferring governance of this program to the newly-created Early Childhood Advisory Council, the program will continue to operate as it has, so any impact on applicants for this program should be negligible at most.

(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: No action will be required of those individuals impacted by this regulation in order to comply therewith.
   (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 imposed on those individuals impacted by this regulation in compliance therewith.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individual who meet the eligibility criteria for this program and apply therefore will be con-
sidered for scholarship awards.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None.
   (b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program is provided through money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 2000 Ky. Acts Ch. 549, Part XI.

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

(8) State whether or not this administrative regulation 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 applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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 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 164.518(3), 164.748(4)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will result in no additional revenues to the Authority during the first full year of its effectiveness.
   (b) How 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 result in no additional revenues to the Authority during subsequent years of its effectiveness.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No costs are associated with this regulation.
   (b) 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.

Revenue (+/-): Expenditures (+/-): Other Explanation:
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 requirements for the maintenance of records under the Early Childhood Development Scholarship Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for maintaining records under the Early Childhood Development Scholarship Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for the administration of the Early Childhood Development Scholarship Program.
(d) How this administrative regulation will assist or will affect the in the effective administration of the statute: The amendment will change this existing administrative regulation by updating the references to the administrative body that governs the Early Childhood Development Scholarship Program to the newly established Early Childhood Council.
(e) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to prepare administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by identifying the newly created Early Childhood Advisory Council as the governing body for this program.
(f) How this administrative regulation will assist in the effective administration of the statute: The authorizing statute requires the Authority to promulgate administrative regulations establishing terms and conditions in order to administer the Early Childhood Development Scholarship program. The amendment to this administrative regulation enhances the administration thereof by correctly identifying the newly created Early Childhood Advisory Council as the governing body for this program.
(g) How this administrative regulation will assist or will affect the in the effective administration of the statute: The authorizing statute requires the Authority to promulgate administrative regulations establishing terms and conditions in order to administer the Early Childhood Development Scholarship program. The amendment to this administrative regulation enhances the administration thereof by correctly identifying the newly created Early Childhood Advisory Council as the governing body for this program.
(h) How much will it cost to administer this administrative regulation? The amendment to this administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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 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 164.518(3), 164.748(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 in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.
(c) How much will it cost to administer this program for the first year? There will be no costs associated with this administrative regulation.
(d) How much will it cost to administer this program for subsequent years? There will be no costs associated with this administrative regulation.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(AMENDMENT)

11 KAR 16:050. Early Childhood Development Scholarship Program costs.

RELATES TO: KRS 164.518
STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.518(3) requires the authority to promulgate administrative regulations governing the Early Childhood Development Scholarship Program. This administrative regulation establishes the mechanism for payment of costs related to the implementation of the Early Childhood Development Scholarship Program.

Section 1. (1) The ECAC[ECDA] shall prepare and transmit to the authority by March 1 each year a written projection of the anticipated number and amount of scholarship awards and monetary incentive awards for the following academic year.

(2) The written projection shall reflect the agreement between ECAC[ECDA] and the authority concerning the amount of funds available for Early Childhood Development Scholarship Program that the authority may expend for costs incurred by the authority related to administration of the program.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: June 11, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on Wednesday, July 31, 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 Agency, 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 a mechanism for payment of administrative costs under the Early Childhood Development Scholarship Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the mechanism for payment of administrative costs under the Early Childhood Development Scholarship Program by the Early Childhood Development Authority.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for the administration of the Early Childhood Development Scholarship Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing a mechanism for payment of administrative costs under the Early Childhood Development Scholarship 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 will change this existing administrative regulation by updating the references to the administrative body that governs the Early Childhood Development Scholarship Program to the newly-established Early Childhood Advisory Council.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to comply with the amendment to KRS 164.518(3) enacted during the 2013 Regular Session of the General Assembly which abolished the Early Childhood Development Authority as the governing body for the Early Childhood Development Scholarship program and established the Early Childhood Advisory Council to fill the role.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by identifying the newly created Early Childhood Advisory Council as the governing body for this program.

(d) How the amendment will assist in the effective administration of the statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions in order to administer the Early Childhood Development Scholarship program. The amendment to this administrative regulation enhances the administration thereof by correctly identifying the newly created Early Childhood Advisory Council as the governing body for this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Although the statute amendment ratified an executive order transferring governance of this program to the newly created Early Childhood Advisory Council, the program will continue to operate as it has, so any impact on applicants for this program should be negligible.

(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: No action will be required of those individuals impacted by this regulation in order to comply therewith.
(b) On a continuing basis: See paragraph (5)(a) above.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals who meet the eligibility criteria for this program and apply therefore will be considered for scholarship awards.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None.
(b) On a continuing basis: See paragraph (5)(a) above.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program is provided through money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 2000 Ky. Acts Ch. 549, Part XI.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation 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 applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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 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 164.518(3), 164.748(4)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.
   (c) How much will it cost to administer this program for the first year? There will be no costs associated with this administrative regulation.
   (d) How much will it cost to administer this program for subsequent years? There will be no costs associated with this administrative regulation.

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

Revenues (+/–):
Expenditures (+/–):
Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)


RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipi

ents.

Section 1. Textbook Expense Reimbursement. (1) The scholarship recipient shall present to his employer at the participating early childhood facility a receipt for the purchase of textbooks for the scholarship program curriculum. The scholarship recipient shall present the receipt to his employer no later than the end of the academic term to be eligible to receive a textbook expense reimbursement for the academic term.

(2) The participating early childhood facility shall, no later than fifteen (15) days after presentation of a receipt for textbook purchase, reimburse the scholarship recipient for the actual cost of the textbooks not to exceed fifty (50) dollars per academic term and $150 per academic year.

(3) The participating early childhood facility shall, upon request by the professional development counselor, provide evidence of reimbursement of scholarship recipients for textbooks.

Section 2. Related Educational Expense Reimbursement. (1) Subject to the availability of funds, a scholarship recipient who meets the requirements set forth in this section shall be eligible for reimbursement of related educational expenses. The scholarship recipient shall earn a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term to be eligible for reimbursement of related educational expenses.

(2) The scholarship recipient shall present to the professional development counselor no later than sixty (60) days following completion of the academic term an official grade report from the participating educational institution as evidence of completion of the scholarship program curriculum with a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit for the academic term.

(3) The amount of the related educational expense reimbursement shall be:
   (a) Fifty (50) dollars to a scholarship recipient pursuing a child development associate's credential at a participating educational institution; or
   (b) $100 to a scholarship recipient pursuing an ECAC(ECDA)-approved early childhood development credential, pursuing other than a child development associate's, or an ECAC(ECDA)-approved associate or bachelor's degree credential.

(4) The professional development counselor, no later than thirty (30) days after considering whether the scholarship recipient is eligible to receive reimbursement of related educational expenses associated with attendance at the participating educational institution, shall notify the scholarship recipient in writing of the determination of eligibility for the reimbursement of related educational expenses and the amount of the award.

(5)(a) After determination of eligibility, the professional development counselor shall transmit to the Department for Community Based Services of the Cabinet for Health and Family Services a list of eligible recipients of reimbursement of related educational expenses. The list shall include:
   1. The name, home address, and Social Security number of the award recipient; and
   2. The amount of the reimbursement of related educational expenses earned by the recipient.
   (b) The Cabinet for Health and Family Service shall remit to the award recipient the earned reimbursement of related educational expenses specified in subsection (3) of this section.

Section 3. Milestone Achievement Award. (1) The scholarship recipient shall present to the professional development counselor and to the participating early childhood facility no later than sixty (60) days following completion of the academic term evidence of earning the ECAC(ECDA)-approved early childhood development credential or degree to be eligible to receive a milestone achievement award. Milestone achievement award reimbursement shall be provided only to the extent funds are available.

(2) Evidence of earning the ECAC(ECDA)-approved early childhood development credential or associate or bachelor's degree shall be:
(a) The certificate for the Commonwealth Child Care Credential, the Child Development Associate Credential, or the Kentucky Early Childhood Development Director’s Credential; or
(b) The diploma or official transcript from the participating educational institution for an ECAC/ECDA-approved early childhood associate or bachelor’s degree.
(3) The milestone achievement award amount shall be:
(a) $100 for earning the Commonwealth Child Care Credential in an early childhood development program approved by the ECAC/ECDA;
(b) $250 for earning an initial child development associate’s credential;
(c) $300 for earning an initial associate degree in early childhood education or other program approved by the ECAC/ECDA; or the Kentucky Early Childhood Development Director’s Credential; or
(d) $500 for earning an initial baccalaureate degree in interdisciplinary early childhood education or other program approved by the ECAC.
(4) The professional development counselor, no later than thirty (30) days after considering whether the scholarship recipient is eligible to receive a milestone achievement award, shall notify the scholarship recipient in writing of the determination of eligibility for the milestone achievement award and the amount of the award.
(5)(a) No later than fifteen (15) days following receipt of the documentation specified in subsection (2) of this section, the participating early childhood facility that employs the scholarship recipient at the time the scholarship recipient earns the ECAC/ECDA: approved early childhood credential or degree shall remit to the scholarship recipient by check ten (10) percent of the earned milestone achievement award specified in subsection (3) of this section.
(b) The participating early childhood facility shall send to the professional development counselor a copy of the check as evidence that the participating early childhood facility has paid the scholarship recipient in accordance with paragraph (a) of this subsection.
(6)(a) After determination of eligibility and evidence of payment by the participating early childhood facility of the milestone achievement award, the professional development counselor shall transmit to the Department for Community Based Services of the Cabinet for Health and Family Services a list of eligible recipients of the milestone achievement award. The list shall indicate:
1. The name, home address, and Social Security number of the award recipient; and
2. The amount of the milestone achievement award earned by the recipient.
(b) The Cabinet for Health and Family Services shall remit to the award recipient ninety (90) percent of the earned milestone achievement award specified in subsection (3) of this section.

KRISTI P. NELSON, Chair
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: June 11, 2013 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2013, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Wednesday, July 31 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 responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the mechanism and responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for the administration of the Early Childhood Development Scholarship Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the effective administration of the Early Childhood Development Scholarship Program by establishing the mechanism for payment of additional monetary incentives under the Early Childhood Development Scholarship Program for scholarship recipients.
(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 updating the references to the administrative body that governs the Early Childhood Development Scholarship Program to the newly established Early Childhood Advisory Council. Additionally, the amendment will revise Section 2(1) to clarify that the educational expense reimbursement is only provided in the event funds are available.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to comply with the amendment to KRS 164.518(3) enacted during the 2013 Regular Session of the General Assembly which abolished the Early Childhood Development Authority as the governing body for the Early Childhood Development Scholarship program and established the Early Childhood Advisory Council to fill the role. Further, the amendment is necessary in order to clearly advise stakeholders of the availability of the educational expense reimbursement.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes at KRS 164.518(3) enacted during the 2013 Regular Session of the General Assembly which abolished the Early Childhood Development Authority as the governing body for the Early Childhood Development Scholarship Program. The amendment to this administrative regulation conforms to the content of those statutes by identifying the newly-created Early Childhood Advisory Council as the governing body for this program. Further, the amendment clarifies the conditions under which the educational expense reimbursement is available.
(d) How the amendment will assist in the effective administration of the statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by correctly identifying the newly created Early Childhood Advisory Council as the governing body for this program. Further, this amendment provides clarification to stakeholders regarding the availability of the educational expense reimbursement.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Although the statutory amendment replaced an existing order transferring governance of this program to the newly-created Early Childhood Advisory Council, the program will continue to operate as it has, so any impact on applicants for this program would be negligible. Additionally, the conditioning of the educational expense reimbursement upon the availability of funds
has been a provision of the program since inception and should likewise have no impact on program recipients.

(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 to comply with this administrative regulation or amendment: No action will be required of those individuals impacted by this regulation in order to comply therewith.

(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 imposed on those individuals impacted by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individual who meet the eligibility criteria for this program and apply therefore will be considered for scholarship awards.

(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: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funded for the Early Childhood Development Scholarship Program is provided through模特 designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 2000 Ks. Acts Ch. 549, Part XI.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participants within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrariness on the part of the agency. The "odd even 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

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 Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that require authorization of the action taken by the administrative regulation. KRS 164.518(3), 164.748(4)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no costs associated with this administrative regulation.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

AGRICULTURAL EXPERIMENT STATION
(AMENDMENT)

12 KAR 1:116. Sampling, analyzing, testing, and tolerances.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101(2) 250.111

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION AND CONFORMITY: KRS 250.081(1)(c) requires the director to prescribe seed sampling methods, methods of analysis, testing and examining of seed, and tolerances. This administrative regulation prescribes the methods of sampling, analyzing, and testing seed, and establishes the tolerances to be applied in the administration of the Kentucky Seed Law.

Section 1. Definition. "Kentucky Seed Law" means KRS 250.021 through 250.111 and 12 KAR Chapter 1.

Section 2. The methods of sampling, analyzing, testing, and examining seed to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds".

Section 3. The tolerances to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds".

Section 4. Incorporation by Reference.


(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. NANCY M. COX, Director
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 31, 2013 at 1:30 pm EST in the conference room of the Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) work days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 July 31, 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: Stephen McMurry, Director of Fertilizer
and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone (859) 257-2785, fax (859) 257-7351.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes the seed sampling procedures, methods of analysis, testing and examining of seed, and tolerances.

(b) The necessity of this administrative regulation: Pursuant to KRS 250.081, the director is required to prescribe seed sampling procedures, methods of analysis, testing and examining of seed, and tolerances. This regulation satisfies that statutory mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.081, the director is required to prescribe seed sampling procedures, methods of analysis, testing and examining of seed, and tolerances. This administrative regulation satisfies that mandate by incorporating the “Rules for Testing Seeds”, issued by the Association of Official Seed Analysts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes seed sampling procedures, methods of analysis, testing and examining of seed, and tolerances. This administrative regulation assists in providing the most up to date analytical services in a professional and accurate manner.

(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 simply incorporates an update from 2005 version of the “Rules for Testing Seeds” to the 2012 version.
(b) The necessity of the amendment to this administrative regulation: The previously incorporated 2005 version of the “Rules for Testing Seeds” was out of date and needs to be updated with the current 2012 version.

(c) How the amendment conforms to the content of the authorizing statutes: This is an update to the most current version of the “Rules for Testing Seeds”.

(d) How the amendment will assist in the effective administration of the statutes: The updated “Rules for Testing Seeds” assists the laboratory in providing the most up to date analytical services in a professional and accurate manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which label agricultural seed for sale in Kentucky will be affected by the regulation 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: None.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost should be associated to the industry with this change.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the national standards articulated in the “Rules for Testing Seeds.”

(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 continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering does not apply.

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? University of Kentucky, Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081

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 (+/-): None
Expenditures (+/-): None
Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION

(Amendment)

12 KAR 1:135. Tags available for purchase from the director.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101.

250.111[250.081](Amendment)

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081 requires the director to establish charges for tags purchased to prescribe types of seed tags and prices of each different tag type which is available for purchase from the director. This administrative regulation satisfies that statutory mandate by establishing those charges.

Section 1. Tags may be obtained from the Division of Regulatory Services, College of Agriculture, University of Kentucky.

Charges shall be as indicated below:

<table>
<thead>
<tr>
<th>Bag Weight</th>
<th>Charge (dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 pound to 25 pounds</td>
<td>0.08</td>
</tr>
<tr>
<td>Greater than 25 pounds to 100 pounds</td>
<td>0.12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Form</th>
<th>Kind of Seed</th>
<th>Maximum Bag Weight</th>
<th>Charge (dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>[Alfalfa, clovers, and grasses, except mixtures]</td>
<td>[25-pound]</td>
<td>[0.08]</td>
</tr>
<tr>
<td>A</td>
<td>[50-pound]</td>
<td></td>
<td>[0.16]</td>
</tr>
<tr>
<td>A</td>
<td>[75-pound]</td>
<td></td>
<td>[0.20]</td>
</tr>
<tr>
<td>A</td>
<td>[100-pound]</td>
<td></td>
<td>[0.24]</td>
</tr>
<tr>
<td>B</td>
<td>[All other seed, except mixtures]</td>
<td>[25-pound]</td>
<td>[0.04]</td>
</tr>
<tr>
<td>B</td>
<td>[50-pound]</td>
<td></td>
<td>[0.08]</td>
</tr>
</tbody>
</table>
Section 2. If tags are purchased for containers weighing over 100 pounds or for seed in bulk, the number of tags purchased shall be identical to the number which would have been purchased if the seed had been in 100-pound containers.

Section 3. The following information shall be provided to the Division of Regulatory Services in order to purchase tags: Lot, Seedman, Address, Kind, Variety, Pure Seed, Inert Matter, Crop Seed, Weed Seed, Germination, Hard Seed, Date of Test, Weight, and Origin. Tags are of two (2) types: unprinted and printed. Unprinted tags are completely blank; whereas printed tags contain the words: “Lot,” “Seedman,” “Address,” “Kind,” “Variety,” “Pure Seed,” “Inert Matter,” “Crop Seed,” “Weed Seed,” “Germination,” “Address,” “Where Grown” with blank underlined spaces for entry by the tag purchaser of information which applies to the seed being labeled.

Section 4. The Division of Regulatory Services has a source of funding so the citizens of the Commonwealth have access to seed analyses and for the support of the Division to successfully implement the duties of KRS 250.021 to 250.111.

Dr. Nancy M. Cox, Director
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 31, 2013 at 1:30 pm EST in the conference room of the Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 July 31, 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: Stephen McMurry, Director of Fertilizer and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone (859) 257-2785, fax (859) 257-7351.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the charges of seed tags available to purchase from the director.
(b) The necessity of this administrative regulation: Pursuant to KRS 250.081, the director is required to establish charges for labels purchased from the director.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a fee structure for purchasing seed tags from the director in line with inspection fees for labelers using their own tags.

(2) Provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The changes will eliminate the breakdown of package sizes over twenty-five (25) pounds to 100 pounds in weight. All seed kinds will have the same fee structure.
(b) The necessity of the amendment to this administrative regulation: To streamline the process of purchasing seed tags from the director. Computer processing software now allows the creation of seed tags in a much more efficient manner.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows for the purchase of seed tags in line with inspection fees for labelers using their own tags.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist us in making proper tags for purchase for the consumer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All firms or individuals which purchase agricultural seed tags for sale in Kentucky will be affected by the regulation 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: Firms that do not want to obtain a permit to label seed have the option to purchase tags from the director. The cost to purchase seed tags is the same as the inspection fee for firms who purchase a permit to label their own tags.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): All seed kinds will have the same fee structure. Packages of one (1) pound in weight and up to and including twenty-five (25) pounds will be eight (8) cents per package. Packages in excess of twenty-five (25) pounds and up to and including 100 pounds, twelve (12) cents per package. For seed sold in bulk or in excess of 100 pounds the number of tags purchased will be twelve (12) cents per 100 pounds.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Firms have the option to purchase tags from the director or they can purchase a permit to label and use their own tags.

(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 continuing costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation changes the fee structure for purchasers of seed tags. For alfalfa, clover and grasses the fee structure decreases, for all other seed the fee structure increases.

(6) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation changes the fee structure for purchasers of seed tags. For alfalfa, clover and grasses the fee structure decreases, for all other seed the fee structure increases.

(7) TIERING: Is tiering applied? No. Tiering does not apply.

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? University of Kentucky, Division of Regulatory Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081.

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? We currently receive less than $1,000 for the service of printing seed labels for individuals who do not want to print their own seed labels.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Less than $1,000 for subsequent years.

(c) How much will it cost to administer this program for the first year? This service is already available so no additional cost for the first year.

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

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

Revenues (+/-): 

Expenses (+/-):

Other Explanation: Persons selling seed can purchase seed tags from the division instead of purchasing a permit to label seed. We currently sell less than $1,000 worth of seed labels each year.

AGRICULTURAL EXPERIMENT STATION

(AMENDMENT)

12 KAR 1:140. Permits, reports, and fees for persons using own tags.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.201

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)(7) requires the director of the Agricultural Experiment Station to promulgate procedures for obtaining a permit to label, responsibilities of permit holders, method to be used in determining inspection fees, and the procedure for permit holders to make payment of fees for distributing agricultural seed. This administrative regulation fulfills that statutory mandate. To prescribe procedures to obtain a permit to label and distribute agricultural seed in Kentucky; to pay inspection fees for agricultural seed based upon kind and amount of seed distributed; and to obtain a permit to label and distribute vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky.

Section 1. Obtaining Permits. (1) Application for permits to label agricultural seed shall be made on Form RS-68-02 (6/13) [RS-65-01d], “Application for Permit for Use to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky.”

(2) Application for permits to label vegetable seed, flower seed, or combination mulch, seed and fertilizer products shall be made on Form RS-68-02 (6/13) [RS-65-01d], “Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky.”

Section 2. Reporting Sales. (1) A person who has been granted a permit to label agricultural seed under the provisions of this subsection shall submit quarterly reports and pay a labeling and inspection fee determined on the basis of quantity of seed sold and on the fee schedule established herein.

(2) Quarters are January through March, April through June, July through September, and October through December. The minimum fee shall be twenty-five (25) dollars per reporting period. An added assessment of twenty-five (25) dollars or ten (10) percent of the unpaid fee, whichever is greater, shall be made for each seed quarterly report (Form RS-63-01 (6/13) [RS-65-02a]) received more than forty-five (45) days after the quarter ends.

Section 3. Inspection fee for agricultural seed permit holders shall be:

1. For packages weighing one (1) pound and up to and including twenty-five (25) pounds: eighteen (18) cents per package.
2. For packages containing one (1) pound and up to and including twenty-five (25) pounds: eight (8) cents per package.
3. For packages weighing forty (40) pounds or more: forty (40) cents per package.
4. For packages in excess of fifty (50) pounds in weight: twelve (12) cents per package.
5. For packages in excess of seventy-five (75) pounds: twenty (20) cents per package.
6. For packages in excess of one hundred (100) pounds in weight: twenty-four (24) cents per package.
7. For packages in excess of two hundred (200) pounds in weight: thirty-six (36) cents per package.
8. For packages in excess of one thousand (1,000) pounds in weight: forty-eight (48) cents per package.

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

(a) “Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky,” RS-68-01, 6/13 [RS-64-01c].

(b) “Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products”, RS-68-02, 6/13 [RS-65-01d]; and

(c) “Seed Quarterly Report”, RS-63-01, 6/13 [RS-65-02c].

(2) This material [these documents] may be inspected, copied, or obtained, subject to applicable copyright law, at [copied] at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [...] Monday through Friday.

DR. NANCY M. COX, Director
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.

PUBLIC HEARING: NO PUBLIC HEARING PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 31, 2013 at 1:30 pm EST in the conference room of the Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 July 31, 2013. Send written notification of intent to be heard at the public hearing or written comments to the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Director of Fertilizer and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone (859) 257-2785, fax (859) 257-7351.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: (Stephen McMurry, 859-257-2785)

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes procedures to obtain a permit to label and distribute agricultural seed in Kentucky; to pay inspection fees for agricultural seed based upon amount of seed distributed, and how to obtain a permit to label and distribute vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky.

(b) The necessity of this administrative regulation: Pursuant to KRS 250.081, the director is required to establish procedures for obtaining a permit to label, responsibilities of permit holders, method to be used in determining inspection fees, and the procedure for permit holders to make payment of fees for distributing agricultural seed. This regulation satisfies that statutory mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation satisfies the statutory mandate found in KRS 250.081 by establishing a fee structure for permit holders and a method for permit holders to make payment of fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The fee structure provides the necessary funding so the citizens of the Commonwealth have access to seed analyses and for the support of the Division to successfully implement the duties of KRS 250.021 to 250.111.

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

(a) How the regulation will change this existing administrative regulation: The changes will eliminate the breakdown of package sizes over twenty-five (25) pounds to 100 pounds in weight. All seed kinds will have the same fee structure. It will include reporting corn and soybeans on a per unit basis.

(b) The necessity of the amendment to this administrative regulation: Seed is now sold on a per unit basis for soybeans and corn. Reporting sales in the different weight categories is cumbersome to the industry.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows for the reporting of sales of agricultural seed in a format in which the industry captures their sales.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make reporting and collection of sales more easy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All firms which sell agricultural seed in Kentucky will be affected by the regulation 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: All seed will be reported with the same fee structure. Instead of reporting sales by different package sizes between twenty-five (25) and 100 pounds and by seed kind, a per package inspection fee is established for all seed sold between twenty-five (25) and 100 pounds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): All seed kinds will have the same fee structure. Packages of one (1) pound in weight and up to and including twenty-five (25) pounds, eight (8) cents per package. Packages in excess of twenty-five (25) pounds and up to and including 100 pounds, twelve (12) cents per package. For soybeans and corn sold on a per unit basis, twelve (12) cents per unit. For seed sold in bulk or in excess of 100 pounds, twenty-four (24) cents per pound. For soybeans and corn sold in bulk or in excess of 100 pounds per package, twelve (12) cents per unit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Firms will no longer have to split out package sizes between twenty-five (25) and 100 pounds for reporting purposes. Firms will no longer have to split out seed kinds with different inspection fees.

(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 continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation changes the fee structure reported by labelers of agricultural seed. For alfalfa, clover and grasses the fee structure decreases, for all other seed the fee structure increases.

(9) TIERING: Is tiering applied? No. Tiering does not apply.

**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? University of Kentucky, Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081

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 year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated from this regulation is based on seed sales in Kentucky which is reported quarterly. Based on sales reported for the previous year, this change would generate an additional $90,000 in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated is based on seed sales in Kentucky. We do not anticipate additional revenue for subsequent years over the first year of implementation.

(c) How much will it cost to administer this program for the first year? This program is already available so no additional cost for the first year.

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

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

Revenues (+/-): $90,000
Expenditures (+/-): $0.00
Other Explanation:

**AGRICULTURAL EXPERIMENT STATION**

(Amendment)

12 KAR 1:145. Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081 requires the director to prescribe the procedures whereby agricultural seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners register with the Division of Regulatory Services. This administrative regulation satisfies
Section 1. Agricultural seed dealers (persons who distribute agricultural seed in containers of forty (40) pounds or more at retail) shall register using Form RS-68-03 (6/13), "Noncertified Custom Seed Conditioner Registration." A twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section 2. Noncertified custom seed conditioners shall register using Form RS-68-04 (6/13)[RS-65-03c], "Noncertified Custom Seed Conditioner Registration." A twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section 3. Registration of certified seed growers and certified seed conditioners shall be accomplished by an exchange of records between the Kentucky Seed Improvement Association and the Division of Regulatory Services.

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

(a) Form RS-68-03, 6/13[RS-65-03a], "Agricultural Seed Dealer Registration[;]" and Form RS-68-04, 6/13[RS-65-03b], "Noncertified Custom Seed Conditioner Registration[;]"

(b) This material[These documents] may be inspected, copied, or reprinted, copyright law notwithstanding, at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [Monday through Friday.]

DR. NANCY M. COX, Director
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 31, 2013 at 1:30 pm EST in the conference room of the Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 July 31, 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: Stephen McMurry, Director of Fertilizer and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone (859) 257-2795, fax (859) 257-7351.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners to register with the Division of Regulatory Services.

(b) The necessity of this administrative regulation: Pursuant to KRS 250.081, the director establishes procedures to register agricultural seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation satisfies the statutory mandate found in KRS 250.081 by establishing a fee structure to register agricultural seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The fee structure provides the necessary funding so the citizens of the Commonwealth have access to seed analyses and for the support of the Division to successfully implement the duties of KRS 250.021 to 250.111.

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

(a) How the amendment will change this existing administrative regulation: This is an update to the forms used to register agricultural seed dealers, noncertified custom seed conditioners, certified seed growers and certified seed conditioners.

(b) The necessity of the amendment to this administrative regulation: The update increases the contact information of our registered entities.

(c) How the amendment conforms to the content of the authorizing statutes: The update will allow for better communication with the registered entities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow for better communication with the registered entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All firms which sell agricultural seed in greater than 40 pounds and noncertified seed conditioners will be affected by the rule 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: This is an update to current forms; no actions will need to be made from the regulated industry.

(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 will be associated to the industry with this update.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These are amended forms which will lead to better communication.

(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 continuing costs.

(6) What is the source of the funding to be used for the implementation of the administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

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

(9) TIERING: Is tiering applied? No. Tiering does not apply.

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? University of Kentucky, Division of Regulatory Services
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 250.081
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, amending forms only.

(b) How 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.

(c) How much will it cost to administer this program for the first year? This program is already available so no additional cost for the first year.

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation: Forms are being updated, no additional revenue and no additional expenditures are expected.

AGRICULTURAL EXPERIMENT STATION
12 KAR 1:150. Stop sale orders.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111
[250.081(1)(e)(5)]

STATUTORY AUTHORITY: KRS 250.081
NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081 requires the director to provide a means of taking administrative action in the form of a “Stop Sale Order” on seed found by analysis, test, examination, or representation to be in violation of the Kentucky Seed Law. This administrative regulation satisfies that statutory mandate.

Section 1. A written or verbal (followed by a written) stop sale order may be issued on any lot of seed found by analysis, test or examination, or upon examination of the label or other graphic or printed representations, or any lot which the director has reasonable cause to believe is in violation of the Kentucky Seed Law and administrative regulations pertaining thereto. Seed under a stop sale order shall not be sold, exposed or offered for sale and shall not be moved from the point where the stop sale order was issued until requirements of the Kentucky Seed Law and administrative regulations have been met and a release has been issued by the director.

Section 2. Conditions for release shall be:
(1) Correction of the deficiencies for which the stop sale order was issued; and
(2) A request in writing or by phone (followed by written request) by the person to whom the stop sale order was issued. (Section 3. Incorporation by Reference.)
(1) The following material is incorporated by reference: “Notice of violation and stop sale” (RS-30-5c).
(2) This document may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.

DR. NANCY M. COX, Director
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 31, 2013 at 1:30 p.m. EST in the conference room of the Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 July 31, 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: Stephen McMurry, Director of Fertilizer and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone (859) 257-2785, fax (859) 257-7351.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) For each of the following questions for each administrative provision:
(a) What this administrative regulation does: This administrative regulation establishes procedures to issue and release seed stop sales which are issued for label violations of the Kentucky Seed Law.

(b) The necessity of this administrative regulation: Pursuant to KRS 250.081, the director establishes procedures for issuing and releasing stop sales on seed found by analysis, test, examination, or representation to be in violation of the Kentucky Seed Law. This administrative regulation satisfies that statutory mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures for issuing and releasing stop sale orders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The stop sale form is an internal form issued when violations occur and should not be incorporated by reference in the regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: We plan to remove the stop sale form incorporated by reference since this is an internal form created when violations occur.

(b) The necessity of the amendment to this administrative regulation: This will update our regulations and enable us to use more electronic means of communication with the seed industry and not solely rely on the existing form for the issuance of stop sale orders.

(c) How the amendment conforms to the content of the authorizing statutes: The update will allow for better communication with the registered entities in the case of a seed violation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow for better communication with the registered entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All firms which sell agricultural seed will be affected by the regulation 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) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will see no additional actions to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost will be associated to the industry with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will be associated to the industry with this change.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.

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(b) On a continuing basis: No continuing costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No. Tiering does not apply.

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? University of Kentucky, Division of Regulatory Services
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? 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: No fiscal impact

AGRICULTURAL EXPERIMENT STATION
(Amendment)
12 KAR 1:155. Schedule of charges for samples submitted for testing.

RELATES TO: KRS 250.021 to 250.111[250.081(1)(c)(6)]
STATUTORY AUTHORITY: KRS 250.081(1)(c)(6)[250.08]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)(6) requires the director of the Agricultural Experiment Station to promulgate administrative regulations establishing charges for tests of samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory for testing. This administrative regulation establishes [To establish] a schedule of charges for service tests, analysis, and examination of seed samples in the Kentucky Agricultural Experiment Station Seed Laboratory.

Section 1. The following service charges shall be assessed for samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory:
(1) Basic charge list.

<table>
<thead>
<tr>
<th>Kind of Seed</th>
<th>Complete Test</th>
<th>Purity and Noxious Weed Test</th>
<th>Germination Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corn and soy.</td>
<td>$18.00</td>
<td>$9.00</td>
<td>$11.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kind of Seed</th>
<th>Complete Test</th>
<th>Purity and Noxious Weed Test</th>
<th>Germination Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfalfa</td>
<td>$14.00</td>
<td>$7.00</td>
<td>$8.00</td>
</tr>
<tr>
<td>Bentgrass</td>
<td>$16.00</td>
<td>$12.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Bermudagrass</td>
<td>$20.00</td>
<td>$12.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Bluegrass</td>
<td>$16.00</td>
<td>$12.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Bromegrass</td>
<td>$16.00</td>
<td>$12.00</td>
<td>8.00</td>
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<tr>
<td>Coreopsis</td>
<td>$10.00</td>
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<tr>
<td>Cress</td>
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<td>8.00</td>
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<tr>
<td>Corn</td>
<td>$14.00</td>
<td>$7.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Crownvetch</td>
<td>$14.00</td>
<td>$7.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Fescue</td>
<td>$15.00</td>
<td>$8.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Lespedeza</td>
<td>$14.00</td>
<td>$8.00</td>
<td>7.00</td>
</tr>
<tr>
<td>Lovegrass</td>
<td>$16.00</td>
<td>$12.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Millet</td>
<td>$11.00</td>
<td>$5.00</td>
<td>7.00</td>
</tr>
<tr>
<td>Orchardgrass</td>
<td>$18.00</td>
<td>$11.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Redtop</td>
<td>$16.00</td>
<td>$12.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Ryegrass</td>
<td>$18.00</td>
<td>$6.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Bergham-</td>
<td>$11.00</td>
<td>$6.00</td>
<td>7.00</td>
</tr>
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<td>$5.00</td>
<td>7.00</td>
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<tr>
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<td>$14.00</td>
<td>$7.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Tobacco</td>
<td>$16.00</td>
<td>$12.00</td>
<td>8.00</td>
</tr>
<tr>
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<td>$14.00</td>
<td>$10.00</td>
<td>7.00</td>
</tr>
<tr>
<td>Vetch</td>
<td>$11.00</td>
<td>$5.00</td>
<td>7.00</td>
</tr>
</tbody>
</table>

(2) Nonresidents will be assessed an additional charge of fifteen (15) dollars per sample. A Kentucky citizen may submit one (1) seed sample per year for a complete test free of charge if the sample is accompanied by the following statement: “I certify that I have not previously submitted a sample for free test during the current calendar year.”
(3) A complete test shall include a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.
(4) A purity and noxious weed test shall include a germination test.
purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(5) In ryegrass samples, a complete test shall be assessed a charge of twenty-five (25) dollars and shall include a fluorescence test which distinguishes perennial ryegrass seed and annual ryegrass seed.

(6) Mixtures, difficult, or dirty samples may be charged an additional forty (40) dollars per hour for extra separation time. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(7) Mixtures submitted for germination testing may be charged a fifteen (15) dollar separation fee. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(8) Rush service may be provided upon request at an additional charge of twenty-five (25), fifteen (15) dollars per sample.

(9) Samples of coated, encrusted, pelleted, film-coated, or treated seed may be charged an additional ten (10) dollars for hand washing and disposal of toxic substances.

(a) Noxious weed seed examinations:
1. Kentucky only: ten (10) dollars; and
2. Other states: fifteen (15) dollars per state; and
3. All states: fifty (50) dollars.

(b) Moisture test: eight (8) dollars;

(c) Seed count per pound: ten (10) dollars;

(d) Varietal identification:
1. Soybean hypocotyl color test: fifteen (15) dollars;
2. Phenol test of wheat: eighteen (18) dollars; and

(e) Vigor tests:
1. Accelerated aging: eighteen (18) dollars;
2. Cold test: eighteen (18) dollars; and

(f) Tetrazolium test:
1. Groups 1 and 2: eighteen (18) dollars; and
2. Groups 4, 5, and 7: thirty (30) dollars; and
3. Groups 3, 6, and 8: forty (40) dollars.

(g) Seed or plant tall fescue endophyte. One (1) to 100 specimens: $100.

(h) Biotechnology trait identification. Herbicide bioassay: twenty-five (25) dollars;

(i) Examination for Kentucky only: eight (8) dollars.

(j) Noxious weed seed examination for any other or for all states: ten (10) dollars.

(k) Moisture test: four (4) dollars.

(l) Seed count per pound: four (4) dollars

(m) Soybean hypocotyl color test: twelve (12) dollars.

(n) Vigor test (accelerated aging): nine (9) dollars.

(o) Tetrazolium test: twelve (12) dollars.

(p) Phenol test of wheat: twelve (12) dollars.

(q) Peroxidase test of soybeans: twenty (20) dollars.

(r) Seed or plant tall fescue endophyte.
1. One (1) to fifty (50): $50
2. Fifty-one (51) to 100 specimens: $60
3. 101 to 150 specimens: $70
4. 151 to 200 specimens: $80
5. 201 to 500 specimens: $90
6. 501 to 1,000 specimens: $100

(a) Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, KRS 250.021 to 250.111 and 12 KAR Chapter 1, may be assessed forty (40) dollars per hour for analytical time.

(b) ISTA rules: fifteen (15) dollars in addition to test fees.

(c) Canadian M & P: eighteen (18) dollars in addition to test fees.

(d) Charges for kinds not listed in this section shall be in accord with charges made for other kinds of seed of similar size.

Dr. Nancy M. Cox, Director
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.
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: Use of the laboratory is voluntary; therefore, only individuals and firms selecting the laboratory are directly impacted by the new fee schedule. Those using the laboratory services will be charged accordingly based on the analytical services requested at sample submission. Additional services are also included in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As stated above, use of the laboratory is voluntary and fee charges vary by procedure requested.

(c) As a result of compliance, what benefits will accrue to the entity identified in question (3): Patrons of the laboratory will have access to new analytical and administrative services. Patrons will receive fair, current, and reasonable fees for services provided.

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

(a) Initially: Duplication of the fee schedule and web posting costs are minimal. Likewise, programming changes to the software used for billing charges are minimal.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is 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 sets forth an updated fee schedule for voluntary testing services. Fees have been updated to be fair, current, and reasonable for similar analyses based on internal cost analysis and a regional basis comparison.

(9) Tiering: Is tiering applied? Yes, tiering is applied. Based on feedback from Kentucky firms and individuals engaged in the seed industry who routinely utilize the laboratory, the additional administrative charge for out-of-state firms and individuals is retained in the regulation. These out-of-state firms and individuals do not support the Division through seed regulatory fees (i.e., registration and tonnage reporting).

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? University of Kentucky, Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires the director to prescribe standards for vegetable seed germination. This administrative regulation satisfies that statutory mandate. If germination is equal to or above the standard, only the year for which the seed was packed must be shown. If germination is below the standard, the exact germination percentage must be shown.

Section 1. The following standards for the germination of the types (kinds) of vegetable and herb seed listed below are hereby adopted:

<table>
<thead>
<tr>
<th>Kind</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anise</td>
<td>50</td>
</tr>
<tr>
<td>Artichoke</td>
<td>60</td>
</tr>
<tr>
<td>Asparagus</td>
<td>70</td>
</tr>
<tr>
<td>Asparagus Bean</td>
<td>75</td>
</tr>
<tr>
<td>Basil, Sweet</td>
<td>70</td>
</tr>
<tr>
<td>Bean, Garden</td>
<td>70</td>
</tr>
<tr>
<td>Bean, Lima</td>
<td>70</td>
</tr>
<tr>
<td>Bean, Runner</td>
<td>75</td>
</tr>
<tr>
<td>Beet</td>
<td>65</td>
</tr>
<tr>
<td>Broadbean</td>
<td>75</td>
</tr>
<tr>
<td>Broccoli</td>
<td>75</td>
</tr>
<tr>
<td>Brussels Sprouts</td>
<td>70</td>
</tr>
<tr>
<td>Burdock, Great</td>
<td>60</td>
</tr>
<tr>
<td>Cabbage</td>
<td>75</td>
</tr>
<tr>
<td>Cabbage, Tronchuda</td>
<td>70</td>
</tr>
<tr>
<td>Cantaloupe (See Mukmelon)</td>
<td></td>
</tr>
<tr>
<td>Caraway</td>
<td>55</td>
</tr>
<tr>
<td>Cardoon</td>
<td>60</td>
</tr>
<tr>
<td>Carrot</td>
<td>55</td>
</tr>
<tr>
<td>Cauliflower</td>
<td>75</td>
</tr>
<tr>
<td>Celery</td>
<td>55</td>
</tr>
<tr>
<td>Chard, Swiss</td>
<td>65</td>
</tr>
<tr>
<td>Chervil, Salad</td>
<td>65</td>
</tr>
<tr>
<td>Chicory</td>
<td>65</td>
</tr>
<tr>
<td>Chinese Cabbage</td>
<td>75</td>
</tr>
<tr>
<td>Chives</td>
<td>50</td>
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<tr>
<td>Citron</td>
<td>65</td>
</tr>
<tr>
<td>Cilantro</td>
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</tr>
<tr>
<td>Collards</td>
<td>60</td>
</tr>
<tr>
<td>Coriander</td>
<td>75</td>
</tr>
<tr>
<td>Corn, Pop</td>
<td>75</td>
</tr>
<tr>
<td>Corn, Sweet</td>
<td>75</td>
</tr>
<tr>
<td>Coriander</td>
<td>70</td>
</tr>
<tr>
<td>Cowpea</td>
<td>75</td>
</tr>
<tr>
<td>Cress, Garden</td>
<td>75</td>
</tr>
<tr>
<td>Cress, Upland</td>
<td>60</td>
</tr>
</tbody>
</table>
The germination standard for all other vegetable and herb seed for which standards have not been established shall be fifty (50) percent.

CONTACT PERSON: Stephen McMurry, Director of Fertilizer and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone (859) 257-2785, fax (859) 257-7351.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation updates the germination standards for vegetable seed.
(b) The necessity of this administrative regulation: To establish germination standards for vegetable seed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the director to establish germination standards for vegetable seed. This is an update to those standards.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes germination standards for vegetable seed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is an updated list for germination standards for vegetable seed.
(b) The necessity of the amendment to this administrative regulation: To be more uniform with other states and the Association of American Seed Control Officials list of germination standards for vegetable seed.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the germination standards for vegetable seed which is essential for the enforcement of the provisions in KRS 250.021 to 250.111.
(d) How the amendment will assist in the effective administration of the statutes: The update will expand the germination standards for vegetable seed from seventeen (17) to eighty-one (81).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which label vegetable seed for sale in Kentucky will be affected by the regulation change.

(4) Provide an analysis of how the entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This is an update for germination standards for vegetable seed, no actions will need to be made from the regulated industry.

(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 continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly increase any fees.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky, Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081

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

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

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

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

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)


RELATES TO: KRS 311.550, 311.595(9), 311.597
STATUTORY AUTHORITY: KRS 311.565(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of licensees. KRS 311.595(9) and 311.597 authorize disciplinary action against licensees for specified offenses. This administrative regulation establishes the requirements governing the use of amphetamine and amphetamine-like anorectic controlled substances.

Section 1. Definitions. (1) "Board" is defined in KRS 311.550(1).

(2) "Body mass index" means the weight of the patient in kilograms divided by the height in meters, squared.

(3) "Schedule II amphetamine or amphetamine-like controlled substance" means:

(a) Amphetamine, its salts, optical isomers, and salts of optical isomers; or

(b) Phenmetrazine and its salts; or

(c) Methylphenidate.

(4) "Schedule III or IV amphetamine-like controlled substance" means a drug classified as a stimulant pursuant to:

(a) 902 KAR 55:025, Section 2; or

(b) 902 KAR 55:030 Section 1.

Section 2. Prior to prescribing, ordering, dispensing, administering, selling, supplying, or giving a Schedule II, III or IV amphetamine or amphetamine-like controlled substance, a physician shall take into account the:

(1) Drug’s potential for abuse;

(2) Possibility that a drug may lead to dependence;

(3) Possibility a patient will obtain the drug for a nontherapeutic use;

(4) Possibility a patient will distribute it to others; and

(5) Potential illicit market for the drug.

Section 3. Schedule II Amphetamine or Amphetamine-like Controlled Substances. (1) The patient’s record shall denote the diagnosis that justifies treatment with a Schedule II amphetamine or amphetamine-like controlled substance.

(2) A Schedule II amphetamine or amphetamine-like controlled substance shall be used to treat only:

(a) Narcolepsy;

(b) Attention deficit/hyperactive disorder;

(c) Resistant depressive disorder in combination with other antidepressant medications, or if alternative antidepressants and other therapeutic modalities are contraindicated;

(d) Drug-induced brain dysfunction; or

(e) A diagnosis for which the clinical use of the Schedule II amphetamine or amphetamine-like controlled substance is investigational and the investigative protocol has been submitted, reviewed, and approved by the board prior to the clinical use of the drug.

(3) A Schedule II amphetamine or amphetamine-like controlled substance shall not be utilized to treat obesity.

Section 4. Treatment of Obesity with a Schedule III or IV Amphetamine-like Controlled Substance. (1) Prior to prescribing, administering, dispensing, ordering, selling, supplying, or giving a Schedule III or IV amphetamine-like controlled substance to treat obesity in a patient sixteen (16) years of age or older, the physician shall:

(a) Establish a physician/patient relationship;

(b) Determine that the patient is obese or overweight with medical risk factors and (adult who) is a proper candidate for weight reduction treatment;

(c) Determine (Consider) and record the extent of prior anoretics or other controlled substances used by the patient. The prescribing physician shall obtain and review a KASPER report for the twelve (12) month period immediately preceding the patient encounter, before prescribing or dispensing controlled substances to the patient;

(d) Determine that the patient has either:

1. A body mass index of the patient is twenty-seven (27) or more, unless the body mass index is twenty-five (25) to twenty-seven (27) and the patient has a co-morbidity such as a cardiovascular disease, diabetes mellitus, dyslipidemia, hypertension, or sleep apnea;

2. Body fat greater than thirty (30) percent in females or greater than twenty-five (25) percent in males;

3. Current body weight greater than 120 percent of a well documented, long-standing, health weight that the patient maintained after age eighteen (18);

4. A waist-hip ratio or waist circumference at a level indicating that the individual is known to be at increased cardiovascular or co-morbidity risk because of abdominal visceral fat; or

5. Presence of a co-morbid condition or conditions aggravated by the patient’s excessive adiposity; and

(e) Provide the patient with carefully prescribed diet, together with counseling on exercise, behavior modification, and other appropriate supportive and collateral therapies.

(2) During treatment for obesity, a physician shall:

(a) Maintain a physician/patient relationship throughout the treatment process;

(b) Maintain an adequate patient record in accordance with subsection (4) of this section; and

(c) Justify in the patient record the use of any Schedule III or IV amphetamine-like controlled substance beyond three (3) months. Before the physician continues the use of a substance beyond three (3) months, the physician shall obtain and review a current

KASPER report.

(3) A physician shall terminate the use of Schedule III or IV amphetamine-like controlled substances if:

(a) The patient does not demonstrate weight loss and does not attempt to comply with exercise and dietary changes;

(b) The body mass index of the patient without a co-morbid condition is less than twenty-seven (27) and the percent...
body fat is normal at greater than thirty (30) percent in females or greater than twenty-five (25) percent in males; or

(c) The body mass index of the patient with a co-morbid condition is less than twenty-five (25) and the percent body fat is normal at greater than thirty (30) percent in females or greater than twenty-five (25) percent in males;

(d) The patient has regained the weight lost, using sympathomimetics as part of a complete program and reuse of the medication does not produce loss of the weight gain to help maintain a minimum of five (5) percent weight loss; or

(e) The patient has obtained Schedule III and IV amphetamine-like controlled substances from another physician without the prescriber’s knowledge and consent.

(4) The board shall consider the following factors in reviewing the adequacy of a patient record:

(a) Medical history, including:
   1. Illnesses, with particular emphasis on cardiovascular diseases;
   2. Surgery;
   3. Lifestyle;
   4. Medications, including controlled substances;
   5. Eating habits;
   6. Exercise;
   7. Weight gain or weight loss;
   8. Prior efforts at weight control or reduction;
   9. Prior treatment compliance;
   10. Menstruation or pregnancy; and
   11. Psychiatric history with particular reference to depression, paranoia, psychosis, or chemical dependency;

(b) Social history;

(c) Family history;

(d) Complete physical examination;

(e) Evaluation of laboratory tests including:
   1. CBC;
   2. Fasting blood sugar;
   3. Thyroid panel or TSH;
   4. Lipid profile;
   5. Serum potassium;
   6. Liver function test; and
   7. Renal function test;

(f) An informed consent signed by the patient that cites the limitations and risk of anorectic treatment including potential dependency or psychiatric illness;

(g) A signed agreement that the patient has voluntarily agreed to:
   a. Have one (1) prescribing physician for controlled substances;
   b. Use one (1) pharmacy to fill prescriptions for controlled substances;
   c. Not have early refills on the prescriptions for controlled substances; and
   d. Provide full disclosure of other medications taken; or

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

(a) What this administrative regulation does: This administrative regulation establishes the restrictions on the use of amphetamine and amphetamine-like anorectic controlled substances.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the restrictions on the use of amphetamine and amphetamine-like anorectic controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the restrictions on the use of amphetamine and amphetamine-like anorectic controlled substances.

(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 restrictions on the use of amphetamine and amphetamine-like anorectic controlled substances.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the medication Phenmetrazine because it has been withdrawn from the market and establishes when it is appropriate to utilize amphetamine and amphetamine-like controlled substances for weight loss.

(b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate this regulation to delete the medication Phenmetrazine because it has been withdrawn from the market and establishes when it is appropriate to utilize amphetamine and amphetamine-like controlled substances for weight loss.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish when it is appropriate to utilize amphetamine and amphetamine-like controlled substances for weight loss.

(d) How the amendment will assist in the effective administration of the statutes: This amendment acts specifically to establish the requirements of when it is appropriate to utilize amphetamine and amphetamine-like controlled substances for weight loss.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This amendment will affect all physicians licensed in Kentucky who prescribe amphetamine and amphetamine-like controlled substances in the Commonwealth of Kentucky for weight loss.

(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 need to make sure they are in compliance with the regulation.

(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): Physicians will be able to determine when it is appropriate to utilize amphetamine and amphetamine-like anorectic controlled substances for weight loss.

(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? The Kentucky Board of Medical Licensure will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 327.010(4)(a)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 12.355; 327.010(1), (2); 327.070
STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on current physical therapy laws and 201 KAR Chapter 22.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section; and

3. Hours may be earned from Category 2 as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a physical therapist assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section; and

3. Hours may be earned from Category 2 as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium.

Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, symposia or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensing agency;

(b) Completion of courses, seminars, workshops, symposia, or home study courses consisting of less than three (3) contact hours that have been produced and developed by the American Physical Therapy Association (APTA) or its state chapters and sections;

(c) Completion or auditing of an accredited postsecondary educational institution credit course meeting continued competency as defined by Section 1(2) of this administrative regulation.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

[d][e] Presentation of a continued competency course, work-
shop, seminar, or symposium that has been approved by the board or its designee. Contact hours shall be awarded equal to contact hours awarded to a participant with a maximum of two (2) events of the same course per biennium;

(i) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(j) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(k) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(l) American Board of Physical Therapy Specialties (ABPTS) certification or recertification of clinical specialization within the scope of physical therapy practice. Twenty-eight (28) contact hours shall be awarded per biennium;

(m) Completion of a clinical residency program, or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each of week of residency within a maximum of twenty-eight (28) contact hours per program per biennium;

(n) A trained in the practice of "physical therapy" as defined by KRS 327.010.11 [1] (1) at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(o) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(p) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(q) Election or appointment to a position of the Kentucky Physical Therapy Association, APTA, or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium;

(r) Member of a committee or task force for one (1) of the organizations in paragraph (m) [4] or (n) [4] of this subsection. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;

(f) Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;

(g) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(h) Completion of cardiopulmonary resuscitation initial certification or re-certification. A maximum of two (2) contact hours shall be awarded per biennium; or

(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium.

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board.

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:
   a. Age;
   b. Disability;
   c. Medical condition;
   d. Financial condition; or
   e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of $250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continued competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continued competency requirements as established in KRS 12.355.

Section 3. Incorporation by Reference. (1) "Exemption or Extension for Completion of Continued Competency Form", June 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: June 4, 2013

FILED WITH LRC: May 16, 2013 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 31, 2013, at 1:30 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 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 July 31, 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation assists in assuring safe and effective practices for the safety and welfare of the public by implementing continued competency.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040 (10).
(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: By creating additional opportunity for credential holders to earn continued competency credit.
(b) The necessity of the amendment to this administrative regulation: The necessity is to clarify the course approval process for continued competency requirements.
(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.
(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,000.
(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 identified in question (3) will be afforded additional opportunity to earn continued competency credit of less than three (3) contact hours.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no additional cost to the entities in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will enjoy greater opportunity to earn continuing competency credit.
(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 costs to the board.
(b) On a continuing basis: There will be no additional costs to the board.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund, and costs to implement to be negligible.
(7) Provide an assessment of whether an 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 regulation does not change the fees directly or indirectly.
(9) TIERING: Is tiering applied? Tiering does not apply to 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? Kentucky Board of Physical Therapy.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(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. 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? No new 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:

GENERAL GOVERNMENT CABINET
Kentucky Board of Physical Therapy
(Amendment)

201 KAR 22:130. Per diem of board members.

RELATES TO: KRS 327.030, KRS 327.080
STATUTORY AUTHORITY: KRS 327.030(10)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.030(10) authorizes the board to promulgate administrative regulations establishing a per diem for board members not to exceed $120 per day for each day the member is actually engaged in the discharge of official duties. This administrative regulation outlines the per diem members will receive when required to represent the board or attend its meetings.

Section 1. Each member of the board shall receive a per diem of $120($100) for attending each meeting of the board or otherwise representing the board.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: May 16, 2013
FILED WITH LRC: June 12, 2013 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on July 31, 2013, at 1:15 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the amended 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 amended administrative regulation. Written comments shall be accepted until July 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the amended administrative regulation to the contact person.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222; phone (502) 429-7140, fax (502) 429-7142.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the per diem of board members.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 327.030 and KRS 327.080 regarding the per diem of board members.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the per diem of board members.
(d) How this administrative regulation currently assists or will contribute to the effective administration of the statutes: It provides for the per diem of board members when required to attend the board or attend its meetings.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment increases the per diem of board members from $100 to $120.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to permit the per diem to be made more consistent with other state licensure boards performing the same or similar functions of its board members.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes and is consistent with the statutory maximum per diem of $120.
(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 making the per diem more consistent with the same or similar functions of other state boards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Seven (7) members of 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 entities identified in question (3) shall comply with the amended per diem for board members.
(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 anticipated costs to comply with the amendment by the board members.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, this will help ensure the per diem is more consistent with other state licensure boards performing the same or similar functions of its board members.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be minimal costs to the board.
(b) On a continuing basis: There will be minimal costs to the board, not to exceed approximately $840 per year.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding to the credential holders of the board since these amounts will be paid out of the existing funds of the board.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This emergency regulation does not change the fees directly or indirectly to the credential holders of the board.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the amendment applies equally to all board members.

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? Members of the board.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.030(10) and KRS 327.080.

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 year the administrative regulation is to be in effect.

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

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

Revenues (+/-): None
Expenditures (+/-): Approximately $840 per year as increased per diem payments to a total of seven (7) board members for a total of approximately six (6) board meetings per year.
Other Explanation: None

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:040. Standards of practice.


STATUTORY AUTHORITY: KRS 324A.035(3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice.

Section 1. The following certificate holders or licensees shall comply with the "Uniform Standards of Professional Appraisal Practice" in effect at the time the services were performed:
(1) A certified general real property appraiser;
(2) A certified residential real property appraiser;
(3) A licensed real property appraiser;
(4) An associate real property appraiser; and
(5) A licensed nonfederal real property appraiser.

Section 2. The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the "American National Standard for Single-Family Residential Buildings; Square Footage-Method for Calculating", ANSI Z765-2003, as approved by the American Na-
Section 3. Appraisal Reporting Requirements. For each appraisal assignment that includes an appraisal management company reference as the client or agent for the client, an appraiser shall identify within the appraisal report:

1. The name that is on file with the board for the appraisal management company;

2. The Kentucky registration number that is on file with the board for the appraisal management company; and

3. The fee that will be paid to the appraiser for each appraisal assignment ordered by an appraisal management company.

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

(a) "Uniform Standards of Professional Appraisal Practice", 2012-2013; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: June 11, 2013

FILED WITH LRC: June 13, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658 fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grafe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards of professional practice.

(b) The necessity of this administrative regulation: This regulation is necessary to set reporting standards for appraisers preparing appraisal reports for an appraisal management company.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the standards for professional appraisal practice.

(d) How this administrative regulation establishes the standards of professional practice: This regulation will assist the board in administering this program by identifying reporting standards for appraisers preparing appraisal reports for an appraisal management company.

(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 add a reporting requirement for appraisers performing appraisals for appraisal management companies that are registered by the board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to add a requirement that appraisers working for appraisal management companies must identify the registered name and number of the company.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the standards for professional appraisal practice.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board in administering this program by identifying reporting standards for appraisers preparing appraisal reports for an appraisal management company.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of certificate holders that are performing appraisals for registered appraisal management companies, but estimates the number to be approximately 1500 licensees or certificate holders.

(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 licensee or certificate holder will be required to identify the appraisal management company, the registration number, and the fee paid.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying beyond the standard application fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The reporting information will fully disclose to the client the information regarding the employment relationship between the appraiser and the appraisal management company.

(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.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by certificate holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foun-
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339.
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 Real Estate Appraisers Board
(Amendment)

201 KAR 30:120. Temporary appraisal licenses and certificates.

RELATES TO: KRS 324A.035(1), (3), 324A.065, 324A.075, 12 C.F.R. 225.64, 225.65, 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3), 324A.065(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience, examination of applicants, and the continuing education of appraisers. KRS 324A.065(1) requires the board to establish fees. KRS 324A.075 authorizes the board to establish requirements for reciprocity. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates.

Section 1. A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in that state shall apply for registration to receive temporary appraiser licensing or certification privileges in this state by paying a fee of $150 (fifty dollars) and filing with the board a notarized application on a form prescribed by the board. The completed application shall include the following information:

   (1) The applicant's name, address, Social Security number and other information necessary to identify the applicant;
   (2) A statement under seal issued by the appraiser licensing or certifying agency in the applicant's resident state setting forth:
      (a) The applicant's name, business name and address;
      (b) The type of license or certificate held by the applicant and the license or certificate number;
      (c) The dates of licensure or certification and the expiration date of the applicant's current license or certificate;
      (d) Whether or not the license or certificate was issued as a result of passing a licensure/certification examination, by reciprocity, or by some other means; and
      (e) A complete record of disciplinary actions taken or disciplinary proceedings pending against the applicant;
   (3) An irrevocable consent that service of process in an action against the applicant arising out of the applicant's appraisal activities in this state may be made by delivery on the executive director of the board;
   (4) A statement that the applicant:
      (a) Has read and agrees to abide by appraiser laws and rules in this state; and
      (b) Agrees to cooperate with any investigation initiated by the board at the direction of the board, including:
         1. Supplying relevant documents; and
         2. Personally appearing before the board or its investigators;
   (5) Information sufficient to identify the appraisal assignment to be performed under the temporary practice certificate or license, including the projected beginning and ending dates for performing the appraisal assignment, but the applicant shall not divulge information concerning the appraisal assignment which would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and
   (6) Such other information as may be necessary to determine the applicant's eligibility for temporary appraiser licensing or certification privileges in this state.

Section 2. (1) An applicant shall be granted a temporary practice certificate or license by the board, to perform the appraisal assignment described in his application, if:
   (a) He has filed a properly completed application;
   (b) He has submitted the required fee with the application;
   (c) He has satisfied the board as to his qualifications, eligibility, and moral fitness for temporary licensing or certification privileges; and
   (d) The time projected by the applicant for completion of the assignment is reasonable, given the scope and complexity of the assignment.

(2) Application for a temporary practice certificate or license shall be made on board form, Nonresident Application for Temporary Appraiser Permit, incorporated by reference.

Section 3. (1) Except as provided by subsection (2) of this section, licensing and certification privileges granted under the provisions of this administrative regulation shall expire upon completion of the appraisal assignment described in the application for temporary licensing.
(2) To afford an applicant additional time to complete the appraisal assignment, the board shall extend the licensing or certification privileges granted under an applicant's temporary practice certificate or license, if he shows to the board's satisfaction that, notwithstanding diligent attention to the appraisal assignment, additional time is needed to complete the assignment.

Section 4. A person granted temporary licensing or certification privileges under the provisions of this administrative regulation shall not advertise or otherwise claim to be a Kentucky state-licensed or state-certified appraiser.

Section 5. Incorporation by Reference. (1) "Nonresident Application for Temporary Appraiser Permit", 2000, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Real...
Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair
APPROVED BY AGENCY: June 11, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a temporary license.
(b) The necessity of this administrative regulation: This regulation is necessary to establish requirements for temporary appraisal licenses and certificates in federally-related transactions.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding a temporary license to practice.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by allowing it to oversee persons seeking a temporary license in Kentucky.
(e) 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 add a reporting requirement for appraisers performing appraisals for appraisal management companies that are registered by the board.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish requirements for temporary appraisal licenses and certificates in federally-related transactions.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity as the authorizing statute gives the board the ability to fees for a temporary license to practice.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board in administering this program by allowing it to oversee persons seeking a temporary license in Kentucky.

2. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates the number of persons seeking a temporary license or certificate in Kentucky to be less than 300 per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A person from another state who is seeking a temporary license will be required to submit the requisite fee.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The new fee for a temporary license will be $150.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A person from another state who meets the requirements can temporarily practice in Kentucky.

4. 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.

5. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by certificate holders and applicants.

6. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will allow the board to better recoup costs for administering the issuance and oversight of persons from out-of-state who wish to perform limited appraisal activity in Kentucky.

7. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a fee.

8. tiering: Is tiering applied? Tiering was not applied.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. This administrative regulation sets out the requirements for temporary licenses and certifications necessary to perform federally related transactions.
3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that the board administer the program in a manner consistent with the federal criteria, and that persons performing appraisals involving federally related transactions be properly licensed.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Does this mandate require or authorize the action taken by the administrative regulation? No.
6. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment, if new, or by the change if it is an amendment: No.

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 Real Estate Appraisers Board.
2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.020, 324A.035(1), (3), 324A.065(1); 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339.
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 in effect. None.
4. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $20,000.
5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Ap-
proximately $20,000.
(c) How much will it cost to administer this program for the first year? Although an exact figure is not available, it is estimated that cost for personnel time in reviewing temporary applications and administer the program for temporary licenses will be within the sums collected.
(d) How much will it cost to administer this program for subsequent years? Although an exact figure is not available, it is estimated that cost for personnel time in reviewing temporary applications and administer the program for temporary licenses will be within the sums collected.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)


RELATES TO: KRS 324A.035(3), 324A.045(2), 12 U.S.C. 3331-3351

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for the renewal of certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the continuing education requirements for appraisers.

Section 1. Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, licensed real property appraisers, and associate real property appraisers shall:
(1) Complete fourteen (14) hours of approved continuing education each license year prior to May 16th of the current renewal year; and
(2) Furnish the board with proof of course completion prior to June 1st of the current renewal year[compliance].

(3) Non-compliance with either of the requirements specified in this section shall cause the applicant’s renewal application to be deemed to be late.

Section 2. Continuing Education. (1) Continuing education credit may be granted for:
(a) Approved continuing education courses; or
(b) Participation, other than as a student, in appraisal educational programs and processes not to exceed seven (7) hours of the required fourteen (14) hours of continuing education for each licensure year.
(2) Appraisal educational programs and processes shall include:
(a) Teaching a course, however credit for instructing any given course shall only be awarded one time during a continuing education cycle;
(b) Program development;
(c) Authorship of textbooks; or
(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.
(3) Continuing education credit shall be granted if a course:
(a) Is at least two (2) hours in duration;
(b) Subject ensures that an appraiser’s skill, knowledge, and competency in real estate appraisal will be maintained or increased; and
(c) Has been approved by the board.
(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

(5) To be approved for continuing education credit, a course shall be consistent with the purpose of continuing education and cover those real property related appraisal topics, including:
(a) Ad valorem taxation;
(b) Arbitration, dispute resolution;
(c) Courses related to the practice of real estate appraisal or consulting;
(d) Development cost estimating;
(e) Ethics and standards of professional practice, USPAP; (f) Land use planning, zoning;
(g) Management, leasing, timesharing;
(h) Property development, partial interests;
(i) Real estate law, easements, and legal;
(j) Real estate litigation, damages, condemnation;
(k) Real estate financing and investment;
(l) Real estate appraisal related computer applications;
(m) Real estate securities and syndication;
(n) Green building construction;
(o) Impact of seller concessions;
(p) Appraising personal property as a component of real property value; or
(q) Appraising business value as a component of real property value.
(6) Real estate appraisal related field trips may be acceptable for credit toward the continuing education requirements. However, transit time to or from the field trip shall not be included when awarding credit unless instruction occurs during the transit time.

(7)(a) All credential holders shall successfully complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and June 30 of each even numbered year.
(b) Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.
(c) USPAP continuing education credit shall only be awarded when the class is instructed by an AQB Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.
(8) The board shall defer continuing education requirements for up to 180 days for credential holders:
(a) Returning from active military duty; or
(b) Whose business or residence is located in a county that has been declared a disaster area by the governor or President of the United States under the law.
(9) Credit for repeating the same course title and content within a twenty-four month (24) period shall not be granted.

HAROLD BRANTLEY, Chair
APPROVED BY AGENCY: June 11, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers: 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements for certified and licensed appraisers.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the continuing education requirements for certified and licensed appraisers.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding continuing education.
(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 setting forth continuing education requirements for certificate holders.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will simplify the reporting period for renewals.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow the board to review continuing education submission in time for the renewal of a certificate.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding continuing education.
(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation allows the board to review continuing education submission in time for the renewal of a certificate.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand eight hundred persons certified 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: A licensee will be required to obtain continuing education for renewal within the period identified.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be up to date in their profession.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by certificate holders.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. This administrative regulation requires compliance with the educational requirements promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.
3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the educational requirements promulgated by the Appraisal Qualification Board of the Appraisal Foundation.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.
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 Real Estate Appraisers Board
(Amendment)

201 KAR 30:150. Education provider approval.
RELATES TO: KRS 324A.035(3)(d),(f), 12 U.S.C. 3331-3351
STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d),(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of education providers for real estate appraisers.

Section 1. Definitions. (1) “Approved instructor” means an instructor who has been approved under 201 KAR 30:160 to teach continuing education or qualifying education.
(2) “Education provider” means a school or organization that
Section 2. Education Provider Approval. (1) To apply for approval as an real estate appraiser education provider or to renew approval, a provider shall submit:

(a) Completed Application for Real Estate Appraiser Education Provider, including the information required concerning curriculum, approved instructors, educational materials and policies;
(b) Copy of the Certificate of Approval from the State Board for Proprietary Education or the Kentucky Department of Education, if applicable;
(c) Sample schedule outlining how a course will be presented; and
(d) Completed course outline for each course, which shall include:

1. A Real Estate Appraisal Instructor Application for each instructor required by 201 KAR 30:130;
2. A copy of a contract or agreement signed by the student which outlines the class schedule, grading system, and attendance requirements;
3. A copy of the written material, including the textbook and other materials that will be used in the classroom;
4. A sample copy of a education provider brochure or information sheet promoting the education provider; or
5. A copy of legal documentation required to support an answer made on the form, if applicable; and
6. A sample copy of an official transcript from the education provider.
(2) An approved real estate appraisal education provider shall include a statement in the education provider’s application for approval into the program that informs the prospective student that a criminal conviction may prevent that person from qualifying for licensure by the Real Estate Appraisers Board. Failure to include this notification may result in suspension of an approved education provider's approval until the information is included in the application.
(3) Courses from institutions which have been accredited by a regional accrediting agency approved by the U.S. Department of Education or listed in the Transfer of Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers shall be approved by the board without review.
(4) The applicant shall be required to supply a syllabus or course outline to verify that the content of the course satisfies an area of study outlined in 201 KAR 30:190.

Section 3. Requirements for an Approved Education Provider.
(1) An approved education provider shall notify the board within fourteen (14) days of a material change in the information originally furnished on the application or in an attachment to the application.
(2) A renewal application shall be submitted by June 30 of each year.
(3) The curriculum offered by the education provider shall:
(a) Include a minimum of two (2) academic hours for a continuing education course;
(b) Include a minimum of fifteen (15) academic hours, including examination time, for each qualifying education course;
(c) Be conducted for a maximum of no more than eight (8) hours during a twenty-four (24) hour period; and
(d) Consist of courses covering the topics listed by the Real Estate Appraisers Board in 201 KAR 30:050, Section 3, or 201 KAR 30:190.
(4) An approved real estate appraisal education provider shall maintain accurate and permanent records on each student enrolled in a course.
(a) A permanent record shall include:
1. Each student's record of courses completed or attempted, academic hours awarded, and final grades; and
2. A board-approved Certificate of Completion form for each student and proof that it was mailed to each student upon completion of a course.
(b) A permanent record shall:
1. Be maintained for five (5) years; and
2. Include student attendance records and test scores.
(c) The education provider shall submit to the board a roster with the names of the individuals who attended the course and each student’s final examination grade with numerical score by June 1 of each licensure year within ten (10) days of the completion of each course.
(d) The education provider shall submit to the student a certificate of course completion within ten (10) days of the completion of each course.
(5) An approved real estate appraisal education provider shall file with the board a Notification Form for Course Dates and Locations no later than ten (10) days prior to beginning a qualifying education course or a continuing education class.
(6) An approved real estate appraisal education provider shall permit an inspection and monitoring by the board or its designee to evaluate all aspects of the administration or operation of the education provider.
(7) Education provider status approval shall be withdrawn if the board determines:
(a) Information contained on the application or renewal is inaccurate or misleading;
(b) The establishment or conduct of the education provider is not in compliance with this administrative regulation;
(c) The instruction is so deficient as to impair the value of the course or;
(d) The education provider failed to meet any policy or statement made in its application.
(8) If an education provider has been given notice of a deficiency under this section, the board shall give the education provider an opportunity to correct the deficiency within thirty (30) days.
(9) An effort made directly or indirectly by a education provider, officer, employee, or person on their behalf to reconstruct the national real property appraisal licensing or certification examination for any licensed or certified real property appraiser, or a portion of these examinations shall result in immediate revocation of education provider approval.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Approved Real Estate Appraisal Education Provider", 2005;
(b) "Course Outline", 2005;
(c) "Certificate of Completion", 2005; and
(d) "Notification Form for Course Dates and Locations", 2005.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

1. Provide a brief summary of:
   (a) The necessity of this administrative regulation: This administrative regulation establishes the requirements for approval of education providers for real estate appraisers.
   (b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the standards of practice required of certified and licensed appraisers.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute gives the board the ability to promulgate regulations regarding the education of appraisers.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the requirements for education providers.

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 recognizes courses from accredited institutions.
   (b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the standards education.
   (c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.
   (d) How the amendment will assist in the effective administration of the statutes: The standards of practice will assist by the submission of the list of attendees in a timely manner.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand eight hundred persons certified 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: Educators will be required to meet the standards.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Educators will know the requirements for providing classes.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No new costs will be incurred by the changes.
   (b) On a continuing basis: No new costs will be incurred by the changes.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

9. TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all providers.

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 Real Estate Appraisers Board.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation KRS 324A.020, 324A.035(3)(d),(f), 12 U.S.C. 3331-3335.

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

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? None
   (d) How much will it cost to administer this program for subse-quent years? None

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

   Revenues (+/-):
   Expenditures (+/-):
   Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:360. Operation of an appraisal management company.

RELATES TO: KRS 324A.150 - 324A.164
STATUTORY AUTHORITY: KRS 324A.152(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.152(8) requires the board to establish by administrative regulation standards governing the operation of an appraisal management company. This administrative regulation establishes requirements for operating an appraisal management company.

Section 1. Performance Obligation. (1) A registrant shall disclose to its client the actual fees paid to an appraiser for appraisal services, separately from any other fees or charges for appraisal management services and, upon written request, shall make that information available to the Board.

(2) A registrant shall disclose to each appraiser that it engages
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for appraisal services verification of its State Registration.
(3) A registrant shall not attempt to directly or indirectly coerce an appraiser to accept an assignment if the appraiser indicates that the appraiser lacks competency or sufficient experience to complete the assignment, and the registrant shall not penalize the appraiser by reducing the number of assignments made to that appraiser, refusing to pay fees owed, or in any other manner.
(4) A registrant shall not withhold or threaten to withhold future business or assignments from an appraiser because of the appraiser's failure to concede improper or illegal requests, demands, or coercion. This prohibition shall include any express or implicit promise of future business, assignments, promotions, or increased compensation for an appraiser in exchange for the appraiser's agreement to concede improper or illegal requests, demands, or coercion.
(5) A registrant shall not require an appraiser to indemnify an appraisal management company or hold an appraisal management company harmless for any liability, damage, losses, or claims arising out of the services provided by the appraisal management company. This prohibition shall not preclude indemnification agreements for services performed by the appraiser.
(6) A registrant shall not use an appraiser directly selected or referred by any member of a loan production staff of a client.
(7) A registrant shall not request that a broker price opinion be used as the primary basis for developing and reporting an appraisal for the purpose of loan origination of a residential mortgage loan secured by any one (1) to four (4) unit residential property.
(8) A registrant may not remove an appraiser from its appraiser panel without prior written notice to the appraiser as required by KRS 324A.158(2)(d). An appraiser may file a complaint with the Kentucky Real Estate Appraisers Board to review the decision of the registrant for removal from its appraiser panel for reasons other than those allowed in KRS 324A.158(2)(d).
(9) A registrant shall require that if an appraisal report prepared by a Kentucky licensed or certified real property appraiser is reviewed by a state licensed or certified real property appraiser, the review appraisal shall also be certified by the Kentucky Real Estate Appraisers Board.
(10) A registrant shall not prohibit communication between a Kentucky licensed or certified real property appraiser and any person from whom the appraiser believes the information is relevant in the performance of an appraisal assignment.
(11) A registrant shall not require a Kentucky licensed or certified real property appraiser that is an independent contractor under Kentucky law to sign a noncompete agreement.

Section 2. Incorporation by Reference. (1) "Commonwealth of Kentucky Appraisal Management Company Uniform Appraiser Services Agreement ", May 2013, Kentucky Real Estate Appraisers Board, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair
APPROVED BY AGENCY: June 11, 2013
FILED WITH LRC: June 13, 2013 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Larry Disney
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for the operation of an appraisal management company.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for the operation of an appraisal management company.
(c) How this administrative regulation conforms to the content of the statutes: KRS 321A.154(2) requires the board to promulgate administrative regulations establishing standards for the operation of an appraisal management company.
(d) How the amendment will change this existing administrative regulation: This amendment will establish a uniform contract for appraisal management companies and licensees of the Board.
(e) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish a uniform contract for appraisal management companies and licensees of the Board.
(f) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the statutes which authorize the board to establish requirements for the operation of an appraisal management company.
(g) How the amendment will assist in the effective administration of the statutes: This amendment assists the board by establishing a uniform contract for appraisal management companies and licensees of the Board.
(h) How the amendment will assist in the effective administration of the statutes: This amendment assists the board by establishing a uniform contract for appraisal management companies.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) What this administrative regulation does:
(b) The necessity of this administrative regulation: This administrative regulation conforms to the content of the statutes: KRS 321A.154(2) requires the board to promulgate administrative regulations establishing standards for the operation of an appraisal management company.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes: This amendment conforms with the statutes which authorize the board to establish requirements for the operation of an appraisal management company.

(3) Provide an analysis of how the entities identified in question (2) 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 type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board currently has registered approximately 120 appraisal management companies.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will vary depending upon the efficiency of the company.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Registrants will know the requirements for operation.

(4) 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: Costs could be incurred by the board if any enforcement actions are necessary to require compliance, but the amount of such costs cannot be determined at this time.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The
Section 2. Licensure of Behavior Analysts. The applicant for licensure as a behavior analyst shall:

(1) Submit a check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 43:010;

(2) Submit proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1); and

(3) Submit proof of completion of at least five (5) hours of training in:
   (a) Adult abuse and neglect prevention;
   (b) Child abuse, neglect, and dependency prevention; or
   (c) A combination of paragraphs (a) and (b) of this subsection.

Section 3. Licensure of Assistant Behavior Analysts. The applicant for licensure as an assistant behavior analyst shall:

(1) Submit a check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 43:010;

(2) Submit proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(2); and

(3) Submit proof of completion of at least five (5) hours of training in:
   (a) Adult abuse and neglect prevention;
   (b) Child abuse, neglect, and dependency prevention; or
   (c) A combination of paragraphs (a) and (b) of this subsection.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, PO Box 1360, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHELLI DESKINS, Chair
APPROVED BY AGENCY: May 9, 2013
FILED WITH LRC: May 17, 2013 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2013 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 July 31, 2013 at 11:59:59 pm. 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: Lindsey Lane, Board Administrator, Kentucky Applied Behavior Analyst Licensing Board, 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 an application procedure and form for the licenses issued by this board.
   (b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 319C.080 and KRS 319C.060(2)(a).
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the statute that gives the board authority to create forms and procedures for the licensure process.
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(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 detailing the application process and forms to be used.

(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 edits the form to clarify procedures and more efficiently collect information.

(b) The necessity of the amendment to this administrative regulation: To update the form to clarify procedures and requested information.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the board to develop a process and prescribe a form to be used by applicants.

(d) How the amendment will assist in the effective administration of the statutes: This regulation puts the public on notice about individuals are licensed by migratory birds, including cities, counties, fire departments, or school districts for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Technical and Administrative Support

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

(10) 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 either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) Estimate the effect of this administrative regulation on the following:
(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be affected for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 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:

418 KAR 1:010. Definitions for 418 KAR Chapter 1.

RELATES TO: KRS 146.550-146.570, 446.010(18)
STATUTORY AUTHORITY: KRS 146.550-146.570
NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also requires the board to promulgate administrative regulations on land acquisition. This administrative regulation defines terms used in 418 KAR Chapter 1.

Section 1. Definitions. (1) "Access land" means land necessary for reasonable and planned ingress and egress from the project site.

(2) "Acquisition" means the procurement of land and includes options, appraisals, maps, surveys, title opinions, title insurance and environmental audits, and inspections, and remediation.

(3) "Areas important to migratory birds" means those areas important to the reproduction and survival of migratory birds, including:

(a) Large tracts of contiguous forest;
(b) Wooded greenspace areas;
(c) Shallow open water habitats with expansive areas of shoreline.
(d) Wetlands or wetland complexes including marshes, deep water sloughs, and swamps;
(e) Natural grasslands; and
(f) Riparian corridors.

(4) "Board" means the Kentucky Heritage Land Conservation Fund Board.

(5) "Buffer land" means land that will aid in protecting the project site from harm, or will prevent degradation of the visitor experience at the project site.

(6) "Chair" means the chairperson of the board.

(7) "Dollar for dollar" means that for every Kentucky Heritage Land Conservation Fund dollar granted by the board, the applicant shall spend an equal amount, and that the applicant shall place all matching funds in one lump sum into escrow at the board’s discretion.

(8) "Fund" means the Kentucky Heritage Land Conservation Fund.

(9) "Grant" means an award of money from the Kentucky Heritage Land Conservation Fund pursuant to KRS 146.570(4)(f).

(10) "Greenspace" means undeveloped land in or around urban areas, including forests or other natural vegetation, streamside corridors, natural areas, and abandoned rights-of-way.

(11) "Local governments" means county governments, municipalities, school districts, and special districts, or a combination thereof.

(12) "Management" means the stewardship necessary to
fulfill the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses site development costs and reasonable operating costs, consultant and contractor fees, facility development, supplies, materials, site-specific equipment, and staff costs.

(13)(42) “Natural area” means any area of land or water, or of both land and water, which:
(a) Retains or has reestablished in the judgment of the board its natural character;
(b) Has natural flora or fauna;
(c) Has biological, ecological, geological, scenic, or archaeological features of scientific, aesthetic, cultural, or educational interest to the public.

(15)(43) “Natural functions” means the interrelationships among the living and nonliving components of ecosystems and includes:
(a) Energy fixation and conversions;
(b) Ecosystem productivity and biomass accumulation;
(c) Nutrient cycling;
(d) Storage, transport, release, and retention of water and other nutrients;
(e) Food web relationships and dynamics;
(f) Weathering, development, and stabilization of substrates; and
(g) Absorption and neutralization of pollutants.

(17)”Natural state” means the condition of any area which retains, has substantially reestablished, or is in the process of reestablishing, an indigenous ecosystem.

(19)”Outdoor recreation” means activity on a subject property that does not cause harm to the property or its natural state, or hinder the heritage land conservation purposes of KRS 146.550 through 146.570.

(20)”Private, nonprofit land trust organization” or “LTO” means a group with Internal Revenue Code 501(c)(3) status qualified to hold land and easements for land conservation purposes.

(18)”RMP” means resources management plan.

(19)”State agency” means any department, program cabinet, institution, board, commission, office, or agency of the Commonwealth of Kentucky.

(20)”State colleges and universities” means accredited colleges and universities located in the Commonwealth of Kentucky.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 13, 2013 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2013 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 July 18, 2013, 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 July 31, 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 defines terms used in 418 KAR Chapter 1.
(b) The necessity of this administrative regulation: This admin-
istrative regulation is necessary to provide terms for the proper understanding of the chapter.
(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 application for funds, review and approval of proposed projects, and review and approval of grants. This administrative regulation provides definitions for those purposes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terms that will assist in the proper understanding of the meaning of the administrative regulations in 418 KAR Chapter 1.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment introduces new terms and amends current definitions in order to comply with the changes to the Heritage Land Conservation Fund program introduced by House Bill 281.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to insert new definitions and amendments to existing definitions related to the passage of House Bill 281.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment inserts new definitions and amends current definitions related to private and nonprofit land trust organizations.
(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to introduce terms that are related to the changes to KRS 146.560 by House Bill 281.
(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 private, nonprofit land trust organizations.

(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 introduces new terms and amends current definitions in order to comply with the changes to the Heritage Land Conservation Fund program introduced by House Bill 281.

(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 simply introduces new terms and amends current definitions.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) to comply: This amendment does not cost the regulated entity an additional amount to comply with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity will benefit from a proper understanding of the terms used in 418 KAR Chapter 1.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This amendment will not cost the administrative body additional funds to implement.
(b) On a continuing basis: This amendment will not cost the administrative body additional funds to implement.
(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 not be a need to increase fees or funding to administer the amendments to this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not increase nor does it establish any fees.
(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.
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? 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 governmental 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 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 new administrative regulation will not generate 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.

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

Revenues (+/-): NA
Expenses (+/-): NA
Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Technical and Administrative Support
( Amendment)

418 KAR 1:040. Grant applications.

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)-(f).

Section 1. Application. (1) A state agency, local government, state college or university, or LTO seeking a grant pursuant to KRS 146.570(4)(f) shall submit to the board a completed grant application package.
   (2) The application package shall include:
      (a) A cover letter;
      (b) The Kentucky Heritage Land Conservation Fund Board Grant Application Form, HL-1A;
      (c) Location map;
      (d) Site or project description;
      (f) Copy of the portion of a 1:24,000 topographical map showing the approximate project boundaries; and
      (g) Project costs worksheet.
(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 informa-
tion 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), each board member shall review the application package and evaluate it based on the following criteria:
   (a) Whether the fund contains adequate money to fund the proposed project;
   (b) Whether the proposed project meets one (1) or more of the priorities for acquisition listed in KRS 146.560(2)(a) through (d);
   (c) Whether the proposed acquisition is one (1) of the areas referred to in KRS 146.565;
   (d) The completeness and accuracy of the application package;
   (e) Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;
   (f) The applicant’s ability to complete the acquisition and manage the land consistent with the preliminary RMP;
   (g) The significance of the natural and educational resources on the project site;
   (h) The prevalence of this type of project and project site in public systems; and
   (i) The threat of loss or degradation of the project site if not protected.
(2) The board:
   (a) Shall approve or deny a grant application by the vote of a majority of those present at a meeting at which there is a quorum; and
   (b) May:
      1. Amend or attach conditions to the approval of a 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.

(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 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) The application;
   (4) A conservation easement which pertains to the project site; and
   (5) The latest RMP approved by the board.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) “Kentucky Heritage Land Conservation Fund Board Grant Application Form”, HL-1A, June 2013[July 2012];
   (b) “Preliminary Resource Management Plan Instructions”, HL-1B, July 2012; and
(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: June 12, 2013
A public hearing on this administrative regulation shall be held on July 25, 2013 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2013, 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 July 31, 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) 564-6998, 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, or private, nonprofit land trust organizations.
(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 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: This amendment includes private, nonprofit land trust organizations to the list of organizations that are required to submit applications for HLCF grant funds. This amendment also includes an updated HL-1A form.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require private, nonprofit land trust organizations to submit applications for HLCF grants. It is also necessary to amend HL-1A.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires private, nonprofit land trust organizations to submit an application to received HLCF grants.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will require private, nonprofit land trust organization to submit an application to received HLCF grants.

(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 private, nonprofit land trust organizations that are interested in applying for grants from the Heritage Land Conservation Fund.

(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 requires private, nonprofit land trust organizations to submit an application to receive HLCF grants.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the regulated entity an additional amount to comply with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Private, nonprofit land trust organizations could receive grants from the HLCF.
(d) How the amendment conforms to the content of the administrative regulation: This amendment includes private, nonprofit land trust organizations to submit an application to receive HLCF grant funds. This amendment will require private, nonprofit land trust organizations to submit applications for HLCF grant funds.
(e) How this administrative regulation conforms to the content of the authorizing statutes: This amendment will require private, nonprofit land trust organizations to submit applications for HLCF grants.
(f) How this administrative regulation conforms to the content of the authorizing statutes: This amendment requires private, nonprofit land trust organizations to submit an application to receive HLCF grants.
(g) How this administrative regulation conforms to the content of the authorizing statutes: This amendment includes private, nonprofit land trust organizations to the list of organizations that are required to submit applications for HLCF grant funds. This amendment also includes an updated HL-1A form.

(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 not be a need to increase fees or funding to administer the amendments to 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? Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570.

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 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 new administrative regulation will not generate 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.

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

RELATES TO: KRS 45.450, 146.550-146.570, 382.800-382.860

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations on acquisition. This administrative regulation governs the acquisition of land purchased, in whole or in part, with Fund money.

Section 1. An applicant shall attempt to acquire:
(1) Land at a price below its fair market value; and
(2) Available matching funds for the purchase of land from a public or private entity.

Section 2. Transfer of Funds. An expenditure approved by the board shall be disbursed promptly after a Memorandum of Agreement has been signed by the grant applicant and the board and all procedures in 418 KAR 1:040 and in the application have been followed.

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 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, a 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 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. (1) A local government, state college, university, or LTO 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.
(2) Matching Funds.
(a) No later than ninety (90) days after board approval of an application from an LTO, the applicant shall deposit into a non-lapsing escrow account the matching funds required by KRS 146.560(2)(d).
(b) An LTO shall submit to the board for review and approval instructions to the escrow holder of each dollar-for-dollar match, and shall ensure that the escrow account stays open for a long enough period of time to allow for withdrawals and disbursements to be made after board approval.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 13, 2013 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2013 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 by July 18, 2013, 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 must be accepted until July 31, 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 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 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: This amendment introduces procedures for private, nonprofit land trust organizations to follow in order to set up and manage escrow accounts which is required in order to meet the dollar for dollar match required in KRS 146.560.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide private, nonprofit land trust organizations the necessary information for meeting the dollar for dollar match required by statute.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the new requirements of KRS 146.560 by providing the method for private, nonprofit land trust organizations to meet the dollar for dollar match requirement.
(d) How the amendment will assist in the effective administr-
tion of the statutes: This amendment requires private, nonprofit land trust organizations to use escrow accounts to make the dollar for dollar match.

(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 private, nonprofit land trust organizations that are interested in applying for grants from the Heritage Land Conservation Fund.

(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 requires private, nonprofit land trust organizations to set up escrow accounts to make the dollar for dollar match required by KRS 146.560.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the regulated entity an additional amount to comply with this amendment.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Private, nonprofit land trust organizations could receive grants from the HLCF.

(5) Provide an estimate of how much it will cost the administrative agency to implement this administrative regulation:
   (a) Initially: This amendment will not cost the administrative body additional funds to implement.
   (b) On a continuing basis: This amendment will not cost the administrative body additional funds to implement.

(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 not be a need to increase fees or funding to administer the amendments to 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? 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 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 new administrative regulation will not generate 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.

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

TRANSPORTATION CABINET
Office of Audits
Division of Road Fund Audits
(Amendment)

601 KAR 1:147. Auditing of U-drive-it permit holders.


STATUTORY AUTHORITY: KRS 138.463(5), 186.281(2)(b), 138.4631

NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.463 requires [and 138.4631 requires] the Transportation Cabinet to establish standards for fair market rental or lease value and assess, collect, and audit the monthly U-drive-it usage tax. This administrative regulation establishes the recordkeeping requirements for a permit holder and the audit procedures of the Transportation Cabinet.

Section 1. Definitions. (1) “Lease” is defined by [in] KRS 138.463(3).
(2) “Rental” is defined by [in] KRS 138.462(2).

Section 2. Recordkeeping. (1) Rental records.
   (a) A holder of a U-drive-it permit who rents a [vehicle] vehicles shall:
      1. Use [Develop] a consecutive, preprinted numbering system for [its] rental agreement [agreements];
      2. For each motor vehicle included in the permit holder’s rental fleet, retain a copy of the original manufacturer’s invoice [from the manufacturer] or [some other] document [that] shows the manufacturer’s suggested retail price of the motor vehicle plus the cost of [all] options included on the motor vehicle; and
      3. Retain a copy of [the] each rental agreement [in consecutive order] including a voided or damaged agreement.
   (b) The following information shall be included on a rental agreement:
      1. Rental agreement number;
      2. Beginning date of the rental;
      3. Ending date of the rental;
      4. Identification of the specific rental vehicle [that] includes the following:
         a. Vehicle identification number;
         b. Make;
         c. Model; and
         d. Year;
      5. Odometer reading of the rental vehicle at the beginning of the rental agreement;
      6. Odometer reading of the rental vehicle at the end of the rental agreement;
      7. Amount charged for the rental agreement;
      8. Method of calculation of the rental amount charged [that] includes mileage charges and number of days used; and
      9. Identification of the person renting the vehicle.
   (c) If applicable, the following shall be attached to an original rental agreement:
      1. Replacement vehicle information; and
      2. Information that will alter the original rental agreement.
   (d) The record of a rental transaction shall be maintained for a period not less than six (6) years after the due date of the U-drive-it tax return.
   (2) Lease records. A holder of a U-drive-it permit who leases a [vehicle] vehicles shall retain a copy of the leasing agreement and other information [as] required by this subsection.
   (a) A lease agreement shall include the following information:
1. Complete name and address of the lessee;
2. Beginning date of the lease;
3. Ending date or term of the lease;
4. Identification of the lease vehicle that includes the following:
   a. Vehicle identification number;
   b. Make;
   c. Model;
   d. Year; and
5. Manufacturer’s suggested retail price;
6. Final lease termination calculation and date;
7. Monthly payment amount subject to the tax imposed by KRS 138.463;
8. Down payment or trade-in information; and
9. Date of first lease payment, if different from agreement beginning date.

(b) The following, if applicable, shall be attached to the lease agreement:
1. Certificate of title of the leased vehicle;
2. A lease amount calculation worksheet;
3. A lease extension agreement;
4. Documentation of a lease early termination; and
5. Information that would alter the original lease agreement.

(c) The record of a lease transaction shall be maintained for a period not less than six (6) years after the due date of the U-drive-it tax return.

Section 3. Audits of Permit Holders. (1) The Division of Road Fund Audits shall notify the permit holder of the date, time, and location of the audit. At least fifteen (15) days’ advance notice shall be given to the permit holder.

(2) The audit period shall not exceed four (4) or six (6) years as established in KRS 138.463(6)(b)Pursuant to the requirements established in KRS 138.463(6), the audit period shall not exceed either four (4) years or six (6) years.

(3) A permit holder who fails to make available the required records, or sufficient alternative records, requested by the auditor shall receive a tax assessment or have the permit cancelled pursuant to KRS 138.463(7) except as provided by subsection (4) of this section. Failure of the permit holder to make available a requested record required to be kept by the permit holder pursuant to Section 2 of this administrative regulation for which the permit holder is not able to provide sufficient alternate records to the auditor shall result in an assessment of tax based on KRS 138.460, 601 KAR 1:146, or cancellation of the permit, whichever is appropriate as determined by the auditor.

(4)(a) A missing or incomplete record shall result in an assessment based on KRS 138.460 or 138.463, whichever is appropriate as determined by the audit.
(b) In computing the assessment for a specific transaction, the permit holder shall receive credit for a tax previously remitted to the Transportation Cabinet for that transaction.
(5) If an audit is being conducted, the auditor shall conduct and document a pre-audit telephone conference with the permit holder outlining:
   a. The operation;
   b. Audit procedures;
   c. Records to be examined;
   d. Sample period; and
   e. Sampling procedures.

(6) The permit holder and auditor shall determine during the pre-audit telephone conference which parties shall be:
   a. Responsible for the final acceptance of audit findings; and
   b. Involved in the fieldwork close-out conference.

(7)(b) If the audit is being conducted, the auditor shall conduct and document a fieldwork close-out conference with the permit holder outlining preliminary findings to include:
   a. Applicable penalty and interest;
   b. Right of appeal; and
   c. To whom the audit report shall be addressed.

(8) The Transportation Cabinet shall furnish the permit holder with a letter of audit findings and recap schedules. If requested, the cabinet shall supply detailed work papers to the permit holder that serve as backup material to the recap schedules to the permit holder.

(b) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue a Notice of Tax Due statement.

(10) Within forty-five (45) days of the notice of tax due statement, a permit holder shall pay the tax due, or protest in writing pursuant to Section 4 of this administrative regulation.

Section 4. Protest or Appeal of Audit Results. (1) A written protest may be filed by a taxpayer or a person representing a taxpayer:

(a) A protest shall include:
   1. A supporting statement that includes the grounds upon which the protest is made as required by KRS 131.110(1); and
   2. Documents that identify the adjustment requested, or the portion of the audit protested.

(b) A protest shall be filed with the cabinet’s Division of Road Fund Audits within forty-five (45) days from the date of the notice of tax due statement.

(2) If the supporting statements and documents are not sufficient to change the assessment results, the taxpayer may request an information gathering, or protest conference, with the Division of Road Fund Audits in writing by regular mail, facsimile, or electronic mail.

(3) The Division of Road Fund Audits shall issue a final ruling to the taxpayer within sixty (60) days from the date the taxpayer submits additional information, or within sixty (60) days of the protest conference if the permit holder may within forty-five (45) days from the date of the letter of transmittal of the audit findings, protest in writing, or a person representing a taxpayer.

(4) If the permit holder does not protest, the audit and the notice of tax due statement shall be final on the beginning of the 46th day.

(5) If a permit holder protests pursuant to this section, the protest shall include a supporting statement and documents which identify:
   1. The specific adjustments requested;
   2. The portion of the audit being protested; and
   3. The reasons the protest is being made.

(b) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change the audit or notice of tax due statement as requested by the permit holder in its protest, the permit holder shall be notified to attend an information gathering and protest conference with the Division of Audit Review. The information gathering and protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled one (1) time by either party.

(4) The permit holder shall within thirty (30) days of the date of the final audit or final notice of tax due statement:

(a) Pay the tax due or
(b) Appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.
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 un-
less 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 July 31, 2013. Send written notification of intent to
be heard at the public hearing or written comments on the pro-
posed 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 administra-
tive regulation establishes, record keeping requirements for a U-
drive-it permit holder and the related audit procedures for the cabi-
et.
(b) The necessity of this administrative regulation: This regu-
lation is necessary to inform the public of the standards for fair mar-
ket rental or lease value, and how the monthly U-drive-it usage tax
is assessed, collected, and audited.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 138.463(5) requires the cabinet to
promulgate administrative regulations to govern the remittance of
U-drive-it usage tax.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation will clarify and update the procedures involved in
the assessment, collection, and audit of the U-drive-it usage tax.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation:
1. Update the office and division responsible for the regulation
to the Office of Audits and the Division of Road Fund Audits;
2. Allow for a pre-audit conference to take place by telephone;
and
3. Standardize the language related to protests to conform with
601 KAR 1:201.
(b) The necessity of the amendment to this administrative
regulation: The amendment is necessary to update language and
procedures related to the U-drive-it usage tax in the Division of
Road Fund Audits.
(c) How the amendment conforms to the content of the autho-
rizing statutes: The amendment clarifies and updates the stan-
dards required by KRS 138.463 and 138.4631.
(d) How the amendment will assist in the effective administra-
tion of the statutes:
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: This administrative regulation affects approxi-
mately 350 U-drive-it permit holders and the Division of Road Fund Audits
at the cabinet.
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change, if it is an amendment, in-
cluding:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: There are no new requirements and no
additional actions will be needed.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): There are no fees involved with this administrative regu-
lation.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): These amendments should make it
easier for U-drive-it permit holders to understand and follow the
regulatory requirements.

(5) Provide an estimate of how much it will cost the administra-
tive body to implement the administrative regulation: There are no
known costs associated with the amendments to this administrative
regulation.
(a) Initial: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No
funding is required.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change, if it is an amendment: There is no
need for the cabinet to increase fees or funding.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: No fees
are established by this regulation either directly or indirectly.
(9) TIERING: Is tiering applied? Yes. Tiering is applied be-
cause motor vehicle classifications are assessed differently in ac-
cordance with the size of the vehicle.

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 adminis-
trative regulation impacts the Division of Road Fund Audits within the
state or local government agency.
(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year? This adminis-
trative regulation will not generate additional revenue.
(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years? This
administrative regulation will not generate additional revenue.
(c) How much will it cost to administer this program for the first
year? No administrative costs are required or expected.
(d) How much will it cost to administer this program for subse-
quent 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:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Admission)

601 KAR 9:200. Registration and titling of rebuilt or sal-
vage motor vehicles.

RELATES TO: KRS 186.115, 186A.170(1)(b), 186A.510-
186A.990[Chapter 186A]

STATUTORY AUTHORITY: KRS 186A.530(11),
186A.550[186.115, 186A.500-186A.550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS
186A.530 requires the Transportation Cabinet to issue a certificate
of title with a brand printed on the face of the title if the vehicle has
been rebuilt or has a branded certificate of title from another juris-
diction. KRS 186A.550 requires the cabinet to promulgate adminis-
trative regulations in accordance with federal law that establish a
Section 1. Application for a Kentucky Salvage Title. (1) A Kentucky salvage title shall be issued for a wrecked or damaged vehicle if the total estimated cost of repair exceeds seventy-five (75) percent of the retail value of the vehicle.

(2) An applicant for a salvage title shall submit an Application for Kentucky Certificate of Title or Registration, TC Form 96-182, to the county clerk accompanied by a minimum of six (6) photographs showing the damage to the vehicle.

Section 2. Vehicles from Other Jurisdictions. (1) [When] the owner of a motor vehicle with a title from another jurisdiction applies for a Kentucky motor vehicle title, or a title and registration, the county clerk receiving the application shall enter the following information relating to brands into the Automated Vehicle Information System or Kentucky Automated Vehicle Information System:

(a) [4] If the brand on a foreign motor vehicle title relates to physical damage to the motor vehicle, the Kentucky title, when issued, shall bear the notation "rebuilt vehicle".

(b) [2] If a vehicle title bears both a "rebuilt" brand as described in subsection (1) of this section and a "water damaged" brand as established [set forth] in KRS 186A.530(4), the Kentucky title shall bear the notation "rebuilt vehicle water damaged".

(2) [2] If a vehicle certificate of title bears a brand relating to the vehicle's usage [use] of the motor vehicle but not to damage to the motor vehicle, the Kentucky certificate of title shall not be branded [Section 2. Branding of Title Issued for a Rebuilt Motor Vehicle. (1) If a salvage certificate of title has been issued pursuant to KRS 186A.520 transferred within Kentucky or if a vehicle with the same title from another jurisdiction is transferred into Kentucky, the new certificate of title shall be another salvage certificate of title until the owner of the motor vehicle has successfully gone through the process established in Section 3 of this administrative regulation.

(3) [4] An application for a certificate of title shall be rejected by the Transportation Cabinet if there is a lien against the vehicle recorded in the Automated Vehicle Information System or Kentucky Automated Vehicle Information System.

(4) An application for a salvage or rebuilt title shall not be processed through "speed title" as established in KRS 186A.170(1)(b).

Section 3. Application for Title of Rebuilt Motor Vehicle. (1) An owner of a motor vehicle that has been assembled from parts of wrecked or salvaged vehicles may apply for registration and title.

(a) The owner applies for registration and title, the motor vehicle shall comply with the equipment and safety requirements of KRS Chapter 189. After a motor vehicle which has been assembled from parts of wrecked or salvaged vehicles and if the motor vehicle complies with all equipment and safety requirements of KRS Chapter 189, the owner may apply for registration or title of the motor vehicle.

(2) An application [All applications] for registration and [of one] title of a motor vehicle that [which] has been assembled from parts of [from] wrecked or salvaged motor vehicles shall be accompanied by [the following]:

(a) A completed Application for Kentucky Certificate of Title and Registration, TC Form 96-182(1). The form required by KRS 186A.060, Vehicle Transaction Record. This form, TC 96-182, effective in July 1994, is incorporated by reference as part of this administrative regulation and shall contain an inspection certificate issued by a certified inspector in accordance with KRS 186A.115.

(b) [2] A completed [Form TC 96-215.] Affidavit of Motor Vehicle Assembled from Wrecked or Salvaged Motor Vehicles, TC Form 96-215 [revised February, 1986. This form is incorporated by reference as a part of this administrative regulation.

(c) A minimum of six (6) photographs showing the damage to the motor vehicle;

(d) A minimum of six (6) photographs showing the repairs done to the damaged motor vehicle;

(e) [2] An address where the motor vehicle may be examined;

(f) An [4] A properly assigned certificate of title; or

(g) A notarized affidavit that explains the ownership of the vehicle, the time, and the amount paid for [when] the vehicle was last registered or licensed; and

(h) [2] A descriptive, notarized labor statement of repairs made and parts replaced;

(i) [4] An original receipt for each part purchased. Multiple parts may be listed on one [each] receipt. The receipt shall include:

1. [4] Seller's name;

2. [4] Seller's address;

3. [4] Seller's telephone number;

4. [4] Date of part purchase;

5. [4] Price and serial number of part purchased; and


(i) [4] A written comprehensive explanation of the reason why the part does not have a serial number;

(j) [4] If the motor vehicle is a motorcycle, a pencil tracing or picture of [both] the motor identification number and frame identification number of the rebuilt motorcycle and the motorcycle from which parts were obtained;

(k) [4] A descriptive, notarized labor statement of repairs made and parts replaced; and

(l) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(m) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(n) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(o) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(p) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(q) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(r) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(s) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(t) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(u) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(v) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(w) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(x) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(y) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(z) [4] A descriptive, notarized labor statement of repairs made and parts replaced;

(A) A separate federal odometer disclosure statement if unavailable on either the Application for Title of Registration or the back of the certificate of title. An Odometer Disclosure Statement, TC Form 96-5 may be used; and

2. A title issued pursuant to KRS 186A.530(2) bearing the notation "rebuilt vehicle".

The separate form may be TC 96-5, Odometer Disclosure Statement, revised March, 1989 or its equivalent. Form TC 96-5 is hereby incorporated by reference.

Section 4. Insurance Companies. (1) If an insurance company shall (made) make application in the name of the company for a regular title.

(2) If the motor vehicle is subsequently recovered and damage to the motor vehicle meets the requirements of a salvage vehicle as established in KRS 186A.520, the insurance company shall make an application for a salvage certificate of title.

(3) If an insurance company has been issued a salvage certificate of title for a vehicle recovered in a theft, but the motor vehicle does not meet the requirements for a salvage vehicle established in KRS 186A.520, an insurance company shall apply for a regular title and titling of a rebuilt motor vehicle that [which] has been assembled from parts of [from] wrecked or salvaged motor vehicles shall be accompanied...
recovered motor vehicle for which the company applied and was issued a salvage certificate of title, but the motor vehicle does not meet the requirements of a salvage vehicle as set forth in KRS 186A.550, the insurance company may make application for a regular certificate of title.

(4) An insurance company shall apply for title by using Application for Kentucky Certificate of Title or Registration, TC Form 96-182. The application shall include: [The application for certificate of title shall be made on form TC 96-182 required by KRS 186A.060 and shall include the following]:

(a) The assigned certificate of title; and

(b) Verification on the company letterhead that the motor vehicle is a theft recovery and a description of the damage to the motor vehicle.

Section 5. Additional Information[Recorded Lien Against Title. An application for a certificate of title to be issued pursuant to KRS 186A.530(2) shall be rejected by the Transportation Cabinet if there is a lien against the vehicle recorded in the Automated Vehicle Identification System.

Section 6. Additional Information which may be Required]. (1) The Transportation Cabinet shall require a confidential inspection of a rebuilt motor vehicle by the Kentucky State Police if:

(a) The documentation required by Section 3 of this administrative regulation is not available; or

(b) A check of the National Crime Information Center computes identifies the motor vehicle as stolen and a check of the Vehicle Identification Number Analysis, "VINA," identifies the motor vehicle as having one with a nonconforming vehicle identification number.

(2) If the repair documentation submitted in accordance with the requirements of Section 3 of this administrative regulation [shall be] is less than seventy-five (75) percent of the value of the motor vehicle, the Transportation Cabinet shall require:

(a) A statement from the insurance company of the damage done to the motor vehicle; or

(b) A salvage pool receipt that describes the damage to the motor vehicle.

Section 6[7]. Mistakenly Issued Brands. (1) [When a certificate of title is issued by error to the owner or county clerk, the Department of Vehicle Regulation, an application for an updated or corrected title shall be submitted to the county clerk as established in accordance with KRS 186A.180.

(2) The application for an updated or corrected certificate of title shall consist of the following documents:

(a) An Application for the Kentucky Certificate of Title or Registration, TC Form 96-182[A newly completed form TC 96-182 required by KRS 186A.060, Vehicle Transaction Record];

(b) The certificate of title; and

(c) An affidavit from the owner or a statement from the county clerk that describes the nature of the error.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Kentucky Certificate of Title or Registration", TC Form 96-182, November, 2012;

(b) "Affidavit of Motor Vehicle Assembled from Wrecked or Salvaged Motor Vehicles", TC Form 96-215, May, 2013; and

(c) "Odometer Disclosure Statement", TC Form 96-5, May, 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Division of Motor Vehicle Licensing, 200 Mero Street, Frankfort, Kentucky 40622, or on the cabinet's web site at mvi.ky.gov. This material may also be obtained at the office of a Kentucky county clerk.

Section 8. Material Incorporated by Reference. The material incorporated by reference may be viewed, copied, or obtained free of charge from any county clerk or the Transportation Cabinet.

Division of Motor Vehicle Licensing. The Division is located on the 2nd and 3rd floors of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-5301. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

T.O. ZAWACKI, Commissioner
MIKE HANCOCK, Secretary
D. ANN DANIELO, Office of Legal Services
APPROVED BY AGENCY: June 11, 2013
FILED WITH LRC: June 14, 2013 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2013 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 July 31, 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 establishes uniform procedures for the registration and titling of salvage and rebuilt vehicles.

(b) The necessity of this administrative regulation: Amendment to this administrative regulation is necessary to clarify and update the requirements for a Kentucky salvage title.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186A.550 requires the cabinet to promulgate administrative regulations establishing a uniform method of titling salvage and rebuilt vehicles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and update the procedures used to title salvage or rebuilt vehicles.

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

(a) How the amendment will change this existing administrative regulation: These amendments require the applicant for a salvage vehicle to submit a minimum of six (6) photographs showing the damage to the vehicle, for the applicant of a rebuilt vehicle to submit a minimum of six (6) photographs showing both the damage and the repairs.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify the titling processes for salvage vehicles; to increase the required photographs of both rebuilt and salvage from three (3) to six (6); and to update forms used for salvage and rebuilt vehicles.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments update the established processes required by KRS 186A.550.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide a mechanism to verify that a salvage vehicle has been rebuilt in compliance with
KRS Chapter 189.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky State Police, the Kentucky Sheriffs Association, the Kentucky County Clerks, and the Division of Motor Vehicle Licensing in the Transportation Cabinet.

(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: Law enforcement will inspect vehicles before title and registration can be issued. The Division of Motor Vehicle Licensing will process, approve, and issue title and registration.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will clarify the processes to be followed in inspecting salvage vehicles to insure that there are safer rebuilt vehicles on state highways.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: No costs are expected.

(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: 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: There is no need for increased fees or funding.

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because no distinction is made between applications to the cabinet.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police, Kentucky Sheriffs Association, the Kentucky County Clerks, and the KYTC Division of Motor Vehicle Licensing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186A.530 and KRS 186A.550.

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 year? No additional costs are expected.

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

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

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

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

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 CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 156.070(2)
STATUTORY AUTHORITY: KRS 156.070(2)
NECESSITY, FUNCTION, AND CONFORMANCE: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education’s agent to manage interscholastic athletics at the middle and high school level in the common schools, including a private school desiring to associate with KHSAA (hereafter) to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control(governing body);

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide, following a grandfathering period for prior participants, for students desiring to participate at the high school level (regardless of level of play) to be enrolled in at least grade seven (7);

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7)[46] Advise the Department of Education of all legal action brought against the KHSAA by October 31;

(8)[7] Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9)[46] Employ a commissioner and evaluate that person’s performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10)[46] Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11)[46] Permit the Board of Control to assess fines on a high school member; and

(12)[113] Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13)[142] Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14)[142] Conduct continual cycles of field audits of the association’s entire high school membership such that each high school is audited over a five (5) year period regarding each school’s compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports including the highlighting of any potential deficiencies in OCR compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested;
As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681(a) and (b); and

(16)(45) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17)(46) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public; and

(18)(47) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, beginning with the 2014-2015 school year, the KHSAA shall implement the following requirements for all participants in middle school athletics and distribute these requirements to all middle schools and publish via the KHSAA Web site:

(1) Require that any coach (head or assistant, paid or unpaid) desiring to coach interscholastic athletics at the middle school level meet the following requirements:

(a) Shall be 21 years of age;

(b) Shall not be a violent offender or convicted of a sex crime as defined by KRS 17.165 that is classified as a felony;

(c) Shall submit to a criminal record check under KRS 160.380; and

(d) Shall have graduated from a public or accredited high school;

(2) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination performed and signed by a physician, physician assistant, advanced practice registered nurse, or chiropractor (if performed within the professional's scope of practice), for each student seeking eligibility to participate in any school athletic activity or sport using the form approved for use at the high school level;

(b) All participants at the middle school level shall adhere to all sports medicine policies in use at the high school level including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs; and

3. Concussion and other head injury policies;

(3) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of regionally distributed middle school administrators from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies; make recommendations for changes in statute, administrative regulation, or policy related to middle school interscholastic athletics; and assist in the development of model guidelines for schools, districts, conferences and associations to be used in implementing a middle school athletic program; and

(e) Report regularly to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the Kentucky Board of Education with recommendations for changes in statute, administrative regulation, or policy;

(f) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published on the KHSAA Web site:

(a) Financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(5) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of Title IX;

(6) Provide a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445, and other requirements for coaches at the middle school level;

(7) Require that no student be able to compete in middle school competition that is repeating a grade for any reason;

(8) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six;

(c) A limitation on practice time prior to the season in any sport or sport activity, such limit not to exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of scrimmages and regular contests in each sport or sport-activity, such limit not to exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the competitive season in each sport or sport-activity, including any invitational activity following the season, such limit not to exceed the allowable number of contests for that sport or sport-activity at the high school level;

(9) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(10) Require that the common schools at the middle school level may only compete in contests against schools that adhere to these provisions; and

(11) Issue an annual report to the Kentucky Board of Education on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy.

Section 4. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control dismay, December 31, audited financial statements with the KHSAA Commissioner’s letter addressing exceptions or notes contained in management correspondence, if any.

Section 5. The materials incorporated by reference in Section 5 shall apply to middle and high school interscholastic ath-
Section 6[6]. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) “KHSAA Bylaws”, 6/2013[6/2012];
(c) “KHSAA Due Process Procedure”, 6/2013[5/2012];
(d) “KHSAA Board of Control and Officials Division Policies”, 6/2013[5/2012];
(g) “KHSAA Form FB103- Football Spring Football Practice”, 4/2011;
(i) “KHSAA Form FB122- Football Contact Practice Log”, 6/2009;
(j) “KHSAA Form GE1- Membership Renewal”, 6/2013[5/2012];
(k) “KHSAA Form GE2- New Membership Application”, 6/2013[6/2012];
(l) “KHSAA Form GE3- Participation List”, 4/2009;
(m) “KHSAA Form GE4- Physician & Parental Permission Form”, 6/2013[5/2012];
(n) “KHSAA Form GE6- Domestic Transfer”, 6/2013[3/2012];
(o) “KHSAA Form GE7- Non Domestic Eligibility”, 6/2013[3/2012];
(p) “KHSAA Form GE14- Contract for Athletic Contests”, 4/2009;
(q) “KHSAA Form GE16- Statutory Waiver of Bylaw 3”, 3/2012;
(r) “KHSAA Form GE18- Survey for Sports Offerings”, 3/2012;
(s) “KHSAA Form GE19-Title IX Procedures Verification”, 5/2011;
(t) “KHSAA Form GE20- Heat Index Record”, 4/2009;
(v) “KHSAA Form GE35- Waiver - 20 Day Notice”, 5/2011;
(w) “KHSAA Form GE36- Add. Info for Appeal”, 5/2011;
(y) “KHSAA Form GE40- Request for a Statutory Waiver of Bylaw 27”, 2/2012;
(cc) “KHSAA Form SO103- Soccer Section/SubSection Financial Report”, 5/2011;
(dd) “KHSAA Form T1- Title IX Accom. Of Interests & Abilities”, 5/2011;
(ee) “KHSAA Form T2- Title IX Accom. Of Interests & Abilities”, 5/2011;
(ff) “KHSAA Form T3- Title IX Accom. Of Interests & Abilities”, 5/2011;
(gg) “KHSAA Form T35- Title IX Actual Expenditures Comparison 1 + Booster Club”, 5/2011;
(hh) “KHSAA Form T36- Title IX Actual Expenditures Comparison 2 + Booster Club”, 5/2011;
(ii) “KHSAA Form T4- Title IX Accom. Of Interests & Abilities”, 5/2011;
(jj) “KHSAA Form T41- Title IX Athletics Audit Checklist”, 5/2011;
(kk) “KHSAA Form T50- Title IX Re-Visit”, 5/2011;
(ll) “KHSAA Form T60- Title IX Corrective Action”, 5/2011;
(mm) “KHSAA Form T61- Title IX Interscholastic Athletics Student Survey”, 5/2011;
(nn) “KHSAA Form T62- Title IX Interscholastic Athletics Survey”, 5/2011;
(oo) “KHSAA Form T70- Title IX Participation Opportunities”, 5/2011;
(pp) “KHSAA Form T71- Title IX Benefits – Summary 1”, 5/2011;
(qq) “KHSAA Form T72- Title IX Benefits – Summary 2”, 5/2011;
(rr) “KHSAA Form T73- Title IX Re-Visit – Publicity Support Group”, 5/2011;
(ss) “KHSAA Form T74- Title IX Re-Visit – Corrective Action Summary Chart”, 5/2011;
(tt) “KHSAA Form WR101- Wrestling Permission Form”, 12/2009;
(uu) “KHSAA Form WR111- Wrestling Skin Condition & Unconscious”, 5/2011; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson
APPROVED BY AGENCY: June 14, 2013
FILED WITH LRC: June 14, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 23, 2013, 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 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 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 July 31, 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, Associate Commissioner and General Counsel, Office of Guiding Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Brown

(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school and middle school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is
VOLUME 40, NUMBER 1 – JULY 1, 2013

granted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts, and publishes changes in bylaws, procedures and rules for affected schools and districts.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: These amendments make changes to the documents incorporated by reference, in the KHSAA Constitution and in KHSAA Bylaws 5, 7, 9, 11, 14, 18, 21, 22, 23, 24, 25, 28, 29, 30, and 31 as adopted by the KHSAA Delegate Assembly. The KHSAA is newly designated as the agent to manage interscholastic athletics at the middle school level.
(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have a meeting, or state and local governments and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly. This amendment also is necessary to designate the KHSAA as the agent to manage interscholastic athletics at the middle school level.
(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage interscholastic athletics in the common schools. The regulation designates the KHSAA as that agent, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, and Due Process to provide rules and procedures for the member schools and districts governing sporting events. The amendment in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input from member schools and districts on changes that need to be made to provide a more sound structure of governance.
(d) How the amendment will assist in the effective administration of the statutes: See (c) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 School Districts
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation. There will be some additional requirements placed on schools and coaches personnel, however the training required to meet these new requirements will be provided at no costs to the schools or the coaching personnel.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Minimal
(b) On a continuing basis: None
(c) How the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as from gate receipts from sporting events.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(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 156.070 and 702 KAR 7:065.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no additional expense to the school districts as a result of this administrative regulation.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? The costs associated to the KHSAA in administering this program for the first year are minimal.
(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administering this program in subsequent first years are minimal.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CENTER
Kentucky Board of Education
Department of Education
(AMENDMENT)

704 KAR 3:303. REQUIRED CORE ACADEMIC STANDARDS.

RELATES TO: KRS 156.070, 156.160, 156.6451, 156.6453, 160.290
STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.6453
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451 and KRS 158.6453 requires the revision of academic content standards. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the Kentucky core academic standards, which contains the general courses of study and academic content standards for use in Kentucky’s common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Core Academic Standards.

Section 2. Incorporation by Reference. (1) The "Kentucky Core Academic Standards", June 2013[2014], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Program Standards[Curriculum Development], Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, 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(5).
TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson, Kentucky Board of Education
APPROVED BY AGENCY: June 13, 2013
FILED WITH LRC: June 14, 2013 at noon

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PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 23, 2013, 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 the 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 July 31, 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: 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 courses of study (standards) for the common schools in Kentucky through the Kentucky Core Academic Standards that are incorporated by reference.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to prescribe courses of study and KRS 158.6453 requires the revision of science standards. This administrative regulation establishes content standards for Kentucky students in grades K-12.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes content standards for grades K-12 through the Kentucky Core Academic Standards, incorporated by reference, and specifically amends the standards to include revised science standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides schools with specific standards to be met through course of study. This administrative regulation does not establish school curriculum. School curriculum is prescribed by local school districts pursuant to KRS 160.290 and KRS 160.345.

(2) If this is an amendment to an existing administrative regulation:

(a) How the amendment will change this existing administrative regulation: This amendment to 704 KAR 3:303 replaces the Kentucky Core Academic Standards for Science adopted by the Kentucky Board of Education in 2006 with the new next generation science standards adopted by the Kentucky Board of Education on June 5, 2013.

(b) The necessity of the amendment to this administrative regulation: Because the Kentucky Board of Education has adopted new science standards as required by KRS 158.6453, the regulation must be amended to include the new standards.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation establishes content standards for students in grades K-12, and the amendment updates the science standards as approved by the Kentucky Board of Education and as required by KRS 158.6453.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides schools with specific standards and the amendment updates those standards for science as required by KRS 158.6453.

(3) List the type and number of individuals, businesses, organizations, state and local government affected by this administrative regulation: Those entities impacted by this amendment will be: 174 public school districts

(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: Districts will assist schools in aligning the educational programs in schools to meet the requirements in the Kentucky Core Academic Standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Department of Education will invest approximately $1.5 million over the next three years to support science leadership networks that will support the implementation of the amended science standards. Each school district, over the next three years, will invest approximately $6,000.00 per school in support of local leadership teams as those teams attend the professional learning to support their districts in the implementation of the standards. It is estimated that districts will incur an additional $10,000 cost for local resources.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): New science standards define what students need to know and be able to do to be college and career ready, which includes being scientifically literate and an effective member of the workforce; define performance expectations for High School Earth and Space Science, Biology, Physics, and Chemistry as essential for ALL students to be Career and College Ready; define a K-12 progression of knowledge, skills, and practices; students will enter high school ready to meet the high school performance expectations and the new standards require application of literacy and mathematics practices.

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

(a) Initially: KDE will invest approximately $1.5 million over the next three years to support science leadership networks to help implement the amended standards. Each school district, over the next three years, will invest approximately $6,000.00 per school in support of local leadership teams as they attend professional learning necessary to support their districts in the implementation of the standards. It is estimated that an additional $10,000 could be necessary for resources at the local level, but subject to available funds.

(b) On a continuing basis: After the initial three year expenditure, KDE will continue to support local school districts through access to resources available through the Continuous Instructional Improvement System (CIITS). The cost of CIITS, to KDE, including all components, is approximately $4 million per year.

(6) What is the source of the funding to be used for the implementation of this administrative regulation: State funds for teacher academies and Professional Development have been reserved for this purpose. Federal Title II funding, in addition to federal Race to the Top III and private foundation grants, are also supporting the leadership networks. Federal Title II funding also supports implementation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: To continue to implement SB 1 (2009) mandates (codified as KRS 158.6453), KDE will ask for additional funds in the next biennial budget request.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the 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? 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 156.070, 156.160, 158.6451, 158.6453, KRS 160.290.
(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 amendment to 704 KAR 3:303.

(b) How 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 amendment to 704 KAR 3:303.

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Education will invest approximately $1.5 million over the next three years to support science leadership networks that will support the implementation of the amended science standards. Each school district, over the next three years, will invest approximately $6,000.00 per school in support of local leadership teams as those teams attend the professional learning to support their districts in the implementation of the standards. It is estimated that districts may need to incur an additional $10,000 cost for local resources, subject to available funds.

(d) How much will it cost to administer this program for subsequent years? At the end of three years, KDE will continue to support their districts through the access districts have to resources through the Continuous Instructional Improvement Technology System (CIITS.) The cost of CIITS to KDE, including all components, is about $4 million per 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:

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:300. General.

RELATES TO: KRS 338.015, 29 C.F.R. 1910.3-1910.7, 1910.9
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.3-1910.7 and 1910.9 establish occupational safety and health standards found to be national consensus standards or established federal standards. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) “Act” means KRS Chapter 338.
(2) “Assistant Secretary of Labor” means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.
(4) “Employee” is defined by KRS 338.015(2).
(5) “Employer” is defined by KRS 338.015(1).
(6) “Established federal standard” is defined by KRS 338.015(10).
(7) “National consensus standard” is defined by KRS 338.015(9).
(8) “Secretary of Labor” means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(9) “Standard” means “occupational safety and health standard” as defined by KRS 338.015(3).
(10) “U.S. Department of Labor” means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:
(1) 29 C.F.R. 1910.3-1910.7 and 1910.9, revised July 1, 2012, and
(2) The reissues to 29 C.F.R. 1910.6 as published in the June 22, 2012 Federal Register, Volume 77, Page 3504, corrected in the July 23, 2012 Federal Register, Volume 77, Numbers 145 and 146, and
(3) The reissues to 29 C.F.R. 1910.6 as published in the December 5, 2011 Federal Register, Volume 76, Number 233 and confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46.

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 13, 2013 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1910.6 published in the June 22, 2012 Federal Register, Volume 77, Number 121, which was corrected by the July 23, 2012 Federal Register, Volume 77, Number 141, and then confirmed by the November 16, 2012 Federal Register, Volume 77, Number 222. The Kentucky OSH Standards Board adopted these amendments on May 7, 2013. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:300 must be amended to include the adopted changes.

With the June 22, 2012 direct final rule OSHA is updating its references to national consensus standards for head protection. Since the final rule updating references to head protection standards was last published in 2009, the American National Standards Institute (ANSI) updated their Z89.1 requirements. Now OSHA’s rule will include the newest 2009 version of the ANSI. This rule also eliminates references in the regulations to ANSI related head protection standards older than 1986, as manufacturers are no longer using these standards to test protective helmets, making them obsolete.

The direct final rule amendments specific to this KAR, changes information related to those standards incorporated by reference.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. This administrative regulation is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
   Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18: 29 C.F.R. Parts 1952; 29 C.F.R. Part 1910

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training (Amendment)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3), 338.061

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) C.F.R. 1910.101-1910.126, revised July 1, 2012; and
[2011;]

(2) The revisions to 29 C.F.R. 1910.119 and 1910.120 as published in the Federal Register, Volume 78, Number 77, published July 1, 2013.

(3) The revisions to 29 C.F.R. 1910.119 and 1910.120 as published in the December 27, 2011 Federal Register, Volume 76, Number 248.

(4) The revisions to Subpart H of 29 C.F.R. 1910 as published in the March 26, 2012 Federal Register, Volume 77, Number 68.

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).

(2) Automotive service station, or service station, shall include that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, or accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 2, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910.101-.126. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1910.119 and .120, as published in the February 8, 2013 Federal Register, Volume 78, Number 27. Section 3 of the regulations changes the language of the federal requirement related to flammable and combustible liquids at automotive service stations. This different requirement has been enforced by the Kentucky OSH Program prior to 1996. The Kentucky OSH Standards Board adopted the new revision on May 07, 2013. As a result of the adoption of this final rule 803 KAR 2:307 must be amended to include the adopted changes.

With the February 8, 2013 final rule, OSHA is correcting and making technical amendments to the regulations that were changed by the Hazard Communication standard final rule published March 26, 2012. Most of the corrections are to references that were inadvertently missed in the original final rule. Other changes correct values in tables and references to terms are updated.

The changes specific to this regulation remove references to the term "material safety data sheet" and replaces it with the new term "safety data sheet," harmonizing the use of terminology throughout the regulations.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Ken-
tucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1910 as published in the February 8, 2013 Federal Register, Volume 78, Number 27. The amendments to the regulation revised terminology that was inadvertently missed during the publication of the March 26, 2012 Federal Register final rule. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are expected from the revisions to Subpart H of the standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the corrections and technical amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18: 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 3 of this regulation currently imposes stricter requirements than those of OSHA; this different requirement has been in effect since 1996. This different requirement clarifies that the regulation applies to automotive service stations not accessible by the public. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3 of this regulation currently imposes stricter requirements than those of OSHA; this different requirement has been in effect since 1996. This different requirement clarifies that the regulation applies to automotive service stations not accessible by the public. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

(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? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with this final rule that only corrects and provides technical amendments to standards that were recently amended with the publication and adoption of the March 26, 2012 Federal Register.

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

Revenues (+/−): Unknown.

Expenditures (+/−): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:308. Personal protective equipment.


STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt occupational safety and health administrative regulations. 29 C.F.R. 1910.132 to 1910.138 and Appendices establish the federal requirements relating to personal protective equipment. This administrative regulation establishes personal protective equipment standards to be enforced by the Department of Workplace Standards in general industry.


(2) “Employee” is defined in KRS 338.015(2).

(3) “Employer” is defined in KRS 338.015(1).

(4) “Established federal standard” is defined in KRS 338.015(10).

(5) “National consensus standard” is defined in KRS 338.015(9).

(6) “Standard” is defined in KRS 338.015(3).

(7) “U.S. Department of Labor” means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:


(2) The amendments to 29 C.F.R. 1910.134 as published in the August 7, 2012 Federal Register, Volume 77, Number 152; and


LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013

FILED WITH LRC: June 10, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made available. Written comments shall be accepted until July 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1910.134 as published in the August 7, 2012 Federal Register, Volume 77, Number 152 as well as the amendments to 29 C.F.R. 1910.135 as published in the June 22, 2012 Federal Register, Volume 77, Number 121, which was corrected by the July 23, 2012 Federal Register, Volume 77, Number 141, and then confirmed by the November 16, 2012 Federal Register, Volume 77, Number 222. As a result of the adoption of these rules, 803 KAR 2:308 must be amended to include the adopted changes.

(b) The final rule: OSHA is correcting and technically amending a number of standards including the respiratory protection standard.

With the June 22, 2012 direct final rule OSHA is updating its references to national consensus standards for head protection. Since the final rule updating references to head protection standards was last published in 2009, the American National Standards Institute (ANSI) updated their Z89.1 requirements. Now, OSHA’s rule will include the newest 2009 version of the ANSI. This rule also eliminates references in the regulations to ANSI related head protection standards older than 1986, as manufacturers are no longer using these standards to test protective helmets, making them obsolete.

The final rule amendments specific to this KAR corrected the respiratory protection standard by removing an outdated and offensive term regarding seizures as well as removing a question regarding an employee’s ability to read. The changes also updated national consensus standard references in the head protection standard.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(2) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to
adopt this amendment. However, to promote consistency and pro-
vide employers and employees with a clear understanding of the
requirements, the Kentucky Occupational Safety and Health Stan-
dards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of
the authorizing statutes: This administrative regulation conforms
to the content of the authorizing statutes of KRS Chapter 338.051
and 338.061.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation will promote worker health and safety throughout
Kentucky and keep the state program as effective as the federal pro-
gram.

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

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the re-
quirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to
July 2012 and adds the amendments to 29 C.F.R.134 as
published in the August 7, 2012 Federal Register, Volume 77,
Number 152 as well as the amendments to 29 C.F.R. 1910.135
published in the June 22, 2012 Federal Register, Volume 77,
Number 121, which was corrected by the July 23, 2012 Federal
Register, Volume 77, Number 141, and then confirmed by the No-


November 16, 2012 Federal Register, Volume 77, Number 222.

These changes correct and a technical amendment to the ap-
pendix in the respiratory protection standard and update refer-
ences to national consensus standard for head protection. This amendment also updates this administrative regulation to meet
KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R.
Parts 1952 and 1953 to be at least as effective as OSHA. Since
OSHA’s amendment did not impose any additional or more strin-
gent requirements on employers than the existing standard, the
Kentucky Occupational Safety and Health Standards Board was
not obligated to adopt this amendment. However, to promote con-


stistency and provide employers and employees with a clear un-

derstanding of the requirements, the Kentucky Occupational Safety
and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the au-
thorizing statutes: This amendment conforms to the content of the
authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administra-
tion of the statutes: This amendment maintains consistency with
the federal requirements, providing all a clear understanding of
the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this administra-
tive regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities cov-
ered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this adminis-
trative regulation, if new, or by the change, if it is an amendment, includ-
ing: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this ad-


ministrative regulation or amendment: This amendment changes
references to consensus standards incorporated by reference within
OSHA’s standards and removes or corrects offensive wording in
a mandatory respirator appendix. No additional compliance duties
are expected from the revisions to Subpart I of the standards.

(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): Because there are no additional compliance duties based
on the revisions, OSHA does not expect any costs associated with
the corrections and technical amendment.

(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all clear understanding of the require-
ments.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continu-
ing basis to implement this amendment to the administrative regu-
lation.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Cur-
rent state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-
don, if new, or by the change if it is an amendment: There is nei-
ther an increase in fees nor an increase in funding necessary to
implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All em-
ployers covered by KRS Chapter 338 are treated equally.
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338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes machinery and machine guarding standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
(2) "Employee" is defined in KRS 338.015(2).
(3) "Employer" of defined in KRS 338.015(1).
(4) "National consensus standard" is defined in KRS 338.015(9).
(5) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:
(1) 29 C.F.R. 1910.211 through 1910.217(b)(xi), revised as of July 1, 2012;
(2) The revisions to 29 C.F.R. 1910.217, as published in the August 7, 2012 Federal Register, Volume 77, Number 152.

General industry shall follow the federal regulations incorporated by reference in Section 5 of this administrative regulation as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative regulation.

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

Section 4. Clutch/Brake Control. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.217(b)(7)(xii).
(2) The clutch/brake control shall incorporate an automatic means to prevent initiation or continued activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision shall not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position.

(a) 29 C.F.R. 1910.211 through 1910.217(b)(xi), revised as of July 1, 2004;
(b) 29 C.F.R. 1910.217(b)(xiii) through 1910.222, revised as of July 2, 2004;
(c) The revisions to 29 C.F.R. 1910.217 and 1910.219, as published in the June 8, 2004, Volume 69, Number 110.

This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 19, 2013 at 10:30 a.m. (EDT) at the Labor Cabinet, Division of Occupational Safety and Health Compliance, 1047 U.S. Highway 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of Subpart O. Section 2 also updates the C.F.R. to July 1, 2012 and establishes the amendments to 29 C.F.R. 1910.217 as published in the August 7, 2012 Federal Register, Volume 77, Number 152. Section 3 of this regulation requires employers to report information to the Kentucky Labor Cabinet. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This administrative regulation clarifies that employers may use a reversing means with the clutch-brake control in the inch position. This provision has been in place since December 13, 1996. On May 07, 2013, the Kentucky OSH Standards Board adopted the amendments to the KAR as published in the federal register. As a result of the adoption of this final rule, 803 KAR 2:314 must be amended to include the adopted changes.
(b) The final rule, 803 KAR 2:314, does not create any additional costs to employers. No impact on the state or local government (including cities, counties, fire departments, or school districts) for the first year. Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.
(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.
(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with revisions that only correct and provide technical amendments to standards.
(e) Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.
technically amending a number of standards including the reporting requirements of the mechanical power presses standard. The final rule amendments specific to this KAR revises the federal OSHA office title and restores the missing reporting requirements. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 also updates the C.F.R. to July 1, 2012 and establishes the amendments to 29 C.F.R. 1910.217 as published in the August 7, 2012 Federal Register, Volume 77, Number 152. These changes revise a reporting reference and restore the reporting requirements that were inadvertently left out during when the December 27, 2011 Federal Register was adopted. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment maintains consistency with the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are expected from the revisions to Subpart O of the standards.

(b) Analyzing with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the revisions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

   Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State whether or not this administrative regulation establishes any additional or more stringent requirements than those required by the federal mandate.

   The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate.

   The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

   Sections 3 and 4 of this regulation impose stricter requirements for reporting and power press clutch brake control. Both of these stricter requirements have been effective since December 13, 1996. The amendment to this regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Sections 3 and 4 of this regulation impose stricter requirements for reporting and power press clutch brake control. Both of these stricter requirements have been effective since December 13, 1996. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

(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? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the final rules that only correct and provide technical amendments to standards.

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

Revenues (+/-): Unknown.
Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
( Amendment)

803 KAR 2:320. Toxic and hazardous substances.

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.015(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.1000 to 1910.1450 establish federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the toxic and hazardous substances standards to be enforced by the Department of Workplace Standards in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three tenths (0.3) mu particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(4) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(5) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4’-Methylene bis (2-chloroaniline) (8) "Closed system" means an operation involving 4, 4’-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4’-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(7) "Decontamination" means the inactivation of 4,4’-Methylene bis (2-chloroaniline) or its safe disposal.

(8) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(9) "Disposal" means the safe removal of 4,4’-Methylene bis (2-chloroaniline) from the work environment.

(10) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4’-Methylene bis (2-chloroaniline) that may result in exposure to or contact with 4,4’-Methylene bis (2-chloroaniline).

(11) "Employee" is defined by KRS 338.015(2).

(12) "Employer" is defined by KRS 338.015(1).

(13) "Established federal standard" is defined by KRS 338.015(10).

(14) "External environment" means any environment external to regulated and nonregulated areas.

(15) "Isolated system" means a fully enclosed structure, other than the vessel of containment of 4,4’-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4’-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4’-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(16) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4’-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee’s body other than hands and arms.

(17) "National consensus standard" is defined by KRS 338.015(9).

(18) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(19) "Open-vessel system" means an operation involving 4,4’-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4’-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(20) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4’-Methylene bis (2-chloroaniline).

(21) "Regulated area" means an area where entry and exit is restricted and controlled.

(22) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4’-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4’-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4’-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4’-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4’-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4’-Methylene bis (2-chloroaniline) within an isolated system such as a “glove box” shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated
with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4’-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4’-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and
2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4’-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply:

1. Access shall be restricted to authorized employees only.
2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.
   a. Exhaust air shall not be discharged to regulated areas, non-regulated areas, or the external environment unless it is decontaminated.
   b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.
3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

Employees engaged in 4,4’-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.
6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, before engaging in other activities.
7. Employees shall be required to shower after the last exit of the day.
8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4’-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;
2. Decontaminated before removing the protective garments and hood; and
3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4’-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.
2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.
3. Surfaces on which 4,4’-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.
4. a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.
   b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.
5. All other forms of 4,4’-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.
6. Employees engaged in animal support activities shall be:
   a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;
   b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;
   c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and
   d. Required to shower after the last exit of the day.
7. Employees, except for those engaged in animal support activities, each day shall be:
   a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;
   b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and
   c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.
8. Air pressure in laboratory areas and animal rooms where 4,4’-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, non-regulated areas, or the external environment unless it is decontaminated.
9. There shall not be a connection between regulated areas and any other areas through the ventilation system.
10. A current inventory of 4,4’-Methylene bis (2-chloroaniline) shall be maintained.
11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to identify and correct containment and operation.

(g) Premixed solutions. If 4,4’-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:
1. Only authorized employees shall be permitted to handle the materials;
2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;
3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.
4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities.
5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and
6. Work areas where solution may be spilled shall be:
   a. Covered daily or after any spill with a clean covering; and
b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification.
1. A daily roster of employees entering regulated areas shall be established and maintained.
2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.
3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.
4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.
1. The potentially affected area shall be evacuated as soon as the emergency is determined.
2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.
3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.
4. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

(c) Hygiene facilities and practices.
1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.
2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.
3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).
4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.
5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.
1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.
   a. Local exhaust ventilation may be used to satisfy this requirement.
   b. Clean make-up air in equal volume shall replace air removed.
2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.
3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.
4. Dry sweeping and dry mopping shall be prohibited.

(e) Signs.
1. Entrance to regulated areas shall be posted with signs bearing the legend:
   CANCER-SUSPECT AGENT
   Authorized Personnel Only
2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with signs bearing the legend:
   Cancer-Suspect Agent Exposed
   In this Area
   Impervious Suit Including Gloves, Boots, and Air-Supplied Hood
3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(f) Container labeling. Containers shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.

(g) Lettering.
1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.
2. Labels on containers required by paragraph (b) of this subsection shall:
   a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and
   b. Not use less than eight (8) point type.
3. Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(h) Training and indoctrination.
1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including:
   a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;
   b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;
   c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;
   d. The purpose for and application of decontamination practices and procedures;
   e. The purpose for and significance of emergency practices and procedures;
   f. The employee's specific role in emergency procedures;
   g. Specific information to aid the employee in recognition and evaluation of conditions and situations that may result in the release of 4,4'-Methylene bis (2-chloroaniline); and
   h. The purpose for and application of specific first-aid procedures and practices.
2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

(i) Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms and referenced in their application.
4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(j) Reports.
1. Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:
   a. A brief description and in-plant location of the areas regulated and the address of each regulated area;
   b. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;
   c. The number of employees in each regulated area, during normal operations including maintenance activities; and
   4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.
2. Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.
   a. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees,
shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

(a) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(b) A description of the area involved, and the extent of known and possible employee and area contamination;

(c) A report of any medical treatment of affected employees and any medical surveillance program implemented; and

(d) An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. (1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are exchanged shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b) Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities;

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b) Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities;

(d) Required to shower after the last exit of the day.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

2. If an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

4. If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time previously specified assure that either:

(a) A copy of the record is provided without cost to the employee or representative;

(b) The necessary mechanical copying facilities (e.g., photocopier) are made available without cost to the employee or representative for copying the record; or

(c) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5.(1) The language relating to gloves in subsection (2) of this section apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix).

2. Gloves shall be worn if it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.
Section 6. Except as modified by Sections 1 through 5 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: (1) 29 C.F.R. 1910.1000 - 1910.1450, revised July 1, 2012; (2) The revisions to 29 C.F.R. 1910.1450 as published in the January 22, 2013 Federal Register, Volume 78, Number 14; (3) The revisions to Subpart Z as published in the February 8, 2013 Federal Register, Volume 78, Number 27; and (4) The revision to 29 C.F.R. 1910.1030 as published in the April 3, 2012 Federal Register, Volume 77, Number 64/4, revised July 1, 2012; (2) The amendments to Subpart Z of 29 C.F.R. 1910 as published in the December 27, 2011 Federal Register, Volume 76, Number 248; and (3) The amendments to Subpart Z of 29 C.F.R. 1910 as published in the March 26, 2012 Federal Register, Volume 77, Number 56.

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 31, 2013 at 10:30 a.m. (EDT) in the Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4’-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.1300. This provision has been in place since October 7, 1992. Section 6 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2012. Section 6 also established the amendments to 29 C.F.R. 1910.1450 as published in the January 22, 2013 Federal Register, Volume 78, Number 14; the amendments to Subpart Z as published in the August 8, 2013 Federal Register, Volume 78, Number 27; and the amendments to 29 C.F.R. 1910.1030, as published in the April 3, 2012 Federal Register, Volume 77, Number 64. The Kentucky OSH Standards Board adopted these amendments on May 07, 2013. As a result of the adoption of these final rules 803 KAR 2:320 must be amended to include the adopted changes.

With the January 22, 2013 rule, OSHA is technically amending a non-mandatory Appendix in the laboratory standard only. This revision updates the contents of the Appendix to include laboratory practices in the latest National Academy of Sciences publication.

With the February 8, 2013 final rule OSHA is correcting and making technical amendments to the regulations that were changed by the Hazard Communication standard final rule published March 26, 2012. Most of the corrections are to references that were inadvertently missed in the original final rule. Other changes correct values in tables and update references to terms. The changes specify when the regulation removes references to the term "material safety data sheet" and replace it with the new term "safety data sheet," harmonizing the use of terminology throughout the regulations. Other changes include correcting values in reference tables that were inadvertently missed during the original publication of the final rule.

With the April 3, 2012 final rule, OSHA is technically amending the朼onded bloodborne pathogens standard. This rule establishes the required injury log requirements for employers to include the adopted changes.

Final, this amendment updates this administrative regulation to meet KRS Chapter 13A provisions.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting in the effective administration of the statutes by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(e) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(f) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(g) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(h) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(i) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(j) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(k) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

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(m) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

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(p) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(q) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(r) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(s) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(t) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(u) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(v) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(w) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(x) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(y) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

(z) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is currently assisting by providing enforcement of the injury log requirements in the latest National Academy of Sciences publication.

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not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statute. This amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statute. This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No additional compliance duties are expected from the revisions to Subpart Z of the standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the corrections and technical amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this administrative regulation due to the consistency with the federal requirements, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.130. This provision has been in place since October 7, 1992. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.130. This provision has been in place since October 7, 1992. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

(a) How much revenue will this administrative regulation gen-
erate 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? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with this final rule that only corrects and provides technical amendments to the Subpart Z standards.

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

Revenues (+/−): Unknown.

Expenditures (+/−): Unknown.

The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:400. Adoption of 29 C.F.R. 1926.1-6[29–1926.4, 1926.6].

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS 338.051, 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 require the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.

Section 1. Definitions. (1) “Assistant secretary” means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.


(3) “Employer” is defined by KRS 338.015(2).

(4) “Employee” is defined by KRS 338.015(1).

(5) “Standard” is defined by KRS 338.015(3).

Section 2. The construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.1-6 [29–1926.4, 1926.6], revised July 1, 2012; and

(2) The revisions to 29 C.F.R. 1926.6, as published in the June 22, 2012 Federal Register, Volume 77, Number 121, corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222; 29 C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.6 published in the June 22, 2012 Federal Register, Volume 77, Number 121, which was corrected by the July 23, 2012 Federal Register, Volume 77, Number 141, and then confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222. These amendments were adopted by the Kentucky OSHA Standards Board on May 07, 2013. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:400 must be amended.

With the June 22, 2012 direct final rule OSHA is updating its references to national consensus standards for head protection. Since the final rule updating references to head protection standards was last published in 2009, the American National Standards Institute (ANSI) updated their Z89.1 requirements. Now OSHA’s rule will include the newest 2009 version of the ANSI. This rule also eliminates references in the regulations to ANSI related head protection standards older than 1986, as manufacturers are no longer using these standards to test protective helmets, making these obsolete.

The direct final rule amendments specific to this KAR, changes information related to those standards incorporated by reference within OSHA’s regulations.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSHA Program is required to adopt 29 C.F.R. Parts 1926 and 1929 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.6. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.6 published in the June 22, 2012 Federal Register, Volume 77, Number 121, which was corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and then confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222. These amendments were adopted by the Kentucky OSHA Standards Board on May 07, 2013. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:400 must be amended.

With the June 22, 2012 direct final rule OSHA is updating its references to national consensus standards for head protection. Since the final rule updating references to head protection standards was last published in 2009, the American National Standards Institute (ANSI) updated their Z89.1 requirements. Now OSHA’s rule will include the newest 2009 version of the ANSI. This rule also eliminates references in the regulations to ANSI related head protection standards older than 1986, as manufacturers are no longer using these standards to test protective helmets, making these obsolete.

The direct final rule amendments specific to this KAR, changes information related to those standards incorporated by reference within OSHA’s regulations.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSHA Program is required to adopt 29 C.F.R. Parts 1926 and 1929 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.6. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.6 published in the June 22, 2012 Federal Register, Volume 77, Number 121, which was corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and then confirmed in the No-
vember 16, 2012 Federal Register, Volume 77, Number 222. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

Provision of 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 changes references to consensus standards incorporated by reference within OSHA’s standards. No additional compliance duties are expected from the revisions to 1926.6.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the technical amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952 and 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 Stat. 1590, 29 C.F.R. Parts 1952 and 1953

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

4. Will this administrative regulation generate any new or increased state and local government expenditures? None.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.
803 KAR 2:403. Occupational health and environmental controls.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.50-1926.66

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.50 to 1926.66 establish the federal requirements relating to occupational health and environmental controls. This administrative regulation establishes the occupational health and environmental control standards to be enforced by the Department of Workplace Standards in the area of construction.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet. (2) "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet. (3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal requirements published in the Office of the Federal Register, National Archives and Records Services,

General Services Administration:
(1) 29 C.F.R. 1926.50 through 1926.66, revised July 1, 2012; and
(2) The revisions to 29 C.F.R. 1926.62 and 1926.65 as published in the February 8, 2013 Federal Register, Volume 78, Number 27(2011);
(3) The amendments to Subpart D of 29 C.F.R. 926 as published in the March 26, 2012 Federal Register, Volume 77, Number 58; and
(3) The amendments to Subpart D of 29 C.F.R. 1926 as published in the December 27, 2011 Federal Register, Volume 76, Number 248.

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.
the federal program.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

4. Provide an analysis of how the entities identified in question 3 will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   a. List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are expected from the revisions to the standards.
   b. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the corrections and technical amendment.
   c. As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.
   d. Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: There will be no cost to implement this specific amendment.
      (b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

6. TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   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? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.
   d. How much will it cost to administer this program for subsequent years? None. These are no expected costs associated with this final rule that only corrects and provides technical amendments to standards that were recently amended with the publication of the March 28, 2012 Federal Register.

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

Revenues (+/-): Unknown.
Expenditures (+/-): Unknown.
Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:404. Personal protective and lifesaving equipment.

RELATES TO: KRS 338.051(3); 338.061, 29 C.F.R. 1926.95–1926.107
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R 1926.95 to 1926.107 establish the federal requirements relating to personal protective and lifesaving equipment. This administrative regulation establishes personal protective and lifesaving equipment standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary of Labor, Kentucky Labor Cabinet or Commissioner of the
Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 of this administrative regulation:

(1) 29 C.F.R. 1926.95 through 29 C.F.R. 1926.107, revised July 1, 2012; and

(2) The amendment to 29 C.F.R. 1926.100 published in the Federal Register, Volume 77, Number 121, corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, on November 16, 2012 Federal Register, Volume 77, Number 222 (2007); and


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.95-107. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.100 published in the June 22, 2012 Federal Register, Volume 77, Number 121, which was corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and then confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222. This amendment was adopted on May 07, 2013 by the OSH Standards Board. As a result of the adoption of the aforementioned direct final rules, 803 KAR 2:404 must be amended.

With the June 22, 2012 direct final rule OSHA is updating its references to national consensus standards for head protection. Since the final rule updating references to head protection standards was last published in 2009, the American National Standards Institute (ANSI) updated their Z89.1 requirements. Now OSHA’s rule will include the newest 2009 version of the ANSI. This rule also eliminates references in the regulations to ANSI related head protection standards older than 1986, as manufacturers are no longer using these standards to test protective helmets, making them obsolete.

The direct final rule amendments, specific to this KAR, change information in the head protection standard for the construction industry.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1910 and 1926 to at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board did not obligate to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.95-107. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.100 published in the June 22, 2012 Federal Register, Volume 77, Number 121, which was corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and then confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1910 and 1926 to at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment changes references to consensus standards incorporated by reference within OSHA’s standards. No additional compliance duties are expected from the revisions to 1926.100.

(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Currently, no funds are required by the state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

(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? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the direct final rules updating references to a national consensus standard.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)


RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1926.250-252

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of
this administrative regulation, the construction industry shall compli-
cy with the following federal regulations published by the Office of
the Federal Register, National Archives and Records Administra-
tion:
(1) 29 C.F.R. 1926.250 through 29 C.F.R. 1926.252, revised July
1, 2012 [2011];
(2) The amendment [amendments] to 29 C.F.R. 1926.251 as
published in the Federal Register, Volume 78, Number 32, May
7, 2013.

This amendment is mandated by 29 C.F.R. Parts 1926, to 29 C.F.R.
1926.251 published in the Federal Register, Volume 78, Number 32. The Kentucky OSH Standards Board
adopted this amendment on May 07, 2013. As a result of the adop-
tion of the aforementioned direct final rules 803 KAR 2:407 must
be amended to include the adopted changes. This amendment also
updates this administrative regulation to meet KRS Chapter 13A con-
siderations.

(b) The necessity of this administrative regulation: The Ken-
tucky OSH Program is mandated by 29 C.F.R. Parts 1952 and
1953 to be at least as effective as OSHA. Since OSHA’s correction
improved employee protection is likely to result from the prom ula-
tion of this amendment due to the consistency with the federal
requirements, providing all a clear understanding of the require-
ments.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There will be no cost to implement this specific
amendment.
(b) On a continuing basis: There will be no costs on a contin-
uing basis to implement this amendment to the administrative
regula-
tion.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Cur-
rent state and federal funding.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: There is nei-
ter an increase in fees nor an increase in funding necessary to
implement these revisions.

(8) State whether or not this administrative regulation estab-
lished at the effective administration of the state
and 338.061.

Contact person: Kristi Redmon
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation, in Section 1, defines terms not found in the federal
standard. Section 2 requires employers to comply with the re-
quirements of 29 C.F.R. 1926.250–252. Section 2 also updates the
C.F.R. to July 2012 and establishes the amendments to 29 C.F.R.
1926.251 published in the Federal Register, Volume 78, Number 32. The Kentucky OSH Standards Board
adopted this amendment on May 07, 2013. As a result of the adop-
tion of the aforementioned direct final rules 803 KAR 2:407 must
be amended to include the adopted changes.

Finally, this amendment updates this administrative regulation to
meet KRS Chapter 13A considerations.
(b) The necessity of this administrative regulation: The Ken-
tucky OSH Program is mandated by 29 C.F.R. Parts 1952 and
1953 to be at least as effective as OSHA. Since OSHA’s correction
did not i-
lishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1926; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be as effective as OSHA. Since OSHA’s correction did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s correction did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

(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? Because no additional compliance duties are required as a result of the correction, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs related to the correction of the regulation.

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

Revenues (+ / -): Unknown.
Expenditures (+ / -): Unknown.
Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

(Amendment)


RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.450-454

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1926

NECESSITY, FUNCTION, AND FUNCTION: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Section 1. Definitions. (1) “Act” means KRS Chapter 338.
(2) “Assistant Secretary of Labor” means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.
(4) “Employee” is defined by KRS 338.015(2).
(5) “Employer” is defined by KRS 338.015(1).
(6) “Established federal standard” is defined by KRS 338.015(10).
(7) “National consensus standard” is defined by KRS 338.015(9).
(8) “Secretary of Labor” means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(9) “Standard” is defined by KRS 338.015(3).
(10) “U.S. Department of Labor” means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives, and Records Administration:

(1) 29 C.F.R. 1926.450-1926.454, revised July 1, 2012[2014]; and
(2) The revisions to Appendix A of 29 C.F.R. 1926 Subpart L, as published in the August 7, 2012 Federal Register, Volume 77, Number 152[revision of 29 C.F.R. 1926.450; paragraph (a), as published in the August 9, 2010 Federal Register, Volume 75, Number 152].

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public; any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.450-454. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to Appendix A of 29 C.F.R. 1926 Subpart L as published in the August 7, 2012 Federal Register. Volume 77, Number 152. The Kentucky OSH Standards Board adopted this amendment on May 07, 2013. As a result of the adoption of the aforementioned final rule, 803 KAR 2:411 must be amended.

With the August 7, 2012 final rule, OSHA is amending an incorrect reference located in a non-mandatory appendix of Subpart L of the construction standards.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.450-454. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to Subpart L of 29 C.F.R. 1926, as published in the August 7, 2012 Federal Register, Volume 77, Number 152. The Kentucky OSH Standards Board adopted this amendment on May 07, 2013. As a result of the adoption of the aforementioned final rule, 803 KAR 2:411 must be amended to include the adopted changes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s correction did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This correction conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This correction maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) Whether or not this administrative regulation establishes any fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the revision.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s revision did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s correction did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consis-
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...tency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1990, 29 C.F.R. Parts 1926 and 1952.

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 in effect.

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

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

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revision, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs related to the correction of the non-mandatory appendix.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.


STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1926.800-1926.804 and Subpart S App. A

establish federal requirements relating to underground construction, caissons, cofferdams, and compressed air. This administrative regulation establishes the underground construction, caissons, cofferdams, and compressed air standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(1).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.800 - 1926.804, and 1926 Subpart S, Appendix A, revised as of July 22, 2012; and

(2) The amendments to 29 C.F.R. 1926.800 as published in the April 23, 2013 Federal Register, Volume 78, Number 78[2010]; and

(3) The amendment to 29 C.F.R. 1926.800 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall be held on July 22, 2013 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.800-804 and Subpart S Appendix A. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.800 published in the April 23, 2013 Federal Register, Volume 78, Number 78. The Kentucky OSH Standards Board adopted this amendment on May 07, 2013. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:418 must be amended to include the adopted changes.

With the April 23, 2013 final rule, OSHA is clarifying the text of the regulation to apply the cranes and derricks standard to underground construction and demolition work. With this specific regulation, OSHA’s final rule is also correcting several inadvertent errors in the text and restoring an employer’s ability to host personnel using a crane for routine access to an underground worksite. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and...
1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the effective date of the April 23, 2013 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program. Kentucky must incorporate the federal requirements by October 23, 2013. The amendments to 803 KAR 2:418 were adopted by the Kentucky OSH Standards Board on May 07, 2013.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c), C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the effective date of the April 23, 2013 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 23, 2013. The amendments to 803 KAR 2:418 were adopted by the Kentucky OSH Standards Board on May 07, 2013.

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the effective date of the April 23, 2013 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 23, 2013. The amendments to 803 KAR 2:418 were adopted by the Kentucky OSH Standards Board on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the effective date of the April 23, 2013 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 23, 2013. The amendments to 803 KAR 2:418 were adopted by the Kentucky OSH Standards Board on May 07, 2013.

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 the regulation does not impose stricter requirements than those required by the federal mandate.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the amendment, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs related to the amendment of the regulation.

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

Revenues (+/-): Unknown.
Expenditures (+/-): Unknown.
Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)


RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.850 - 860
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules, administrative regulations, and standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.600-1926.606, revised July 1, 2012[2010]; and

(2) The amendments to 29 C.F.R. 1926.856 and 1926.858 as amended and published in the April 23, 2013 [August 9, 2010] Federal Register, Volume 78[29], Number 78[152].

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standards. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.850-860. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.856 and 1926.858 as published in the April 23, 2014 Federal Register, Volume 78, Number 78. The Kentucky OSH Standards Board adopted this amendment on May 07, 2013. As a result of the adoption of the final rule 803 KAR 2:419 must be amended to include the adopted changes.

(b) The necessity of the amendment to this administrative regulation:

With the April 23, 2013 final rule, OSHA is clarifying wording in the regulation to ensure that the cranes and derricks in construction standards apply to demolition work. Other minor revisions are also being made to the demolition standards including reinserting a requirement to comply with Subpart N of the standards in addition to Subpart CC.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.856 and 1926.858 published in the April 23, 2013 Federal Register, Volume 78, Number 78. The Kentucky OSH Standards Board adopted this amendment on May 07, 2013. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:419 must be amended to include the adopted changes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation:

The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the effective date of the April 23, 2013 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in rule, Kentucky must incorporate the federal requirements by October 23, 2013. The amendments to 803 KAR 2:419 were adopted by the Kentucky OSH Standards Board on May 07, 2013.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1926.856 and 1926.858 published in the April 23, 2013 Federal Register, Volume 78, Number 78. The Kentucky OSH Standards Board adopted this amendment on May 07, 2013. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:419 must be amended to include the adopted changes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation:

The amendment to 803 KAR 2:419 is necessary to meet the federal requirements.
Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the effective date of the April 23, 2013 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 23, 2013. The amendments to 803 KAR 2:419 were adopted by the Kentucky OSH Standards Board on May 07, 2013.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338. This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment provides clarification regarding the application of the cranes in construction standard to demolition work. It also makes a minor modification by reinstating a requirement to comply with Subpart N as well as Subpart CC of the construction standards. No additional compliance duties are expected from the amendments.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: There will be no cost to implement this specific amendment.
      (b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.
   (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.
   (9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the effective date of the April 23, 2013 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 23, 2013. The amendments to 803 KAR 2:419 were adopted by the Kentucky OSH Standards Board on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the effective date of the April 23, 2013 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 23, 2013. The amendments to 803 KAR 2:419 were adopted by the Kentucky OSH Standards Board on May 07, 2013.

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 the regulation does not impose stricter requirements than those required by the federal mandate.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596, 29 C.F.R. Parts 1952 and 1953.

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

   (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? Because no additional compliance duties are required as a result of the final rule, no costs are associated with the amendment of this regulation.

   (d) How much will it cost to administer this program for subsequent years? There are no expected costs related to the correction of the regulation.

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

Revenues (+/-): Unknown.
Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.
803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: 29 C.F.R. 1926.1101-1926.1152

STATUTORY AUTHORITY: KRS 338.051(3); 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1101 to 1926.1152 establish the federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in the construction industry.

Section 1. Definitions. (1) “Assistant secretary” means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.
(2) “Director” means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.
(3) “U.S. Department of Labor” means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:
(1) 29 C.F.R. 1926.1101 through 1926.1152, revised as of July 1, 2012[2014]; and
(2) The amendments to Subpart Z of 29 C.F.R. 1926 as published in the February 8, 2013 Federal Register, Volume 78[22], Number 27[58].

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 6, 2013
FILED WITH LRC: June 10, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification is received in (5) to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1101-1152. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to Subpart Z of 1926 published in the February 8, 2013 Federal Register, Volume 78, Number 27. The Kentucky OSH Standards Board adopted this amendment on May 07, 2013. As a result of the adoption of the aforementioned final rule 803 KAR 2:425 must be amended to include the adopted changes.

With the February 8, 2013 final rule, OSHA is correcting and making technical amendments to the regulations that were changed by the Hazard Communication standard final rule published March 26, 2012. Most of the corrections are to references that were inadvertently missed in the original final rule. Other changes correct values in tables and references to terms are updated. The changes specific to this regulation remove references to the term “material safety data sheet” and replaces it with the new term “safety data sheet,” harmonizing the use of terminology throughout the regulations.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1101-1152. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to Subpart Z of 1926 as published in the February 8, 2013 Federal Register, Volume 78, Number 27. The Kentucky OSH Standards Board adopted this amendment on May 07, 2013. As a result of the adoption of the aforementioned final rule, 803 KAR 2:425 must be amended to include the adopted changes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s correction did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This correction conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are expressed from the revisions to the standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the corrections and technical amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing state standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA’s amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

(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? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with this final rule that only corrects and provides technical amendments to standards that were recently amended with the publication of the March 26, 2012 Federal Register.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)


RELATES TO: KRS 338.015, 29 C.F.R. 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. Parts 1915, 1917, 1918, and 1919 establish federal requirements relating to maritime employment. This administrative regulation establishes maritime employment standards to be enforced by the Department of Workplace Standards in the maritime industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Labor Cabinet or Department of Workplace Standards.

(2) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the maritime industry
shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. Part 1915, revised July 1, 2012[2011], relating to occupational safety and health standards for shipyard employment;
(2) 29 C.F.R. Part 1917, revised July 1, 2012[2011], relating to maritime terminals;
(3) 29 C.F.R. Part 1918, revised July 1, 2012[2011], relating to safety and health regulations for longshoring;
(4) 29 C.F.R. Part 1919, revised July 1, 2012[2011], relating to gear certification; and

(b) The necessity of this administrative regulation: The Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. Parts 1915, 1917, 1918, and 1919. Section 2 also updates the C.F.R. to July 2012 and establishes the amendments to 29 C.F.R. 1915 published in the February 8, 2013 Federal Register, Volume 78, Number 27. As a result of the adoption of this final 803 KAR 2:500 must be amended to include the adopted changes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) will have to take to comply with this administrative regulation: This amendment maintains consistency with the federal 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 of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(e) Who is the contact person: Kristi Redmon

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in maritime activity covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(c) What is the source of the funding to be used for the imple-
ment and enforcement of this administrative regulation: Current state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 07, 2013.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in maritime industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

(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? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amend-
which the applicant seeks a temporary license. Each applicant for a special temporary license shall complete and submit to the Office of Alcoholic Beverage Control, a Schedule "Temporary License form incorporated by reference in 804 KAR 4:410"

FREDERICK A. HIGDON, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 29, 2013, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by July 19, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Trey Hieneman, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hieneman

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a definition for an "organized civic or community-sponsored event" and provides that a special temporary license may be issued, with written proof, for an organized civic or community-sponsored event.
(b) The necessity of this administrative regulation: This administrative regulation provides for the issuance of a special temporary license to any regularly organized fair, exposition, racing association or other party.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.260 provides for issuance of special temporary license. To this end, the Kentucky Department of Alcoholic Beverage Control ("Department") may issue such licenses to any regularly organized fair, exposition, racing association or nonprofit organization, political campaign function or any for-profit individual, corporation or organization when used in conjunction with an organized civic or community-sponsored event.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines an "organized civic or community-sponsored event" and provides that written or documentary evidence of the civic nature of the event must be submitted with the application.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment will define an "organized civic or community-sponsored event" and provide that written or documentary evidence of the civic nature of the event must be submitted with the application.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to define an "organized civic or community-sponsored event" and provide that written or documentary evidence of the civic nature of the event is required.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 provides for the issuance of a special temporary license to any regularly organized fair, exposition, racing association or other party. KRS 243.260 provides for issuance of a special temporary license. The amendment will define an "organized civic or community-sponsored event" and will provide that applicants must submit written or documentary evidence of the civic nature of the event, including but not limited to, promotional materials or news articles evidencing the local government's knowledge of, and support for, the event for which the applicant seeks a temporary license.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will define an "organized civic or community-sponsored event" and provide that applicants must submit written or documentary evidence of the civic nature of the event along with the application for the temporary license.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will provide a definition for an "organized civic or community-sponsored event." The amendment will also provide that applicants by-for-profit individual, corporate or organizational applicants for a temporary license, in conjunction with an organized civic or community-sponsored event, must submit written or documentary evidence of the civic nature of the event, including but not limited to, promotional materials or news articles evidencing the local government's knowledge of, and support for, the event.
(4) Provide an analysis of how 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 impact will be minimal because the department already issues state licenses and enforces alcohol laws.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A
(5) Provide an estimate of how much it will cost to implement this administrative regulation or amendment:
(a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.
(b) On a continuing basis: None.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implementation and enforcement of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to implement this administrative regulation amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering 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 Alcoholic Beverage Control is the only state or local entity affected by this amendment.
2. Identify each state or federal statute or federal regulation that requires of authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to the issuance of alcoholic beverage licenses.
3. Estimate the effect of this administrative regulation on the
expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:
Revenue (+/-): 
Expenditures (+/-): 
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control (Amendment)

804 KAR 4:390. License renewals.

RELATES TO: KRS 243.090(1)
STATUTORY AUTHORITY: KRS 241.060(1), 243.090(1)[EO 2008-507]
NESCITY, FUNCTION, AND CONFORMITY: KRS 243.090(1) requires the Department of Alcoholic Beverage Control to establish a year-round system for renewal of licenses. This administrative regulation establishes the system for license renewal.

Section 1. All licenses in Ballard, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Larue, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Ohio, Owen, Spencer, Trim, Trumbo, Union, and Webster Counties shall renew in the month of January.


Section 3. All licenses in Anderson, Bourbon, Boyd, Bracken, Carroll, Carter, Franklin, Gallatin, Grant, Greenup, Henry, Lewis, Mason, Nicholas, Oldham, Pendleton, Pike, Robertson, Rowan, Scott, Shelby, Wolfe, and Woodford Counties shall renew in the month of June.

Section 4. All licenses in Jefferson County shall renew in the month of October.

Section 5. All licenses in Boone, Campbell, Fayette, and Kenton Counties shall renew in the month of November.

Section 6. The license of a statewide or out-of-state licensee shall renew in December.

Section 7. All batch renewals shall renew in August.

Section 8. Unless a licensee notifies the department of its intent to renew premises licenses separately as provided in Sections 1 through 6 of this administrative regulation, a licensee that holds a group license that covers multiple premises shall renew its licenses at the same time.

Section 9. If a licensee that holds a group license that covers multiple premises wants to renew the premise licenses separately, the licensee shall notify the board, in writing, of its intent to renew each premises separately. The licenses shall then be renewed using the license expiration date based on the county of each premises, as provided in Sections 1 through 5 of this administrative regulation.

Section 10. A licensee that holds more than one (1) license shall not be required to send a letter requesting that its licenses be renewed separately or in a batch unless the licensee wishes to change its current renewal schedule from batch to separate or from separate to batch (KRS 243.090(1)) requires the Office of Alcoholic Beverage Control to establish a year-round system for renewal of licenses. EO 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet and reorganized the Office of Alcoholic Beverage Control as the Department of Alcohol Beverage Control. This administrative regulation establishes the system for license renewal.

Section 1. A licensee shall renew its license on or before the expiration date of the license as established in the document titled "ABC Table of License Expiration Dates by Zip Code." (1) Except as provided in subsections (2) and (3) of this section, a licensee shall renew in the month listed under the column titled "Month License Expires" based on the zip code of the location for which the license was issued.

Section 2. The license of a statewide or out-of-state licensee shall expire in December.

Section 3. Unless a licensee notifies the department of its intent to renew premises licenses separately as provided in subsection (4) of this section, a licensee that holds a group license that covers multiple premises shall renew its licenses at the same time as follows:

(a) If the licensee’s name begins with a numeral or the letters A through L, the license shall expire in July; and

(b) If the licensee’s name begins with the letters M through Z, the license shall expire in August.

Section 4. If a licensee that holds a group license that covers multiple premises wants to renew the premise licenses separately, the licensee shall notify the board, in writing, of its intent to renew each premises separately. The licenses shall then be renewed using the license expiration date based on the zip code of each premise, as provided in subsection (1) of this administrative regulation.

Section 5. A licensee that holds more than one license shall not be required to send a letter requesting that its licenses be renewed separately or in a batch unless the licensee wishes to change its current renewal schedule from batch to separate or from separate to batch.

Section 2. Incorporation by Reference. (1) "ABC Table of License Expiration Dates by Zip Code," 07/15/04 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

FREDERICK A. HIGDON, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2013, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by July 19, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Trey Hiemenan, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hiemenan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a year-round system for renewal of alcohol licenses in all 120 counties.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to codify agency interpretation of KRS Chapters 241, 242, 243, and 244 to comply with KRS 243.090(1) which requires the board to promulgate reasonable administrative regulations establishing a year-round system for renewal of alcohol licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the board may promulgate reasonable administrative regulations. KRS 243.090(1) requires the board to establish a year-round system for renewal of alcohol licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides assistance to all licensees, local administrators, and the state office in distributing the license renewal workload evenly throughout all 120 counties.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment will provide for renewals of licenses in all 120 counties so that if a dry territory votes to permit alcohol sales, a license renewal date will already exist.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment is necessary to implement the findings of the 2012 Governor’s Task Force on the Study of Kentucky’s Alcoholic Beverage Control Laws and establish a year-round system for renewal of licenses.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the ABC board to promulgate reasonable administrative regulations. KRS 243.090(1) requires the board to establish a year-round system for renewal of alcohol licenses. This administrative regulation amendment establishes a year-round system for renewal of licenses.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will provide a year-round renew system for alcohol licenses for all 120 counties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all state alcoholic licenses issued by the Department of Alcoholic Beverage Control in the Commonwealth of Kentucky.

(4) Provide an analysis of how 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 alcoholic beverage license holders will have a renewal date for their respective licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

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

(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: The existing Trust and Agency account, KRS 243.025, already provides the necessary 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: No increase in fees or assessments will be necessary to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or assessments will be established or increased to implement this administrative regulation amendment.

(9) TIERING: Is tiering applied? The statutory requirements are applicable to all licensees and, accordingly, tiering does not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. The Department of Alcoholic Beverage Control is the only state or local entity affected by this amendment.

2. Identify each state or federal statute or federal regulation that requires of authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to the issuance of alcoholic beverage licenses.

3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenue (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

AMENDMENT

804 KAR 9:010. Quota retail license limits[Retail liquor license limit].

RELATES TO: KRS[241.010(38)] 241.060, 241.065, 241.075, 243.030

STATUTORY AUTHORITY: KRS 241.060(1), (2)[EO 2008-507]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations relative to the applications for, the issuance of, the renewal of, and revocations of licenses. KRS 241.060(2) authorizes the board to limit the number of licenses to be issued in any county of the Commonwealth[EO 2008-507, effective June 18, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol
This administrative regulation establishes the basis of this limitation and establishes the manner in which the population of a county is to be ascertained for purposes of the number of licenses in a county.

Section 1. (1) Except as provided in 804 KAR 9:040 or in subsection (2) of this section, the number of quota retail packages (liquor) licenses issued by the Alcoholic Beverage Control Board in any county of the Commonwealth shall not exceed a number equal to one (1) for every 2,300 persons resident. (2) A county containing a city of the first class shall be subject to the limitations established in KRS 241.065.

Section 2. (1)(a) Except as provided in paragraph (b) of this subsection or in subsection (2)(a)-(5) of this section, the number of quota retail drink licenses issued by the Alcoholic Beverage Control Board in any county of the Commonwealth shall not exceed a number equal to one (1) for every 2,500 persons resident. (b) A county containing a city of the first class shall be subject to the limitations established in KRS 241.065. (2) [The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is for a facility that is: (a) An outlet in a hotel, inn, or motel for accommodation of the traveling public; (b) Designed primarily to serve transient patrons; and (c) Has submitted to the board evidence that the facility will accommodate sufficient patrons to sustain the operation of a retail drink outlet. The evidence shall include documentation that the facility: (1) Contains at least fifteen (15) sleeping units; (2) Contains dining facilities for at least 100 persons; and (3) Receives from its total food and beverage sales at least fifty (50) percent of its gross receipts from the sale of food. An applicant shall submit to the Board satisfactory proof that the facility shall accommodate sufficient patrons to sustain the operation of a retail drink outlet. The facility shall: (1) Contain at least fifteen (15) sleeping units; (2) Contain dining facilities for at least 100 persons; and (3) Receive at least fifty (50) percent of its gross receipts from the sale of food. (3) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is for an outlet in an airport terminal where commercial flights are made in or near cities of the first, second, or third class in wet counties. (4) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is for a facility that: (a) Is a restaurant as defined by KRS 241.010(38); (b) Has a minimum seating capacity of 100 people at tables; (c) Has submitted to the board: (1) Evidence that the facility meets the criteria established in paragraphs (a) and (b) of this subsection, and (2) A certification of seating capacity by the applicable fire marshal’s office or its equivalent; and (d) If applying for a license renewal, has submitted an annual report to the Board indicating annual gross receipts from the sale of food and the sale of alcoholic beverages. (5) The Alcoholic Beverage Control Board may issue quota retail drink licenses in excess of the number provided in subsection (1) of this section if the license is for an outlet located within a premises that has been issued an Entertainment Destination Center License under 804 KAR 4:370. (6) Licenses issued under the exceptions established in subsection (2) or (3), (4), or (5) of this section shall not be transferred to other premises. Section 3. (1) The estimates of population for Kentucky counties prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year. (2)(a) On or before January 1 of each year, the Alcoholic Beverage Control Board shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for those counties in which license quotas may need to be reviewed by the board. (b) Upon receipt of these estimates from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, the Alcoholic Beverage Control Board shall, within thirty (30) days, send a specific notice to the newspaper with the largest circulation in each county where the estimate justifies a change in that county’s quota, and issue a release of this information to the general press. (c) The Department of Alcoholic Beverage Control shall accept applications for new quota licenses for a period of thirty (30) days following the date of publication in the newspaper of each county affected.

Section 4. This administrative regulation shall not prohibit renewal of licenses. The present quota shall be reduced, in conformance with this administrative regulation, as licenses are revoked or surrendered.

FREDERICK A. HIGDON, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2013, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by July 19, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Trey Hieneman, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hieneman
(1) Provide a brief summary of:
(a) What this administrative regulation does: This amended administrative regulation repeals definitions for hotel, airport and restaurant licenses.
(b) The necessity of this administrative regulation: 2013 SB 13 codified these definitions in KRS Chapter 243. Therefore, these definitions are no longer necessary.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This amendment removes redundancies that would exist in statute and regulation.

(2) If this is an amendment to an existing administrative regulation provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment removes definitions for hotel, airport and restaurant drink licenses that have been codified into statute.
(b) The necessity of the amendment to this administrative regulation: 2013 SB 13 codified these definitions into statute, and
therefore these must be repealed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes redundancies that would exist in statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Since the contents of this amendment have been codified into statute, no changes are occurring. Therefore, no individuals, businesses, organizations, or state and local governments are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no impact because the license types being repealed have been codified into statute.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

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

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

(a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement or enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service or requirement of a state of local government? (including cities, counties, fire departments, or school districts)? No.

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The Department of Alcoholic Beverage Control is the only state or local entity affected by this amendment.

3. Identify each state or federal statute or federal regulation that requires of authorizes the action taken by the administrative regulation: KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to alcoholic beverage licenses.

4. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect: There will be no effect on revenue or expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenue (+/-): Expenditures (+/-): Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Building Code Enforcement
(Amendment)


RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform state building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" means the commissioner of the Department of Housing, Buildings, and Construction.

(4) "Department" means the Department of Housing, Building, and Construction.

(5) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) that is qualified by and registered with the property valuation administrator in the county in which the property is located.

(6) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(7) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(8) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one-family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and which shall not be connected to any other unit or building.

(11) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling, or townhouse shall not be constructed unless it is in compliance with the 2012 International Residential Code[2006] for One (1) and Two (2) Family Dwellings, as amended by this administrative regulation and the 2013[2007] Kentucky Residential Code.

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family, or townhouses shall comply with the 2012 International Building Code for One (1) and Two (2) Family Dwellings[2006] and the 2013[2007] Kentucky Building Code.

(3) The 2012 International Residential Code for One (1) and
Two (2) Family Dwellings shall be amended as established in the 2013 Kentucky Residential Code.

(4) Plans for single-family or one (1) family dwellings, two (2) family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

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

(a) “2012 International Residential Code for One (1) and Two (2) Family Dwellings,” International Code Council, Inc., February 2012; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 13, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013, 9:00 a.m., EDT, in the Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2013 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard is 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 July 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-0365, ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Residential Code as required pursuant to KRS 1988.050.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to adopt the Kentucky Residential Code as required pursuant to KRS 1988.050.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation utilizes the International Residential Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendments unique to Kentucky after due consideration of equivalent safety measures as required by KRS 1988.050.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth standards authorized by the statute for the enforcement of the residential code, incorporating all applicable laws into its 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: Updates the Kentucky Residential Code from the 2006 international model code to the 2012 international model code, including new post frame structure requirements; references updated versions of the International Codes and NFPA Standards; includes revised seismic mapping provisions.
(b) The necessity of the amendment to this administrative regulation: To implement code changes approved by the Board of Housing, Buildings and Construction during its May 2013 meeting.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 1988 mandates the Board of Housing, Buildings and Construction to establish a uniform Kentucky Building Code. These amendments were approved by the Board to update and amend the current 2007 Kentucky Residential Code.
(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Residential Code are intended to enhance public safety and to allow the construction industry to utilize an updated version of the model code and its referenced codes and standards as well as provide clarification regarding post frame structures constructed in accordance with the Kentucky Residential Code.
(3) List the type and number of individuals, businesses, or state and local governments affected by this administrative regulation: Construction projects subject to the Kentucky Building Code will be affected by the amendments to this regulation; architects; engineers; contractors; project managers; businesses; and local government.
(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) The actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The identified entities must comply with the new amendments to the residential code.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The affected entities will incur the expense of obtaining newly incorporated and mechanical codes and standards.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include enhanced safety features, flexibility in building design and increased clarity of standards.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.
(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency beyond cost of code books incorporated by reference. Any agency costs resulting from these administrative amendments will be met with existing 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: The amendment will not necessitate an increase in fees or require funding to the Department for implementation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.
(9) TIERING: Is tiering applied? Tiering is not applied as all builders, contractors, local governments and owners will be subject to the amended requirements.
1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.040(7) and KRS 198B.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? The regulatory amendments are not anticipated to generate additional revenues for the agency.

(b) How 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 regulatory amendments are not anticipated to generate additional revenues for the agency.

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

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer these regulatory amendments.

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)


RELATES TO: KRS 216B.015, 216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. (1) The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index for the twelve (12) month period ending December 31, 2012[2014], represents a 2.41[3.82] percent increase.

Section 2. (1) The capital expenditure minimum established in KRS 216B.015(8) shall be $2,816,924[$2,750,634].

(2) The major medical equipment minimum established in KRS 216B.015(17) shall be $2,816,924[$2,750,634].

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: May 29, 2013
tion (3): There will be no cost to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The facilities will have access to the most current information regarding capital expenditure and major medical expenditure minimums when completing their applications for Certificate of Need.

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

(a) Initially: No cost
(b) On a continuing basis: No cost
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 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.

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 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 impact to revenues.

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

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

900 KAR 6:120. Certificate of need angioplasty two (2) year trial program.[pilot projects].

RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's certificate of need program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the provisions for the certificate of need approved angioplasty two (2) year trial program[pilot project for primary angioplasty] in hospitals without on-site open heart surgery.[Pilot program] established in the 2004-2006 State Health Plan for the certificate of need program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)(f).
(2) "Days" means calendar days, unless otherwise specified.
(3) "Trial" means the certificate of need approved angioplasty two (2) year trial program in hospitals without on-site open heart surgery. [Improvement] means change or addition to the premises of a hospital facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

Section 2.[Pilot] Angioplasty Two (2) Year Trial Program. The provisions of this section shall apply during the two (2) year period of the trial[to the pilot project] for primary (i.e. emergency) and elective angioplasty in hospitals without on-site open heart surgery.[Pilot program] established in the 2004-2006 State Health Plan.

1. Hospitals participating in the trial[pilot program] shall, within twenty-four (24) hours of the event or on the first business day following the event, report the following events to the Office of Health Policy by fax at (502) 564-0302 or by emailing the executive director:
(a) A death that occurs within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. The report shall indicate if the death was a cardiac death or a noncardiac death.

1. A death shall be considered a cardiac death if the death was due to any of the following:
   a. Acute myocardial infarction;
   b. Cardiac perforation/pericardial tamponade;
   c. Arrhythmia or conduction abnormality;
   d. Cerebrovascular accident related to, or suspected of being related to, the cardiac catheterization procedure. An event shall be considered to be a cerebrovascular accident if there were acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred:
      (i) During the index catheterization; or
      (ii) During the index hospitalization;
   e. Death due to complication of the procedure including bleeding, vascular repair, transfusion reaction, or bypass surgery; or
   f. Any death in which a cardiac cause could not be excluded.

2. A death shall be considered a noncardiac death if the death was not due to cardiac causes as described in subparagraph 1 of this paragraph.

(b) Emergency coronary artery bypass graft surgery (CABG) within twenty-four (24) hours of the procedure or hospital discharge. An event shall be considered to be an emergency if there is a sudden and often life-threatening mishap that arises in the course of, and as a result of, the performance of a cardiac catheterization or angioplasty procedure. It shall not include patients either transferred directly from the cardiac catheterization procedure room or taken within twenty-four (24) hours to the operating room for surgical correction of emergent or life threatening cardiac disease; or
   (c) Shock within twenty-four (24) hours of the procedure or hospital discharge.

2. Hospitals participating in the trial[pilot program] shall report in writing within seven (7) days to the Office of Health Policy any of the following events:
   (a) Cerebrovascular accident, which are acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred with-
in thirty (30) days after the catheterization but were not clearly related to the procedure; 
(b) Any intracranial bleed within thirty (30) days of the cardiac catheterization procedure; 
(c) Recurrent Q wave or Non-Q wave myocardial infarction (MI) during the initial hospitalization; or 
(d) Vascular complications which occur within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. These shall include:
1. Hematoma of more than four (4) centimeters; 
2. Retropitoneal Bleed; 
3. False Aneurysm; 
4. AV fistula; 
5. Peripheral ischemic/nerve injury; or 
6. Hemolysis and Hemolytic anemia.

(3) Hospitals participating in the trial shall:
(a) Establish a Joint Performance Improvement Committee (Joint PI Committee) with its collaborating tertiary hospital or with practicing interventional cardiologists. The membership of the Joint PI Committee shall, at a minimum, include each of the following disciplines from both the hospital participating in the trial and the collaborating tertiary hospital:
   1. Physicians; 
   2. Nurses; and 
   3. Administrators; 
(b) Review the Joint PI Committee at least quarterly but sooner if twenty-five (25) patients have been treated to review the care provided to patients under the trial. This review process shall focus on patient outcomes and, at a minimum, include:
   1. An assessment of the appropriateness of the selection of each patient entered into the trial; 
   2. All complications, any adverse outcomes, and for transfers, the number of patients requiring transfer and the reason for each transfer to a tertiary facility; 
   3. The technical quality of the catheterization and angioplasty procedures performed; and 
   4. The “door to cath lab time” and “door to treatment time”; 
(c) Develop and implement a plan of correction for any problems identified; 
(d) Develop a process for including the findings of the Joint PI Committee’s review in the trial hospital’s performance improvement program; and 
(e) The Joint PI Committee to make a quarterly recommendation to the Office of Health Policy whether the pilot program should continue; and 

(4) Require all staff, including interventional cardiologists, nurses, and technicians, as well as representatives of the Emergency Department and Critical Care Unit staffs participating in the trial to attend a minimum of one (1) meeting of the Joint PI Committee per year. 

(4) Performance of primary and elective angioplasty at a hospital as measured by quality indicators including mortality, morbidity, and adverse reactions shall be comparable, on a risk adjusted basis, to the performance of existing angioplasty programs in Kentucky and with similar organizations nationally, according to the National Cardiovascular Data Registry. 

(a) If the outcomes are worse at a hospital participating in the trial, that facility shall file and implement a plan of correction with the Office of Health Policy. 
(b) If the facility’s results do not improve after one (1) quarter of implementing a plan of correction, the Office of Health Policy may terminate the facility’s participation in the trial. 

(5) Hospitals participating in the trial shall:
(a) Continue to make available the primary angioplasty/catheterization service twenty-four (24) hours per day and seven (7) days per week; 
(b) Develop policies and procedures that will assure that all interventional cardiologists performing primary angioplasty procedures at the hospital participating in the trial maintain an appropriate level of proficiency as a member of the team performing primary angioplasty at the hospital participating in the trial. The policies and procedures shall detail the process the physician director will utilize to assure the establishment, maintenance, and monitoring of the proficiency of each interventional cardiologist; and 
(c) Maintain a collaborative association and a current, valid collaboration agreement with a tertiary hospital including Joint PI and staff education programs; and 
(d) Perform a minimum of thirty-six (36) primary angioplasty procedures per year. At least thirty (30) of these angioplasty procedures shall be primary angioplasty procedures, excluding patients that have “rescue angioplasty” procedures performed. 

(6) The time frame for measuring compliance with procedural utilization requirements shall begin six (6) months after the date of the facility’s administration’s notification to the Office of Health Policy that all training requirements have been fulfilled. Within twelve (12) months from the start date, the hospital shall have performed eighteen (18) primary angioplasty procedures or shall receive a warning that approval to participate in the pilot program may be withdrawn. 

(7) Within the following six (6) months, a total of eighteen (18) months from the date of the department’s letter of approval, the hospital shall have performed at least another eighteen (18) procedures for a total of thirty-six (36) primary angioplasty procedures, or the program may be discontinued at that site. 

(8) Each site shall continue to perform at least eighteen (18) primary angioplasty procedures per six (6) months and a total of thirty-six (30) primary angioplasty procedures per year, or the program may be discontinued at that site. 

(9) All physicians performing angioplasty procedures (percutaneous coronary intervention (PCI)) at a hospital participating in the trial shall:
(a) Continue to perform no fewer than seventy-five (75) angioplasties (100 cardiac catheterization diagnostic and therapeutic procedures) per year. At least seventy-five (75) procedures shall be angioplasty procedures unless the procedures are being performed at a facility at which more than four hundred angioplasty procedures are being performed per year; and 
(b) Be board certified by the American Board of Internal Medicine in interventional cardiology (Maintain credentials at a hospital at which that operator performs elective angioplasty procedures). 

(10) All staff that are hired after the completion of the initial training at the hospital participating in the trial shall complete a training program that mirrors the initial training program. The hospital participating in the trial and its (relevant) collaborating tertiary hospital shall develop this training program. 

(b) Training of all staff including all interventional cardiologists, nurses, and technicians, shall be performed on the intra-aortic balloon pump annually. 
(c) All staff involved in providing PCI, including the interventional cardiologists, nurses and technicians, shall have a current Advanced Cardiac Life Support (ACLS) certification. 
(d) Inservice programs shall be based upon need identified through staff evaluations and the quality assurance process. 

(11) The Office of Health Policy may discontinue the trial at a hospital participating in the trial by:
(a) Quarterly reports made by the American College of Cardiology - National Cardiovascular Data Registry (ACC-NCDR); 
(b) Records obtained through an audit; or 
(c) Patient medical records [Peer review reports; or ] 
(d) Reports on serious adverse events. 

(12) Upon notification to the hospital by the Office of Health Policy, the hospital shall terminate the trial and cease to perform primary angioplasty procedures. 

(13) In order to assist the Office of Health Policy in evaluating the trial, the performance of hospitals participating in the trial, and the formulation of recommendations for continuing or modifying the trial program, the Office of Health Policy may collaborate with university based researchers to:
(a) Evaluate and compare performance data of hospitals participating in the trial with existing Kentucky angioplasty programs; and 
(b) Conduct an evaluation of the short-and long-term outcomes of patients undergoing primary angioplasty at hospitals participating in the trial with those patients transferred to hospitals with
open heart surgical backup.

[11] [14] The Office of Health Policy shall review reports from the collaborating university-based researchers as well as quarterly reports made by the ACC-NCDOR, records obtained through audit, peer review, and registries kept by hospitals or licensed physicians who provide angioplasty services. The necessary component to this administrative regulation: The amendment to this regulation will conform to the requirements of the certificate of need angioplasty trial program established in the State Health Plan, 900 KAR 5:020. The trial has recently been expanded to include elective angioplasty.

(a) How the amendment will change this existing administrative regulation: The amendment will address the requirements for participation in the certificate of need angioplasty trial program which has recently been expanded to include elective angioplasty.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.040(2)(a)1 requires the cabinet to administer the certificate of need program and to promulgate administrative regulations as necessary for the program.

(d) How the amendment will assist in the effective administration of the program: The amendment: The amendment will assist in the effective administration of the program: The amendment will provide the requirements for participation in the certificate of need approved angioplasty two (2) year trial programs in hospitals without on-site open heart surgery.

(b) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect six (6) hospitals which currently have outstanding certificates of need for the angioplasty trial program as well any additional hospital that receives certificate of need approval for the trial program.

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certificate of need approved angioplasty trial programs shall comply with the performance improvement and reporting requirements of this amendment during the two (2) year trial program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A hospital that successfully completes the trial in accordance with this regulation shall have the trial status removed from its certificate of need.

(b) how much will it cost each of the entities identified in question (3): Applicants proposing to establish a trial angioplasty program will be required to submit an additional $10,000.00 certificate of need application fee as established in 900 KAR 6:020. Certificate of need holders will be required to report specific events to the Office of Health Policy and participate in a performance improvement program during the trial period.

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

(a) Initially: Up to $10,000 per trial.

(b) On a continuing basis: Up to $10,000 per trial.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The certificate of need application fee for angioplasty trial programs includes an additional fee of $10,000 pursuant to 900 KAR 6:020.

(7) Provide an assessment of whether an 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 amendment may impact any government owned hospitals.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for the certificate of need approved angioplasty two (2) year trial program in hospitals without on-site open heart surgery.

(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 address the requirements for participation in the certificate of need angioplasty trial program which has recently been expanded to include elective angioplasty.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.040(2)(a)1 requires the cabinet to administer the certificate of need program and to promulgate administrative regulations as necessary for the program.

(d) How the amendment will assist in the effective administration of the program: The amendment: The amendment will assist in the effective administration of the program: The amendment will provide the requirements for participation in the certificate of need approved angioplasty two (2) year trial programs in hospitals without on-site open heart surgery.

(b) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect six (6) hospitals which currently have outstanding certificates of need for the angioplasty trial program as well any additional hospital that receives certificate of need approval for the trial program.

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certificate of need approved angioplasty trial programs shall comply with the performance improvement and reporting requirements of this amendment during the two (2) year trial program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A hospital that successfully completes the trial in accordance with this regulation shall have the trial status removed from its certificate of need.

(b) how much will it cost each of the entities identified in question (3): Applicants proposing to establish a trial angioplasty program will be required to submit an additional $10,000.00 certificate of need application fee as established in 900 KAR 6:020. Certificate of need holders will be required to report specific events to the Office of Health Policy and participate in a performance improvement program during the trial period. At the conclusion of the trial, a hospital is required to have an outside consultant verify that the quality of the program’s risk-adjusted statistics are acceptable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A hospital that successfully completes the trial in accordance with this regulation shall have the trial status removed from its certificate of need.

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

(a) Initially: Up to $10,000 per trial.

(b) On a continuing basis: Up to $10,000 per trial.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The certificate of need application fee for angioplasty trial programs includes an additional fee of $10,000 pursuant to 900 KAR 6:020.

(7) Provide an assessment of whether an 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 amendment may impact any government owned hospitals.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for the certificate of need approved angioplasty two (2) year trial program in hospitals without on-site open heart surgery.

(b) The necessity of this administrative regulation: KRS 216B.040(2)(a)1 requires the cabinet to administer the certificate of need program and to promulgate administrative regulations as necessary for the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for a certificate of need approved angioplasty two (2) year trial program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the administrative regulation: The amendment of the regulation will assist certificate of need holders and applicants by providing the requirements for participation in the two (2) year angioplasty trial 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 will address the requirements for participation in the certificate of need angioplasty trial program which has recently been expanded to include elective angioplasty.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.040(2)(a)1 requires the cabinet to administer the certificate of need program and to promulgate administrative regulations as necessary for the program.

(d) How the amendment will assist in the effective administration of the program: The amendment: The amendment will assist in the effective administration of the program: The amendment will provide the requirements for participation in the certificate of need approved angioplasty two (2) year trial programs in hospitals without on-site open heart surgery.

(b) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect six (6) hospitals which currently have outstanding certificates of need for the angioplasty trial program as well any additional hospital that receives certificate of need approval for the trial program.

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certificate of need approved angioplasty trial programs shall comply with the performance improvement and reporting requirements of this amendment during the two (2) year trial program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A hospital that successfully completes the trial in accordance with this regulation shall have the trial status removed from its certificate of need.

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

(a) Initially: Up to $10,000 per trial.

(b) On a continuing basis: Up to $10,000 per trial.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The certificate of need application fee for angioplasty trial programs includes an additional fee of $10,000 pursuant to 900 KAR 6:020.

(7) Provide an assessment of whether an 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 amendment may impact any government owned hospitals.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 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.

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? $10,000 revenue for the Office of Health Policy per CON applicant is anticipated during the first full year. The number of hospitals that will apply for CON during the first year is unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $10,000 per CON application filed.

(c) How much will it cost to administer this program for the first year? None of the 6 participating hospitals will complete the trials during the first year. Estimated that it will cost the Cabinet up to $10,000 per trial, with the majority of funds be expended during the second year of the trial.

(d) How much will it cost to administer this program for subsequent years? Up to $10,000 per facility completing the trial. Note: 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)

800 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.040, 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).
(2) “Days” means calendar days, unless otherwise specified.
(3) “Exempt practitioners [physicians]” means physicians, dentists, and other practitioners of the healing arts that meet the exemption established in KRS 216B.020(2)(a) and that operate a Magnetic Resonance Imaging unit.
(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(22)(24) 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;
(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 practitioners [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 practitioners [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.chls.ky.gov/OHPSurvey/

Section 5. Surveys shall be submitted annually as follows:
(1) Kentucky Health Survey Registry 2013-2012 Ambulatory Surgery II;
(2) Kentucky Health Survey Registry 2013-2012 Home Health II;
(3) Kentucky Health Survey Registry 2013-2012 Hospice;
(4) Kentucky Health Survey Registry 2013-2012 Hospital [Annual Survey of Licensed Hospitals];
(5) Kentucky Health Survey Registry 2013-2012 Private Duty Nursing;
(6) Kentucky Health Survey Registry 2013-2012 Long Term Care;
(7) Kentucky Health Survey Registry 2013-2012 Magnetic Resonance Imaging;
(8) Kentucky Health Survey Registry 2013-2012 Megavoltage Radiation (Linear Accelerator);
(9) Kentucky Health Survey Registry 2013-2012 Psychiatric Residential Treatment Facility; and
(10) Kentucky Health Survey Registry 2013-2012 Positron Emission Tomography.

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 Office of Health Policy [administrator of the specific surveys].
(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 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 shall be notified of a Web site and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review the 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 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/dhcpp/dataresgal.htm. 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 practitioner or 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 Practitioners or Physicians that have MRI Equipment. (1) An exempt practitioner or 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 Office of Health Policy:

(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, the addition of another MRI unit, or the discontinuation of any unit, 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:

(c) “Kentucky Health Survey Registry 2013[2012] Hospice”, screen prints dated August 23, 2012;
(f) “Kentucky Health Survey Registry 2013[2012] Long Term Care”, screen prints dated August 23, 2012;
(i) “Kentucky Health Survey Registry 2013[2012] Psychiatric Residential Treatment Facility”, screen prints dated August 23, 2012; and

(2) This material may be inspected, copied, or obtained from 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.

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: May 29, 2013
FILED WITH LRC: June 4, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 22, 2013, at 9:00 a.m. in the Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by July 15, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street S W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins
1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for completion of annual surveys with the Office of Health Policy. It also establishes voluntary registration of practitioner owned Magnetic Resonance Imaging (MRI) units as well as voluntary submission of annual surveys by physicians owning CON-exempt MRI units.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, KRS 216B.010, 216B.062, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, and 216B.990 by establishing the requirements for completion of annual surveys, the voluntary registration of new magnetic resonance imaging units, and voluntary completion of annual surveys by physician exempt MRI units with the Office of Health Policy for the orderly administration of the certificate of need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS
216B.010, 216B.062 and 216B.990 by establishing the requirements for completion of annual surveys and the voluntary requirement of practitioner owned MRI units to register with the Office of Health Policy.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment incorporates by reference the 2013 annual surveys.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the 2013 version of the annual surveys to entities required to submit annual surveys.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing the 2013 version of the annual surveys...
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the 2013 version of the annual surveys.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity required to submit annual surveys and an entity wishing to voluntarily register a Magnetic Resonance Imaging unit. Approximately 899 entities complete a survey each year.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity required to submit an annual report shall complete the annual survey online by March 15, 2014.
(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 charge to complete the survey.
(c) As a result of compliance, what benefits will accrue to the entities identified in Question 3: The entities will now have updated surveys for collection of 2013 data and will have access to the published reports which include the reported utilization of all providers in a specific category.

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 the Office of Health Policy’s existing budget. As stated above, the annual survey process and voluntary registration of MRI units identified in the administrative regulation are already used as part of our normal operations, therefore 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 establishes a twenty (20) dollar fee for a paper copy of the published utilization report. An increase in the fee is not proposed.

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 amendment may impact any government owned health care facilities which are required to submit annual utilization reports.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, and 216B.990.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation includes a twenty (20) dollar fee for anyone wishing to purchase a paper copy of an annual report. As the reports are available electronically at no cost, the fee is necessary to recoup the agency’s printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. We anticipate that approximately forty (40) reports will be purchased for total revenue of $800.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation includes a twenty (20) dollar fee for anyone wishing to purchase a paper copy of an annual report. As the reports are available electronically at no cost, the fee is necessary to recoup the agency’s printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. We anticipate that approximately forty (40) reports will be purchased for total revenue of $800.
(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this regulation.
(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this regulation for subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(New Administrative Regulation)

201 KAR 30:200. Reciprocity requirements for applicants licensed or certified in another state.

RELATES TO: KRS 324A.035(1), (3), 324A.075, 12 U.S.C. 3331-3351


NECESSITY, FUNCTION, AND CONFORMITY: 12 U.S.C. 3331 through 3351 requires the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally related transactions. KRS 324A.075 authorizes the board to issue a license or certification to a person licensed or certified in another state under certain requirements. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state.

Section 1. General. Persons licensed in another state who seek to obtain a certification or license in Kentucky by reciprocity may obtain a Kentucky real property appraiser certification upon terms and conditions outlined in this administrative regulation.

Section 2. (1) An individual who is a certified residential or a certified general real property appraiser out-of-state may apply for a Kentucky certification that is the same as the out-of-state certification held by that individual in the other state provided that the appraiser licensing program of the other state:

(a) Is in compliance with the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of Title XI Real Estate Appraisal Reform Amendments (12 U.S.C. 3331-3351); and

(b) Meets or exceeds the minimum certification criteria established by the Appraiser Qualifications Board (AQB) of The Appraisal Foundation at the time of application.

(2) To obtain a Kentucky certification issued by the board, an out-of-state applicant shall:

(a) Complete the application for out-of-state resident certification on a form approved by the board;

(b) File with the board a letter of good standing, license history other proof of good standing issued to the applicant for reciprocity by the out-of-state appraiser regulatory agency;

(c) Be identified on the National Registry of The Appraisal Subcommittee as an active certified real property appraiser that currently conforms to the AQB criteria;

(d) Not have received disciplinary action that limited or stopped the ability to complete the practice of real property appraising;

(e) Not have lost a license to practice any profession by revocation, suspension, or voluntary surrender;

(f) Certify completion of the experience requirements in 201 KAR 30:050, Section 2 for the type of certification requested on a form approved by the board; and

(g) Successfully complete a Kentucky real property appraiser law and administrative regulation course developed and offered by the board.

Section 3. Exemption from requirements. No provision of this administrative regulation shall be construed to prohibit the professional appraisal practice activities of any out-of-state certified appraiser who is performing the duties and responsibilities while a direct full-time employee of any entity of the United States government.

Section 4. Incorporation by Reference. (1) "Application for Out-of-State Resident Certification", June 2013, Kentucky Real Estate Appraisers Board, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

VOLUME 40, NUMBER 1 – JULY 1, 2013
NEW ADMINISTRATIVE REGULATIONS

FILED WITH LRC: June 13, 2013 at 2 p.m.
APPROVED BY AGENCY: June 11, 2013
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2013 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements for certification for persons seeking certification who are certified in another state.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the requirements for certified and licensed appraisers from another state to obtain certification or licensure in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the requirements for applicants who are certified in another state.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons currently involved in obtaining licensure or certification by the board from other states, but estimates the number to be under 100 per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have to file an appli-
cation and demonstrate compliance with the requirements set forth 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 are no additional costs for complying beyond the standard application fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons seeking licensure from another state that is in good standing with the federal oversight agency, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, can be licensed or certified in Kentucky through the process established in this administrative regulation.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The board’s operations are funded by fees paid by certificate holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3351

2. State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that person’s who are certified by the state meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation, 12 U.S.C. 3351 mandates that the states institute a reciprocity process for licensure or certification.

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

5. Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: 324A.035(1), (3), 324A.075, 12 U.S.C. 3331-3351.

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 subsequent years? 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 the first year? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(New Administrative Regulation)

201 KAR 45:001. Definitions.

RELATES TO: KRS 309.335
STATUTORY AUTHORITY: KRS 309.331, 309.335
NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. This administrative regulation provides the definitions to be used in those administrative regulations.

Section 1. Definitions.
(1) “Apprentice diabetes educator” is defined by KRS 309.325(5).
(2) “Board” is defined by KRS 309.325(1).
(3) “Diabetes education” is defined by KRS 309.325(2).
(4) “Licensed diabetes educator” is defined by KRS 309.325(3).
(5) “Master licensed diabetes educator” is defined by KRS 309.325(4).
(6) “Supervisor” means a licensed diabetes educator as defined by KRS 309.325(3) in good standing, or a master licensed diabetes educator as defined by KRS 309.325(4) in good standing.
(7) “Work experience” means the hours spent performing the services and tasks and drafting documentation and reports necessary for providing diabetes education to a person with diabetes or the caregiver of someone with diabetes.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 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 wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James
(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation provides the definitions for the section.
(b) The necessity of this administrative regulation: This regulation is necessary because it provides the definitions for the section.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to promulgate regulations in KRS 309.331(1).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions for the section.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This is a new regulation.
   (b) The necessity of the amendment to this administrative regulation: This is a new regulation.
   (c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
   (d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment, including:
   (a) List the changes that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: N/A
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): $0.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: $0.
   (b) On a continuing basis: $0.
   (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by the fees paid by licensees and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There will be no need of a fee increase to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331.
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? $0.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? $0.
   (c) How much will it cost to administer this program for the first year? The Board is currently charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses. The Board has and will continue to accrue legal expenses as well.
   (d) How much will it cost to administer this program for subsequent years? It is expected the cost will be a minimum of $1,000. The fee will be reviewed by the Office of Occupations & Professions when the Office is determining its own budget for the next biennium. The legal fees will also continue to accrue as more regulations for licensure implementation are drafted.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(New Administrative Regulation)

201 KAR 45:070. Application procedures for current practitioners.

RELATES TO: KRS 309.335
STATUTORY AUTHORITY: KRS 309.331, 309.335
NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. KRS 309.335 requires the board to promulgate application procedures for currently practicing diabetes educators to apply for licensure. This administrative regulation establishes the application procedures for currently practicing diabetes educators.

Section 1. Persons with experience in the care of people with diabetes under supervision. Prior to July 1, 2014, a person who has a core body of knowledge and skills and experience in the care of people with diabetes under supervision as specified in KRS 309.335(3)(a) and (b) may apply for licensure by submitting the following to the board:
   (1) A completed "Application for Licensure", Form DE-01 (06/2013);
   (2) Payment of the licensure fee as established in 201 KAR 45:100;
   (3) A letter from the applicant’s supervisor verifying the applicant’s current scope of practice is within the scope of practice as defined in 201 KAR 45:160.

Section 2. Persons who have practiced diabetes education for the past three (3) years. Prior to May 1, 2014, a person who has practiced diabetes education for a minimum of 1,000 hours per year for the past three (3) years as specified in KRS 309.335(4) may apply for licensure by submitting the following to the Board:
   (1) A completed "Application for Licensure", Form DE-01 (06/2013);
   (2) Payment of the licensure fee as established in 201 KAR 45:100;
   (3) Letters from one (1) or more supervisors who can attest that the applicant has practiced diabetes education within the last three (3) years.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

3. Describe the change from the existing administrative regulation to the one proposed in the administrative regulation.

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:

   (a) Apprentice diabetes educators: N/A

   (b) Master licensed diabetes educators: N/A

   (c) Board: N/A

5. Provide an estimate of how much it will cost to administer this program for the first year? The Board is charged an annual fee of $1,000 by the Office of Occupations and Professions for the administrative services provided prior to the issuing of licenses.

6. Provide an estimate of how much it will cost to administer this program for subsequent years? The revenue generated will depend on the number of apprentice diabetes educators for subsequent years.

7. Provide an analysis of the fiscal impact of the administrative regulation.

   Revenues (+/-): N/A
   Expenditures (+/-): N/A
   Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(New Administrative Regulation)

201 KAR 45:100 Fees.

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.335 requires the board to promulgate an administrative regulation establishing the initial fee, annual fee, and late renewal fee for licensure as a diabetes educator. This administrative regulation establishes fees for licensure as a diabetes educator.

Section 1. Licensure Fee. The fee for licensure as a licensed diabetes educator, apprentice diabetes educator, or master licensed diabetes educator shall be fifty (50) dollars.
Section 2. Renewal and Reinstatement. The following fees shall be paid for renewals and reinstatements for licenses issued by the board:

(1) The renewal fee on or before November 1 shall be fifty (50) dollars annually.

(2) The renewal fee after December 2 but before January 30 shall be the licensure fee as set forth in Section 1 of this administrative regulation, plus a twenty (20) dollar late fee.

(3) The reinstatement fee after January 30 of an expired license due to failure to renew shall be $120.

KIM DECOzte, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. The purpose of the hearing is to afford all parties an opportunity to provide the board with relevant information and data on the proposed administrative regulation. A transcript of the public hearing will be made available at the hearing or within fifteen (15) days of the hearing. Written comments on the proposed administrative regulation shall be accepted until July 31, 2013. Send written comments to the contact person.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5500, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:
(a) What this administrative regulation does: The regulation establishes the fees for licensure, renewal and reinstatement.
(b) The necessity of this administrative regulation: This regulation is necessary because it states the cost to obtain and maintain the license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board has determined that the proposed regulation is consistent with the authorizing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary because it states the cost to obtain and maintain the license.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) What this amendment will change this existing administrative regulation: This is a new regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if not, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires applicants to pay a fee for initial licensure, renewal and reinstatement of the license.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial licensure fee will be fifty (50) dollars. The renewal fee will be fifty (50) dollars, plus twenty (20) dollars if the renewal is late. The reinstatement fee will be $120.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be issued a license if the applicant meets the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The budget for the Board is unknown, as it has not begun collecting fees.
(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the Board begins to collect fees.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board's operation is funded by the fees paid by licensees and applicants.

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

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees for licensure, renewal and reinstatement.

(8) How the amendment will assist in the effective administration of the statutes: This administrative regulation is necessary because it states the cost to obtain and maintain the license.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Licensees of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of applicants for the year. However, it is estimated that the regulation will generate $15,000 annually.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue generated will depend on the number of applicants for the subsequent years. However, it is estimated the regulation will generate $15,000 a year.

(c) How much will it cost to administer this program for the first year? The Board is currently charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuance of licenses. The Board has and will continue to accrue legal expenses as well.

(d) How much will it cost to administer this program for subsequent years? It is expected the cost will be a minimum of $1,000. The fee will be reviewed by the Office of Occupations & Professions when the Office is determining its own budget for the next biennium. The legal fees will also continue to accrue as more regulations for licensure implementation are drafted.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A
GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Proposed Administrative Regulation)
201 KAR 45:110. Supervision and work experience.

RELATES TO: KRS 309.331
STATUTORY AUTHORITY: KRS 309.331
NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331
requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Accumulation of Work Experience. An apprentice diabetes educator shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of application for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

Section 2. Supervision. (1)(a) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours per month to discuss the apprentice diabetes educator’s work with clients and review the apprentice diabetes educator’s provision of diabetes self-management education.
(b) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours quarterly while being physically present in the same room.
(2) The hours of work experience and verification by the apprentice diabetes educator and supervisor shall be documented on the "Application for Licensure," Form DE-01 (09/2012).
(3) A supervisor shall not serve as a supervisor for more than four (4) apprentice diabetes educators at a time.
(4) The supervision process shall focus on:
(a) Identifying strengths, developmental needs, and provide direct feedback to foster the professional development of the apprentice diabetes educator;
(b) Identifying and providing appropriate resources to facilitate learning and professional growth;
(c) Developing awareness of professional and ethical responsibilities in the practice of diabetes education; and
(d) Ensuring the safe and effective delivery of diabetes education services and fostering the professional competence and development of the apprentice diabetes educator.

Section 3. Documentation requirements. The documentation required by the "Supervised Work Experience Report," Form DE-05 (06/2013) shall be maintained for a period of five (5) years and provided to the board at the request of the board.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Licensure," Form DE-01, 06/2013;
(b) "Supervisor Log," Form DE-05, 06/2013; and
(c) "Apprentice Log," Form DE-XX, 06/2013.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administra-
tive 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 July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Matt James
(1) Provide a brief summary of:
(a) What this administrative regulation does: The regulation establishes the work experience and supervision required for licensure and the qualifications to be a supervisor.
(b) The necessity of this administrative regulation: This regulation is necessary because it explains the amount of work experience needed for licensure and the standards for supervision.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish administrative regulations for the practice of diabetes education.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the definitions of work experience and supervision for apprentice diabetes educators.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new apprentice diabetes educators apply for licensure.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires apprentice diabetes educators to file a completed application setting forth how the individual meets the qualifications for licensure.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to apply for licensure and receive supervision.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The budget for the Board is unknown, as it has not begun collecting fees.
(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the Board begins to collect fees.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board operation is funded by the fees paid by licensees and apprentice diabetes educators.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation is the initial regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. There will be a fee to apply that is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of apprentice diabetes educators for the year.

   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of apprentice diabetes educators for the subsequent years.

   (c) How much will it cost to administer this program for the first year? The Board is charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

   (d) How much will it cost to administer this program for subsequent years? The Board will be charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

   Revenues (+/−): N/A

   Expenditures (+/−): N/A

   Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(New Administrative Regulation)

201 KAR 45:120 Renewal, Reinstatement, and Inactive Status.

RELATES TO: KRS 309.331, 309.335
STATUTORY AUTHORITY: KRS 309.331, 309.335
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations establishing procedures for annual renewal and reinstatement of licenses. This administrative regulation establishes procedures for annual renewal and reinstatement of licenses.

Section 1. Regular License Renewal. (1) A licensed diabetes educator or master licensed diabetes educator shall submit the following to the board by November 1 of each year:

   (a) A completed "Renewal Application," Form DE-02 (06/2013);

   (b) Proof of the required continuing education as set forth in 201 KAR 45:130; and

   (c) The renewal fee as set forth in 201 KAR 45:110.

(2) If a license is not renewed by January 30 of the new license year, it shall automatically expire.

Section 2. Reinstatement. (1) An expired license shall be reinstated upon the licensees:

   (a) Paying the required fees set forth in 201 KAR 45:110; and

   (b) Submitting proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as set forth in 201 KAR 45:130 for each year since the last date the license was active.

(2) An expired license may be reinstated within five (5) years of the date of expiration.

Section 3. Inactive Status. (1) A licensee may place his license in inactive status by submitting written notice to the board prior to November 1.

(2) An individual with an inactive license shall not be permitted to practice diabetes education while the license is inactive. A licensee may remain in inactive status for a maximum of five (5) years.

(3) During the period of inactive status, the licensee shall not be required to meet the annual continuing education requirements as established in 201 KAR 45:130. Upon the licensee’s request for licensure reactivation, the licensee shall provide proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as set forth in 201 KAR 45:130 for each year the license was inactive.

(4) An individual shall submit in writing a request to the board to be placed back in active status. The request shall be submitted at least one (1) week in advance of the board’s regularly scheduled board meeting.

Section 4. Regular Permit Renewal. (1) An apprentice diabetes educator shall submit the following to the board by November 1 of each year:

   (a) A completed "Renewal Application," Form DE-02 (06/2013);

   (b) Proof of the required continuing education as set forth in 201 KAR 45:130; and

   (c) The renewal fee as set forth in 201 KAR 45:110.

(2) If a permit is not renewed by January 30 of the new license year, it shall automatically expire, and the apprentice diabetes educator must reapply for a permit as provided in KRS 309.XXX.

No work experience accumulated shall carry over between permits.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

   (a) What this administrative regulation does: The regulation establishes the process to renew and reinstate a license and place a license into inactive status.

   (b) The necessity of this administrative regulation: This regula-
tion is necessary because it explains how a licensee can renew his license before it expires, reinstate the license once it has expired and place it into an inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish administrative regulations for the licensing of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process to renew and reinstate a license and place a license into inactive status.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires licensees to fill out an application for renewal and reinstatement, along with paying a fee. The licensee applying for inactive status will provide written notice to the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensee will be able to continue to practice diabetes education. The inactive license holder will not have to meet the regular requirements for licensure.

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

(a) Initially: The budget for the Board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the Board begins to collect fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by the fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in 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 did not establish the fees but there will be a fee applied that is set in a separate regulation for renewal and reinstatement.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of applicants for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of applicants for the subsequent years.

(c) How much will it cost to administer this program for the first year? The Board is charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The Board will be charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(New Administrative Regulation)

201 KAR 45:130. Continuing education.

RELATES TO: KRS 309.337
STATUTORY AUTHORITY: KRS 309.331
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.337 requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for licensed diabetes educators.

Section 1. Accrual of Continuing Education Hours. (1)(a) The annual continuing education accrual period shall be from November 1 of each year to October 31 of the next year.

(b) Prior to renewal of a license for the next licensure period, a licensee shall have earned fifteen (15) hours of approved continuing education.

(2) No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period.

(3) It shall be the responsibility of each licensee to finance the costs of continuing education.

Section 2. Methods of Acquiring Continuing Education Hours. (1) Continuing education hours for license renewal shall be applicable to diabetes and presented at a professional level that enhances the quality and effectiveness of diabetes self-management education.

(2) Licensees shall obtain their continuing education courses from any of the following continuing education providers or programs approved by the providers:

(a) American Association of Diabetes Educators (AADE);
(b) American Diabetes Association (ADA);
(c) Academy of Nutrition and Dietetics (AND);
(d) Accreditation Council for Pharmacy Education (ACPE);
(e) Accreditation Council for Continuing Medical Education (ACCM/AAMA);
(f) American Nurses Credentialing Center (ANCC);
(g) American Academy of Family Physicians (AAFP);
(h) American Academy of Nurse Practitioners (AANP);
(i) American Academy of Optometry (AAO);
(j) American Academy of Physician Assistants (AAPA);
(k) American Association of Clinical Endocrinologists (AACE);
(l) American College of Endocrinology (ACE);
(m) American College of Sports Medicine (ACSM);
(n) American Medical Association (AMA) or its Kentucky affiliate;
(o) American Nurses Association (ANA);
(p) American Occupational Therapy Association (AOTA);
(q) American Physical Therapy Association (APTA);
(r) American Psychological Association (APA);
(s) Commission on Dietetic Registration (CDR);
(t) Council on Continuing Medical Education (CCME-AOA);
(u) Council on Podiatric Medical Education (CPME-APMA);
(v) International Diabetes Federation (IDF);
(w) National Association of Clinical Nurse Specialists (NACNS);
(x) National Association of Social Workers (NASW);
(y) Kentucky Board of Nursing (KBN);
(z) Kentucky Board of Pharmacy;
(aa) Kentucky Board of Medical Licensure; and
(bb) Kentucky Nurses Association (KNA).

Section 3. Recordkeeping of Continuing Education Hours. (1) A licensee shall maintain a record of all continuing education courses attended for two (2) years after attending the course.
(2) Appropriate documentation to be kept shall include:
(a) Proof of attendance;
(b) Date of activity;
(c) Description of activity;
(d) Total hours of instruction, excluding breaks; and
(e) Names and professional qualifications of the presenters.
(3)(a) Each licensee shall sign a statement on the Renewal Application form incorporated by reference in 201 KAR 45:120, indicating compliance with the continuing education requirements.
(b) A license shall not be renewed without the licensee signing this sworn statement.

Section 4. Reconsideration. (1) A licensee may request the board reconsider its denial of a continuing education course by filing a written request with the board and any additional documentation on the course in support of approval.
(2)(a) A licensee shall file the request for reconsideration within thirty (30) calendar days of notification of the denial.
(b) The request will be reviewed by the board at its next regularly scheduled meeting.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:
(a) What this administrative regulation does: The regulation establishes the continuing education required to maintain licensure.
(b) The necessity of this administrative regulation: Since licensees are required to obtain continuing education, they must know what will be accepted for continuing education credit.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations setting the requirements for continuing education.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the activities that are acceptable for continuing education and the licensee’s duty to maintain records regarding the courses attended.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new regulation.
(b) The necessity of this amendment to this administrative regulation: This is a new regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.
(3) List the number and type of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board had not licensed any individuals yet, but it is estimated for the future until the Board begins to collect fees.
(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) The actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires applicants to obtain continuing education to maintain their license.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The cost of continuing education will vary based on the provider.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to maintain licensure and stay aware of the developments in the profession of diabetes education.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The budget for the Board is unknown, as it has not begun collecting fees.
(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the Board begins to collect fees.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by the fees paid by licensees and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in 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 did not establish the fees.
(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government

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(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.337

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? This administrative regulation will not generate revenue.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.
   (c) How much will it cost to administer this program for the first year? The Board is charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.
   (d) How much will it cost to administer this program for subsequent years? The Board will be charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

   Revenues (+/-): N/A
   Expenditures (+/-): N/A
   Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(New Administrative Regulation)

201 KAR 45:140. Code of ethics.

RELATES TO: KRS 309.331, 309.339
STATUTORY AUTHORITY: KRS 309.331
NECESSITY, FUNCTION AND CONFORMITY KRS 309.331(1) requires the board to promulgate a code of ethics for licensed diabetes educators. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Patients. (1) A diabetes educator shall:
   (a) Provide services with respect for the uniqueness, dignity, and autonomy of each individual; and
   (b) Advance and protect the welfare of the patient.
   (2) A diabetes educator shall not recommend the use of a specific product or service based solely on the educator’s relationship with the manufacturer of the product or provider of the service.

Section 2. Confidentiality A diabetes educator shall respect and guard the confidences of each patient, maintaining all records according to state and federal law. (1) A diabetes educator shall not disclose a patient confidence except:
   (a) As mandated or permitted by law;
   (b) If the diabetes educator is a defendant in a civil, criminal, or disciplinary action arising from services provided, confidences may be disclosed only in the course of that action; or
   (c) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver.
   (2) A diabetes educator may use patient or clinical materials in teaching, writing, and public presentations if:
      (a) A written waiver has been obtained in accordance with subsection (1)(c) of this section; or
      (b) Appropriate steps have been taken to protect patient identity and confidentiality.

Section 3. Professional Competence and Integrity. A diabetes educator shall maintain standards of professional competence and integrity and hold himself or herself out in a manner that demonstrates honesty, integrity, and fairness and shall be subject to disciplinary action for:
   (1) Having been subject to disciplinary action by another regulatory agency;
   (2) Impairment due to mental incapacity or the abuse of substances which negatively impacts the practice of diabetes education;
   (3) Conviction, as used in KRS 309.339, of a felony or a misdemeanor;
   (4) Refusing to comply with an order or request from the board;
   (5) Failure to cooperate with the board by not:
      (a) Furnishing in writing a complete explanation to a complaint filed with the board; or
      (b) Appearing before the board at the time and place designated; or
   (6) Failure to provide the board with new contact information within thirty (30) business days the changes is effective.

Section 4. Supervisor’s Responsibility. A supervisor shall not permit apprentice diabetes educators under the supervisor’s supervision to hold themselves out as competent to perform professional services beyond their level of training, experience, and competence.

Section 5. Apprentice Diabetes Educator’s Responsibility. An apprentice diabetes educator shall not represent that he or she is competent to perform professional services beyond his or her level of training, experience, and competence.

Section 6. Financial Arrangements. (1) A diabetes educator shall make financial arrangements with a patient or third party payor that are reasonably understandable and conform to accepted professional practices.
   (2) A diabetes educator shall:
      (a) Not offer or accept payment for referrals;
      (b) Not charge excessive fees for services;
      (c) Disclose his or her fees to patients at the beginning of services; and
      (d) Represent facts truthfully to patients and third party payors regarding services rendered.

Section 7. Advertising. A diabetes educator shall:
   (1) Accurately represent his or her education, training, and experience relevant to the practice of diabetes education;
   (2) Not make false, fraudulent, misleading, or deceptive claims or any statement intended to or likely to create an unjustified expectation.

KIM DECOUSTE, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.
This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2013. Send written noti-
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.339

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? There is no cost to administer this regulation.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(New Administrative Regulation)

201 KAR 45:150. Complaint Procedures.

RELATES TO: KRS 309.335
STATUTORY AUTHORITY: KRS 309.331, 309.335
NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. This administrative regulation provides for the complaint procedures to be used by the board in the enforcement of those statutes and administrative regulations promulgated thereunder.

Section 1. Complaints. A complaint:

(1) Shall be submitted by completing a "Complaint Form", Form DE-06 (06/2013) and signed by the person offering the complaint.

(2) May be filed by the board based upon information in its possession.

Section 2. Receipt of Complaints. Upon receipt of a complaint:

(1) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual’s response to the complaint.

(2) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response to the board.

(3) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

(4) The complainant shall have seven (7) days from receipt to submit a written reply to the response to the board.

Section 3. Initial Review. (1)(a) After the receipt of the complaint and the expiration of the period for the individual response, the board shall consider the individual's response, complainant’s reply to the response, and any relevant material available.

(b) The names of the individuals and other identifying informa-
tion shall be redacted to provide anonymity.

(c) The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:
   (a) Dismiss the complaint; and
   (b) Notify the complainant and respondent of the board’s decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall conduct a formal investigation into the matter.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the board shall determine whether there has been a prima facie violation of KRS 309.325 to 309.339 or the administrative regulations promulgated thereunder. If so, a formal complaint shall be filed.

(2) If the board determines that a complaint does not warrant the issuance of a formal complaint, it shall:
   (a) Dismiss the complaint; and
   (b) Notify the complainant and respondent of the board’s decision.

(3) If the board determines that a violation has occurred but is not serious, the board shall issue a written admonishment to the license holder.

   (a) A copy of the written admonishment shall be placed in the permanent file of the license holder.
   (b) The license holder shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in the license holder’s permanent file.
   (c) Alternatively, the certificate holder may file a request for a hearing with the board within thirty (30) days of the admonishment.

   (d) Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

   (4)(a) If the board determines that a complaint warrants the issuance of a formal complaint against the license holder, the board or its counsel shall prepare a formal complaint that states clearly the charge or charges to be considered at the hearing.
   (b) The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B.

2. The formal complaint shall be processed in accordance with KRS Chapter 13B.

Section 5. Settlement by Informal Proceedings. (1) The board, through counsel, may at any time during this process enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the chair and the individual who is the subject of the complaint.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Incorporation by Reference. (1) "Complaint Form", Form DE-06, 06/2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECASTE, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James,

(1) Provide a brief summary of:

(a) What this type and number of rule does: The regulation establishes disciplinary complaint procedures for the Board.

(b) The necessity of this administrative regulation: This regulation is necessary because it provides the procedures for the Board to follow in receiving and resolving complaints.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations in KRS 309.331(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides complaint procedures for the Board to follow.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licenses.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: They will have to comply with any requests for investigation or hearings made by the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It may cost them the fees or directly or indirectly increases any fees: No.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the benefit of an opportunity to file formal complaints and have an opportunity to be heard regarding any complaints that may be filed against them.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by the fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied.
VOLUME 40, NUMBER 1 – JULY 1, 2013

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, countries fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331.

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? $0
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? $0
(c) How much will it cost to administer this program for the first year? The Board is currently charged an annual fee of $1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses. The Board has and will continue to accrue legal expenses as well.
(d) How much will it cost to administer this program for subsequent years? It is expected the cost will be a minimum of $1,000. The fee will be reviewed by the Office of Occupations & Professions when the Office is determining its own budget for the next biennium. The legal fees will also continue to accrue as more regulations for licensure implementation are drafted.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(NEw Administrative Regulation)

201 KAR 45:160 Scope of practice.

RELATES TO: KRS 309.331
STATUTORY AUTHORITY: KRS 309.331
NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. This administrative regulation establishes the functions that a diabetes educator may perform.

Section 1. A person holding a license or a permit from the Board may perform the following functions:
(1) Provide education and support for people with diabetes, people at risk for diabetes, and caregivers of those with diabetes;
(2) Communicate and coordinate with other health care professionals to provide education and support for people with diabetes, people at risk for diabetes, and caregivers of those with diabetes;
(3) Provide diabetes self-management services, including activities that assist a person in implementing and sustaining the behaviors needed to manage diabetes on an ongoing basis;
(4) Determine the persons to whom diabetes education and services will be provided, how those education and services may be best delivered, and what resources will assist those persons;
(5) Develop a program for diabetes management, which may include:
(a) Describing the diabetes treatment process and treatment options;
(b) Incorporating nutritional management into lifestyle;
(c) Incorporating physical activity into lifestyle;
(d) Using medications safely and for maximum therapeutic effectiveness;
(e) Monitoring blood glucose and other parameters and interpreting and using the results for self-management and decision making;
(f) Preventing, detecting, and treating acute and chronic complications of diabetes;
(g) Developing personal strategies to address psychosocial issues and concerns;
(h) Developing personal strategies to promote health and behavior change;
(i) Develop an individualized education and support plan focused on behavior change, which will be documented in an education/health record;
(j) Develop a personalized follow-up plan for ongoing self-management support, and communicate that follow-up plan to other health care providers as necessary;
(k) Monitor whether participants are achieving their personal diabetes self-management goals and other outcomes using appropriate frameworks and measurement techniques, such as:
(1) Physical activity;
(b) Healthy eating;
(c) Taking medication;
(d) Monitoring blood glucose;
(e) Diabetes self-care related problem solving;
(f) Reducing risks of acute and chronic complications of diabetes;
(g) Evaluation of the psychosocial aspects of living with diabetes;
(h) Evaluate the effectiveness of the education and services, and engage in a systematic review of process and outcome data.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2013 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:
(a) What this administrative regulation does: The regulation defines the scope of practice of a licensed diabetes educator.
(b) The necessity of this administrative regulation: This regulation is necessary because it describes which functions a licensed diabetes educator may perform.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to regulate the practice of diabetes education.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the actions that a licensed diabetes educator may perform.
(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires applicants to maintain confidentiality, report discipline from other licensing agencies, truthfully advertise services and make financial arrangements that are reasonable.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? N/A
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All licensees will know the scope of practice that they may engage in as a licensed diabetes educator.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: N/A
(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by the fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The administrative regulation is not expected to generate any revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The administrative regulation is not expected to generate any revenue.
(c) How much will it cost to administer this program for the first year? There is no cost to administer this regulation.
(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

KENTUCKY COMMUNITY & TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission
(New Administrative Regulation)

739 KAR 2:080. Candidate Physical Ability Test.

RELATES TO: KRS 75.010, 95A.040
STATUTORY AUTHORITY: KRS 95A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040 requires the commission to establish and implement a candidate physical ability test to be used for professional firefighter positions. This administrative regulation establishes the candidate physical ability test to be used for candidates seeking professional firefighter positions.

Section 1. Definitions. (1) "CPAT" means the most current version of the Candidate Physical Ability Test Program copyrighted by the IAFF.
(2) "CPAT Administration" means the IAFF's secure web-based tool for all IAFF licensees to collect and provide aggregate and redacted data in support of all aspects of administering the CPAT program.

(3) "IAFC" means the International Association of Fire Chiefs.

(4) "IAFF" means the International Association of Fire Fighters.

Section 2. Licensure Requirements. (1) All candidates applying for full-time employment as a firefighter with a Kentucky fire department on or after January 1, 2013 shall have successfully completed the CPAT, with the exception of:
(a) Fire department chiefs and their executive staffs;
(b) Any part-time firefighter employed and paid by a fire department prior to January 1, 2013, who is promoted to a full-time position within the same fire department; all candidates for professional firefighter positions. This administrative regulation establishes the candidate physical ability test to be used for candidates seeking professional firefighter positions.

(2) Any Kentucky fire department may require all new candidates for full-time firefighter positions to successfully complete the CPAT, including the categories of candidates listed in subsection (1)(a)-(c) of this section.

(3) All fire departments established pursuant to KRS 75.010 shall be fully licensed with the IAFF to implement the CPAT.
(a) All licensees shall agree to collect and provide to the IAFF and the IAFC data regarding number of male, female, and minority applicants that have taken the CPAT and the pass and fail rates of each. The CPAT Administration shall be used by the licensee as the sole means for collecting and providing data as well as for the administration of the CPAT.
(b) All licensees shall use the CPAT in whole and only for the purpose of candidate testing in accordance with the most current copyrighted version of the "CPAT Manual, 2nd Edition". This includes, but is not necessarily limited to, recruiting, mentoring, preparatory programs, orientation programs, and proper program administration including using specified equipment, test parameters, qualified proctors, and test personnel.

(4) A third party testing organization may obtain a limited CPAT license for the purpose of testing the physical capability of firefighter candidates. The limited license shall be granted only upon the express condition that the licensee may only administer the CPAT for a fire department that already possesses a complete and valid license from the IAFF. As a condition of receiving a limited license, an applicant shall agree that it will only administer the CPAT in accordance with the IAFF’s licensing requirements, which include full compliance with the EEOC conciliation agreement and utiliza-
tion of the CPAT Administration.

(a) Limited licensees shall not administer the CPAT to any person without first obtaining a written agreement with the fire department to which the person is applying. The agreement will contain the following provisions:

1. The fire department will certify that it has a valid CPAT license and that it agrees to recognize and accept proof of completion of the CPAT from the limited licensee;

2. The fire department will certify that it will utilize the CPAT only in the context of an overall implementation of the CPAT program that complies with its CPAT license;

3. The limited licensee shall have the capability and agree to assist the fire department in meeting the terms of compliance, including the pre-test orientation and mentoring requirements;

4. The limited licensee shall have the capability and staff to validate the CPAT for jurisdictions through a transportability study, assist the fire department in obtaining CPAT licensure, provide consistent CPAT testing administration, and legally defend their valid and CPAT.

5. The limited licensee shall have the capability and agree to provide candidates continuously available practice tests and orientations. It shall further provide the CPAT licensed fire department with assistance in establishing candidate mentoring programs. The limited licensee shall have purchased all CPAT equipment and verify that the equipment and props conform to all specifications in the CPAT Manual and that it has the ability to administer the CPAT in conformity with the specifications of CPAT;

6. If fees are charged by the limited licensee, a pricing model shall be established that allows flexibility to have applicants or fire departments cover the cost. The limited licensee shall have a mechanism in place to assure that any individual who demonstrates a financial hardship will be provided the CPAT at reduced or no charge; and

7. If the limited licensee is providing CPAT certifications for a candidate’s use in applying for employment in multiple fire departments, it shall notify the IAFF of the CPAT licensed fire departments for which the certification is provided. Further, the testing organization shall provide an electronic system. CPAT licensed fire departments that accept the certifications can verify applicant’s results and the date when the results are no longer valid.

(b) Limited licensees shall agree to fully cooperate with the IAFF in its conduct of on-site reviews and audits of the facilities holding a limited license. The on-site review and audit will include, but are not necessarily limited to, the following:

1. Verification of written agreements with fire departments;

2. Verification of test administration procedures;

3. Verification of proctors;

4. Facility inspection in accordance with the CPAT requirements on size, environmental conditions, floor composition, etc.;

5. Equipment inspection to ensure that all equipment and props meet the CPAT specifications;

6. Verification that course layout is in accordance with the CPAT specifications; and

7. Verification that the CPAT Administration is being properly used and data reported.

(c) Limited license holders shall be charged an annual licensing fee of $5,000 to be paid to the IAFF. Limited licenses shall be non-transferable, nonexclusive, and revocable at will for any reason.

(d) Limited license holders shall confirm their license with the Kentucky Fire Commission prior to administering the CPAT.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Fire Commission, 118 James Ct., Suite 50, Lexington, KY 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

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

RONNIE DAY, Executive Director

APPROVED BY AGENCY: June 13, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2013 at 10:30 a.m. Eastern Time at the Kentucky Fire Commission, 118 James Ct., Suite 50, Lexington, Ky. 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 July 31, 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: Anne-Tyler Morgan, Legal Counsel, McBrayer, McGinnis, Leslie & Kirkland, PLLC., 201 East Main Street, Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anne-Tyler Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 739 KAR 2:080 establishes the candidate physical ability test to be used for candidates seeking professional firefighter positions.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 95A.040, which requires the Kentucky Fire Commission to implement a candidate physical ability test to establish uniform standards of the physical abilities required of all firefighter candidates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 95A.040, which requires the Kentucky Fire Commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 95A.040 requires the Kentucky Fire Commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions. This regulation ensures that all candidates for professional firefighting positions will be tested consistently and comprehensively.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation and is not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) All candidates seeking professional firefighter positions;

(b) All fire departments who are licensed with the IAFF to implement the CPAT;

(c) All third party testing organizations who obtain a Limited CPAT license for the purpose of testing the physical capability of firefighter candidates;

(d) County and City Governments who fund fire departments within their governmental boundaries; and

(e) All residents and citizens who receive firefighting services in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-
ivered regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities – fire fighter candidates, fire departments, third party testing organizations, and county and city governments – shall meet applicable requirements for IAFF licensure and CPAT implementation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to fire departments, third party testing organizations, and county and city governments is the cost of IAFF licensure or limited licensure.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the consistency of fire fighter performance testing as administered through use of the CPAT, which will result in the greater competency of Kentucky’s fire fighters and fire departments.
(3) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Kentucky Fire Commission shall pay for the administration of the CPAT to full-time fire fighter candidates.
(a) Initially: The above paragraph is accurate for initial costs.
(b) On a continuing basis: The above paragraph is accurate for continuing costs.
(c) Other Explanation: What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Fire Commission is a state agency that receives its annual budget from the state government. The funding allotted for the administration of the CPAT is provided by an insurance surcharge in a trust and agency account.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees will be required of fire departments, county and city governments, and third party testing organizations obtaining full or limited IAFF licensure.
(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 is not applied in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation will relate to any County or City owned fire department obtaining an IAFF license to administer the CPAT.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 95A.040. No federal statutes necessitate 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? This administrative regulation will generate no 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 will generate no revenue for subsequent years.
(c) How much will it cost to administer this program for the first year? This administrative regulation will impose the cost of annual IAFF licensure to County and City owned fire departments administering the CPAT.
(d) How much will it cost to administer this program for subsequent years? This administrative regulation will impose the cost of annual IAFF licensure to County and City owned fire departments administering the CPAT.

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

Revenues (+/-): This administrative regulation will not generate revenue.
Expenditures (+/-): This administrative regulation will impose the cost of annual IAFF licensure to County and City owned fire departments administering the CPAT, as determined by the IAFF.

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Repealer)


RELATES TO: KRS 243.030(15), 243.030(20), 243.030(21), 243.030(22), 243.030(35), 243.030(32), 243.040, 243.090, 243.200, 243.210, 244.290
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations to issue licenses for transporting and serving malt beverages and distilled spirits and wine. This administrative regulation repeals 804 KAR 4:020, 804 KAR 4:030, 804 KAR 4:130, 804 KAR 4:140, 804 KAR 4:160, 804 KAR 4:170, 804 KAR 4:180, 804 KAR 4:200, 804 KAR 4:220, and 804 KAR 4:260, which are being codified into KRS Chapter 243.

Section 1. The following administrative regulations are hereby repealed:
(1) 804 KAR 4:020, Nonresident, special agent or solicitor;
(2) 804 KAR 4:030, Transport permit, nonresident licensee;
(3) 804 KAR 4:130, Beer storage;
(4) 804 KAR 4:140, Distributor’s storage;
(5) 804 KAR 4:160, Beer transporter;
(6) 804 KAR 4:170, Through transporter’s license;
(7) 804 KAR 4:180, Freight forwarders;
(8) 804 KAR 4:200, Warehouses;
(9) 804 KAR 4:220, Riverboats; and
(10) 804 KAR 4:260, Horse race track license.

FREDERICK A. HIGDON, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2013
FILED WITH LRC: June 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2013, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by July 19, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Trey Hiemenz, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.
Contact Person: Trey Hieneman  
(1) Provide a brief summary of:  
(a) What this administrative regulation does: This regulation repeals 804 KAR 4:020, 030, 130, 140, 160, 170, 180, 200, 220, and 260.  
(b) The necessity of this administrative regulation: The existing administrative regulations have been codified into KRS Chapter 243. Therefore, these administrative regulations are no longer necessary.  
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. Since the contents of these administrative regulations are now codified in statute, they are no longer necessary.  
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. The repeal of these regulations removes redundancies that would exist in statute and regulation.  
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
(a) How the amendment will change this existing administrative regulation: N/A  
(b) The necessity of the amendment to this administrative regulation: N/A  
(c) How the amendment conforms to the content of the authorizing statutes: N/A  
(d) How the amendment will assist in the effective administration of the statutes: N/A  
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Since the contents of these regulations have been codified into statute, no changes are occurring. Therefore, no individuals, businesses, organizations, or state and local governments are affected by the repeal.  
(4) Provide an analysis of how 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 of the repealed licenses have been codified into statute. Therefore, no entities are affected.  
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A  
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A  
(5) Provide an estimate of how much it will cost to implement this administrative regulation:  
(a) Initially: No extra costs are anticipated to repeal this administrative regulation.  
(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 funding is used to implement and enforce the repealed administrative regulations.  
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to repeal these administrative regulations.  
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation repealer does not directly or indirectly increase any fees.  
(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering 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 Alcoholic Beverage Control is the only state or local entity affected by this repealer.  
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to the issuance of alcoholic beverage licenses.  
3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.  
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A  
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A  
(c) How much will it cost to administer this program for the first year? N/A  
(d) How much will it cost to administer this program for subsequent years? N/A  
 Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:  
Revenue (+/-):  
Expenditures (+/-):  
Other Explanation:  
PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(Repealer)  
RELATES TO: KRS 243.200, 243.210  
STATUTORY AUTHORITY: KRS 241.060  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations to issue licenses for the transportation of malt beverages and distilled spirits and wine. This administrative regulation repeals 804 KAR 8:010, 804 KAR 8:020, and 804 KAR 8:030, which are being codified into KRS Chapter 243.  
Section 1. The following administrative regulations are hereby repealed:  
(1) 804 KAR 8:010, Common carrier;  
(2) 804 KAR 8:020, Transporters’ license; and  
(3) 804 KAR 8:030, Boatlines’ qualifications.  
FREDERICK A. HIGDON, Commissioner  
ROBERT D. VANCE, Secretary  
APPROVED BY AGENCY: June 12, 2013  
FILED WITH LRC: June 14, 2013 at 11 a.m.  
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2013, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by July 19, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Trey Hiemen, Special Assistant, Department of Alcoholic Beverage Control, 1033 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hiemen

(1) Provide a brief summary of:
  (a) What this administrative regulation does: This regulation repeals 804 KAR 8:010, 020, and 030.
  (b) The necessity of this administrative regulation: The existing administrative regulations have been codified into KRS Chapter 243. Therefore, 804 KAR 8:010, 020, and 030 are no longer necessary.
  (c) How this administrative regulation conforms to the content of the statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. Since the contents of these administrative regulations are now codified in statute, they are no longer necessary.
  (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. The repeal of these administrative regulations removes redundancies that would exist in statute and regulation.
  (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
    (a) How the amendment will change this existing administrative regulation: N/A
    (b) The necessity of the amendment to this administrative regulation: N/A
    (c) How the amendment conforms to the content of the authorizing statutes: N/A
    (d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
    Since the contents of these regulations have been codified into statute, no changes are occurring. Therefore, no individuals, businesses, organizations, or state and local governments are affected by the repeal.

(4) Provide an analysis of how entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
    (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no impact as these repealed licenses have been codified into statute.
    (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A
    (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
    (a) Initially: No extra costs are anticipated to repeal these administrative regulations.
    (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 funding is used to implement and enforce the repealed administrative regulations.
    (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to repeal these administrative regulations.
    (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation repeal does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering 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? Alcohollic Beverage Control Board

2. Identify each state or federal statute or federal regulation that requires of authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to the issuance of alcoholic beverage licenses.

3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A
   (c) How much will it cost to administer this program for the first year? N/A
   (d) How much will it cost to administer this program for subsequent years? N/A

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Kentucky Health Benefit Exchange
(New Administrative Regulation)


RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of the Kentucky Health Benefit Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. 18031 and 45 C.F.R. parts 155 and 156.

Section 1. Definitions. (1) "Agent" is defined by KRS 304.9-020(1).

(2) "Annual open enrollment period" means the period each year during which a qualified employee may enroll or change coverage in a qualified health plan through an exchange.

(3) "Annual renewal date" means the date following twelve (12) months from the first day of the first coverage month and every twelve (12) months thereafter.

(4) "Children’s Health Insurance Program" or "CHIP" is defined by 42 C.F.R. 457.10.

(5) "COBRA" means continuation of coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986, as
amended.

(6) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(7) "Employer identification number" means a unique numerical identifier which is used to identify a business, partnership, or other entity.

(8) "Full-time employee" is defined by 45 C.F.R. 155.20.

(9) "Full-time equivalent employee" means the number of employees determined by using the method set forth in section 4980H(c)(2) of the Internal Revenue Code.

(10) "Group participation rate" means the number of eligible employees enrolled in a group health plan in relation to the number of employees eligible to enroll in the group health plan.

(11) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

(12) "Indian" means any individual as defined by 25 U.S.C. 450b(d).

(13) "Initial open enrollment period" means the period during which a qualified employee may enroll in health coverage through an exchange for the 2014 benefit year which shall:

(a) Begin October 1, 2013; and

(b) Extend through March 31, 2014.

(14) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange conditionally approved by HHS under standards set forth in 45 C.F.R. 155.105 to offer qualified health plans on January 1, 2014.

(15) "Kentucky Health Insurance Premium Payment Program" or "KHIPP" means a Kentucky Medicaid program that pays the costs of some or the entire employee portion of employer-sponsored health insurance premiums.

(16) "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. sections 1396 et seq. as amended.

(17) "Medicare advantage plan" means a Medicare program under Part C of title XVIII of the Social Security Act, which provides Medicare Part A and B benefits through a private insurer.

(18) "Metal level of coverage" means health care coverage provided within plus or minus two (2) percentage points of the full actuarial value as follows:

(a) Bronze level with an actuarial value of sixty (60) percent;

(b) Silver level with an actuarial value of seventy (70) percent;

(c) Gold level with an actuarial value of eighty (80) percent; and

(d) Platinum level with an actuarial value of ninety (90) percent.

(19) "Minimum essential coverage" is defined by 26 C.F.R. 1.5000A-2.

(20) "Participation agreement" means an agreement between the office and a small employer participating in the KHBE Small Business Health Options Program.

(21) "Plan year" means a consecutive twelve (12) month period during which a health plan provides coverage for health benefits.

(22) "Premium" is defined by KRS 304.14-030.

(23) "Qualified employee" means an individual employed full-time by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(24) "Qualified employer" means a small employer that elects to offer, at a minimum, all full-time employees of such employer eligible for one (1) or more QHPs in the small group market offered through a SHOP.

(25) "Qualified Health Plan" or "QHP" means a health plan that has in effect a certification issued by the KHBE that it meets the standards described in 45 C.F.R. 156 subpart C.

(26) "Qualifying event" means an event described in Section 9(1) of this administrative regulation.

(27) "Reference plan" means the selection of a single plan on which an employer will base their contribution and employees are then able to elect other plans and pay the premium differential.

(28) "Service area" means a geographical area in which an individual shall reside or be employed in order to enroll in a QHP.

(29) "Shared responsibility payment" means a penalty imposed for failing to meet the requirement to maintain minimum essential coverage in accordance with 26 U.S.C. 5000A.

(30) "SHOP" means a Small Business Health Options Program operated by an exchange through which a qualified employer can provide employees, spouses, and their dependents with access to one (1) or more QHPs.

(31) "Small employer" or "small group" means for a plan year beginning:

(a) Before January 1, 2016, an employer who employed an average of at least two (2) but no more than fifty (50) full-time employees on business days during the preceding calendar year; or

(b) On or after January 1, 2016, an employer who employed an average of at least one (1) but no more than 100 full-time equivalent employees on business days during the preceding calendar year and who employs at least one (1) employee on the first day of the plan year.

(32) "Special enrollment period" means a period during which a qualified employee who experiences certain qualifying events may enroll in, or change enrollment, in a QHP through the KHBE outside the initial and annual open enrollment periods.

(33) "TRICARE" means the Department of Defense health care program administered serving active uniformed service members, retirees, and their families.

Section 2. Employer Eligibility and Participation Requirements.

(1) Beginning October 1, 2013, a small employer shall be eligible to purchase health insurance coverage for its small group through the KHBE SHOP if the employer is a small employer that:

(a) Elects to offer, at a minimum, a full-time employee coverage in a QHP through the KHBE SHOP; and

(b) 1. Has its principal business address in the service area and offers coverage to its full-time employees through the KHBE SHOP; or

2. Offers coverage to each eligible employee through the KHBE SHOP serving that employee’s primary work site;

(c) Has a valid federal employer identification number; and

(d) Has a group participation rate of at least seventy five (75) percent in accordance with subsection (6) of this section.

(2) A small employer participating in more than one (1) SHOP and meeting the criteria in subsection (1) of this section shall offer coverage to its employees whose primary work site is in the service area of the KHBE SHOP.

(3) A small employer may submit an application to participate in KHBE SHOP:

(a) Via the KHBE Web site at www.kynect.ky.gov;

(b) By telephone by contacting the KHBE customer service center;

(c) By mail; or

(d) In person.

(4) A qualified employer who ceases to be a small employer solely by reason of an increase in the number of employees shall be eligible to participate in the KHBE SHOP until the employer:

(a) Fails to otherwise meet the eligibility criteria of this section; or

(b) Chooses to no longer purchase health insurance coverage for qualified employees through the KHBE SHOP.

(5) As part of the verification of an application of the employer application, a small employer shall submit:

(a) An employee census that includes the name, address, and social security number of all eligible employees;

(b) Proof of a federal employer identification number; and

(c) Copy of most recent Employer’s Quarterly Unemployment Wage and Tax Report, if applicable.

(6) A calculation of a group participation rate shall not include in the count of eligible employees an employee:

(a) Enrolled in:

1. A group health plan offered by a second employer;

2. A group health plan offer through the spouse of the employee;

3. An individual health plan;

4. Medicare, including a Medicare advantage plan;

5. Medicaid or CHIP;

6. TRICARE or other veteran’s health coverage;

7. A parent’s health plan;

8. Coverage identified in 45 C.F.R. 156.602; or

9. Coverage recognized by HHS as meeting the requirement for minimum essential coverage under 45 C.F.R. 156.604;

(b) Issued a certificate of exemption from the shared responsibility payment by KHBE or HHS; or
Section 3. Employer Selection of Qualified Health Plans. (1) A small employer shall make available to a qualified employee:

(a) A single QHP;
(b) All available QHPs at a single metal level of coverage; or
(c) If metal levels are contiguous, one (1) or more QHPs at more than one (1) metal level of coverage.

(2) A qualified employer may apply for coverage through the KHBE SHOP for its small group at any time in a year.

(3) The employer’s plan year shall consist of the twelve (12)-month period beginning with the qualified employer's effective date of coverage.

Section 4. Minimum Contribution. (1) If a small employer selects one (1) QHP to offer to a qualified employee in accordance with Section 3 of this administrative regulation, the small employer shall:

(a) Define a percentage contribution of at least fifty (50) percent toward a premium for employee-only coverage under the QHP; and
(b) Apply the employer contribution determined in paragraph (a) of this subsection toward a QHP selected by the employee.

(2) If a small employer selects more than one (1) QHP to offer to a qualified employee in accordance with Section 3 of this administrative regulation, the small employer shall:

(a) Select a QHP to serve as a reference plan on which a contribution shall be based;
(b) Make a percentage contribution of at least fifty (50) percent toward a premium for employee-only coverage under the reference plan; and
(c) Apply the employer contribution determined in paragraph (b) of this subsection toward a QHP selected by the employee.

(3) If a small employer elects to provide dependent coverage, the small employer may make a contribution toward a premium for dependent coverage.

Section 5. Annual Employer Election Period. (1) On an annual basis a small employer shall have a thirty (30) day period prior to the completion of the employer's plan year and before the annual open enrollment to change the employer’s participation in the KHBE SHOP for the next plan year.

(2) During the employer annual election period, a small employer may change the:

(a) Method by which the qualified employer makes QHPs available to qualified employees in accordance with Section 3 of this administrative regulation;
(b) Employer contribution towards the premium of a qualified employee made in accordance with Section 4 of this administrative regulation; and
(c) QHP or QHPs offered to qualified employees in accordance with Section 3 of this administrative regulation.

Section 6. Employee Eligibility. (1) An employee shall be eligible to enroll in a QHP through the KHBE SHOP if the employee receives an offer of coverage from a qualified employer.

(2) An employee shall submit an application to enroll in a QHP:

(a) Via the internet at www.kynect.ky.gov;
(b) By telephone by calling the KHBE customer service center;
(c) By mail; or
(d) In person.

(3) If the information submitted by an employee is inconsistent with the eligibility standards in this section, the employee shall have thirty (30) days after a notification of the inconsistency to present documentation to support the employee’s application or resolve the inconsistency.

(4) A qualified employee may designate an individual or organization as an authorized representative.

(5) An eligible employee who does not want to enroll in a QHP offered by a qualified employer shall waive coverage.

(6) A small employer shall be notified if a qualified employee enrolled in a QHP terminates coverage in the QHP.

Section 7. Enrollment and Effective Dates of Coverage. (1) A qualified employee shall select a QHP or change a QHP offered by a qualified employer in accordance with Section 3 of this administrative regulation during:

(a) The initial open enrollment period;
(b) An annual open enrollment period as set forth in Section 8 of this administrative regulation;
(c) A special enrollment period set forth in Section 9 of this administrative regulation; or
(d) An enrollment period outside of the employer’s open enrollment period as set forth in Section 8(3) of this administrative regulation, only for a qualified employee who is newly eligible.

(2) The length of an initial open enrollment period and annual open enrollment period shall be:

(a) Thirty (30) days; and
(b) At the request of a small employer, extended up to a maximum of fifteen (15) additional days.

(3) Coverage in a QHP shall be effective:

(a) If plan selection is made prior to December 15, 2013, during the initial open enrollment period, January 1, 2014;
(b) If open enrollment ends between the 16th and the last day of any month, the first day of the following month;
(c) If open enrollment ends between the 16th and the last day of any month, the first day of the second following month; and
(d) Upon receipt of the full first month’s premium from a small employer.

(4) For a renewal, the effective date of coverage shall be an employer’s annual renewal date.

(5) For a special enrollment period, the effective date of coverage shall be in accordance with Section 9(5) and (6) of this administrative regulation.

(6)(a) Except for the death of an employee or dependent of an employee, the effective date for cancellation of coverage shall be the last day of the month during which an issuer terminates an employee’s or dependent of an employee’s coverage.
(b) The effective date for cancellation of coverage for the death of an employee or dependent of an employee shall be the date of death.

(7) Unless an employee changes coverage due to a qualifying event, a premium shall not change until the employer’s annual renewal date.

Section 8. Annual Open Enrollment Period. (1) A qualified employee shall select a QHP or change QHPs during an annual open enrollment period that shall be:

(a) No less than thirty (30) days; and
Section 9. Special Enrollment Period. (1) A qualified employee or dependent of a qualified employee may enroll in a QHP or a qualified employee may change QHPs during a special enrollment period if:

(a) The qualified employee or dependent of a qualified employee demonstrates to the KHBE that the QHP in which the qualified employee or dependent of the qualified employee is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(b) The qualified employee or dependent of the qualified employee loses access to new QHPs as a result of a permanent move;

(c) The qualified employee or dependent of the qualified employee loses eligibility for coverage under Medicaid or CHIP;

(d) The qualified employee enrolls in another QHP; or

(e) The qualified employee or dependent of the qualified employee is enrolled in qualified health plans offered on the Kentucky Health Benefit Exchange (KHBE) SHOP.

(2) A qualified employee or dependent of a qualified employee has thirty (30) days from the date of a triggering event described in subsection (1) to select a QHP through the KHBE SHOP.

(3) A qualified employee or dependent of a qualified employee has sixty (60) days from the date of a triggering event described in subsection (1) to select a QHP through the KHBE SHOP.

(4) A dependent of a qualified employee shall not be eligible for a special enrollment period if a small employer does not offer coverage to a dependent.

(5) Except as provided in subsection (6) of this section, the effective date of coverage for an enrollment during a special enrollment period if a qualified employee selects a QHP shall be:

(a) Between the first and the fifteenth day of any month, the first day of the following month; and

(b) Between the sixteenth and the last day of any month, the first day of the second following month.

(6) In the case of birth, adoption, or placement for adoption, the effective date of coverage shall be the date of birth, adoption, or placement for adoption.

(7) Loss of minimum essential coverage includes those circumstances described in 26 C.F.R. 54.9801–6(a)(3)(i) through (iii).

(8) Loss of minimum essential coverage does not include termination or loss due to:

(a) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage; or

(b) A situation allowing for a rescission as specified in 45 C.F.R. 147.128.

Section 10. Employer Voluntary and Involuntary Termination from KHBE SHOP. (1) An employer may terminate its participation in KHBE SHOP at any time and for any reason by providing written notice to KHBE.

(2) The earliest effective date of termination shall be the last day of the calendar month following the calendar month in which notice is given.

(3) An employer may be terminated from participation in KHBE SHOP if the employer:

(a) Fails to pay a premium in accordance with Section 4 of this administrative regulation;

(b) Fails to meet the employer eligibility requirements established in Section 2 of this administrative regulation; or

(c) Commits fraud or misrepresentation.

(4) The effective date of employer termination from participation in the KHBE SHOP shall be:

(a) The date of notification of termination for non-payment of premiums, if the condition in subsection (2)(a) of this section is met;

(b) The last day of the plan year, if the condition in subsection (2)(b) of this section is met; or

(c) The last day of the calendar month following the month in which an employer shall be notified of the termination by the KHBE, if the condition in subsection (2)(c) of this section is met.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: June 1, 2013
FILED WITH LRC: June 7, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 22, 2013, 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 July 15, 2013, 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 July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures relating to the operation of a Small Business Health Options Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that small businesses are aware of the small business health options program which will allow them to enroll employees in qualified health plans offered on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156 and qualify
for small employer health insurance tax credits pursuant to 26 U.S.C. 45R.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for the small business health options program and how small businesses may enroll employees in qualified plans to be offered on the Kentucky Health Benefit Exchange to comply with the statute and qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 2,500 small businesses that may purchase health insurance for their employees on the Kentucky Health Benefit Exchange and potentially qualify for small employer health insurance tax credits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be able to submit an application online to purchase health insurance coverage for their employees through the Exchange, provide supporting documentation, and contribute at least fifty (50) percent of the premium towards an employee coverage.

(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 the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each small business as it may ease the administrative burden of administering their health insurance program and may benefit certain employers through health insurance tax credits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: (a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of the Kentucky Health Benefit Exchange 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.050(1), 42 U.S.C. § 18031, and 45 C.F.R. Parts 155 and 156.

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.

(b) How 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.

(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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The “Kentucky Health Benefit Exchange” (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105. An Exchange must establish a Small Business Health Options Program (SHOP). A SHOP is designed to assist qualified small employers in the state in enrolling their employees in qualified health plans in the state’s small group market.

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. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

(New Administrative Regulation)

906 KAR 1:190. Kentucky Applicant Registry and Employment Screening Program.

RELATES TO: 42 U.S.C. 1320a-71

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C.
NECESSITY, FUNCTION, AND COMFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1320a-71 directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. On May 20, 2011, the Commonwealth of Kentucky was the twelfth state to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320a-71. On the date this administrative regulation was filed with the Legislative Research Commission, twenty-three (23) states had received an NBCP grant. The Cabinet for Health and Family Services, Office of Inspector General is charged with responsibility to oversee and coordinate Kentucky’s fingerprint-supported NBCP grant initiative, called the KARES “Kentucky Applicant Registry and Employment Screening” Program. This administrative regulation establishes procedures for the implementation of KARES as a voluntary program. The Cabinet for Health and Family Services encourages long-term care facility, and providers to participate in KARES as the grant program provides employers with an enhanced pre-employment screening mechanism intended to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation. The conditions set forth in this administrative regulation for voluntary KARES program participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions. (1) “Applicant” means an individual who applies for employment with an employer identified in subsection (6) of this section.
(2) “Cabinet” means the Cabinet for Health and Family Services.
(3) “Criminal background check” means a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.
(4) “Disqualifying offense” means:
(a) A conviction of, or a plea of guilty to, an offense, or a plea of nolo contendere to:
1. A misdemeanor offense related to abuse, neglect, or exploitation of an adult or child, or a sexual offense;
2. A criminal offense against a victim who is a minor, as defined in KRS 17.500;
3. A felony conviction involving a child victim;
4. A felony offense under:
   a. KRS Chapter 209;
   b. KRS Chapter 218A;
   c. KRS 507.020;
   d. KRS 507.030;
   e. KRS 507.040;
   f. KRS Chapter 508;
   g. KRS Chapter 509;
   h. KRS Chapter 510;
   i. KRS Chapter 511;
   j. KRS Chapter 513;
   k. KRS 514.030;
   l. KRS Chapter 515;
   m. KRS 529.100;
   n. KRS 529.110;
   o. KRS Chapter 530; and
   p. KRS Chapter 531;
   q. Any offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or
   r. Any crime described in 42 U.S.C. 1320a-7;
   s. A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3 or 1396r;
   t. Registration as a sex offender under federal law or under the law of any state; or
   u. Being listed on a registry as defined in subsection (9) of this section;
   v. “Employee” means any individual who is hired by an employer defined in subsection (6) of this section through employment or through a contract with the facility or provider, and includes:
   w. Nurses;
   x. Nurse aides;
   y. Housekeepers;
   z. Maintenance personnel;
   A. Dieticians;
   B. Pharmacists;
   C. Administrative staff;
   D. Any staff person who has access to the personal belongings or funds of a patient, resident, or client of the employer; and
   E. Any volunteer who has duties that are equivalent to the duties of an employee providing direct services and those duties involve or may involve one-on-one contact with a patient, resident, or client of an employer without line-of-sight supervision by facility or provider staff;
(6) “Employer” means:
   a. A long-term care facility as defined in KRS 216.510;
   b. A nursing home as defined in subsection (8) of this section providing staff to a long-term care facility or provider;
   c. An adult day health care program as defined in KRS 216B.0441;
   d. An assisted living community as defined in KRS 194A.700;
   e. A home health agency as defined in KRS 216.935;
   f. A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;
   g. A personal services agency as defined in KRS 216.710;
   h. A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);
   i. Providers of home and community-based services authorized under KRS Chapter 205;
   j. A staffing agency with a contractual relationship to provide one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section; or
   k. Any other health facility or service licensed pursuant to KRS Chapter 216B that applies to participate voluntarily in the KARES program;
(8) “Nursing pool” means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including but not limited to nurses, nursing assistants, nursing aides, and orderlies.
(9) “Registry” means the:
(a) Nurse aide abuse registry maintained pursuant to 42 C.F.R. 483.156;
(b) Child abuse and neglect registry maintained pursuant to 42 U.S.C. 1395t-1; and
(c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7.
(10) “State” is defined by KRS 446.010(40).
(11) “Violent crime” means a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

Section 2. Applicability and Exceptions. (1) This administrative regulation shall apply to:
(a) Prospective cabinet staff whose duties include conducting inspections of:
   1. Health facilities and services licensed pursuant to KRS Chapter 216B;
   2. Services regulated pursuant to KRS 194A.700 through 194A.729, or KRS 216.710 through 216.714;
(b) Prospective employees of state-owned or operated health facilities;
facilities licensed pursuant to KRS Chapter 216B;
(c) Prospective cabinet staff who have or may have one-on-one contact with a patient or resident of an employer defined by Section 1(6) of this administrative regulation; and
(d) Prospective employees seeking employment with a private employer that participates voluntarily in the KARES Program.
(2) This administrative regulation shall not apply to current cabinet staff or current employees of any employer that participates voluntarily in the KARES program.
(3) A prospective employee shall not include any individual who independently contracts with an employer to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the employer.

Section 3. Agreement to Participate. An employer that elects to participate in KARES voluntarily shall complete and submit an Agreement to Participate in the KARES Program.

Section 4. Registry and Criminal Background Checks: Procedures and Payment. (1) To initiate the process for obtaining a background check on a prospective employee, the employer shall:
(a) Request that the applicant provide a copy of his or her driver’s license or government-issued photo identification and verify that the photograph clearly matches the applicant;
(b) Request that the applicant complete a:
1. Disclosure Form; and
2. Consent and Release Form;
(c) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant’s demographic information for a check of:
   1. Each registry as defined by Section 1(9) of this administrative regulation; and
   2. Databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, and Kentucky Board of Physical Therapy to validate the applicant’s professional licensure status, if applicable.
(2) An applicant who is found on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470 may request a rehabilitation review pursuant to Section 9 of this administrative regulation.
(3)(a) If an applicant is cleared for hire after a check of the registries and databases identified in subsection (1)(c) of this section, the employer shall submit payment via credit or debit card for the criminal background check.
(b) Effective until May 19, 2014, or until NBCP grant funds are depleted, employers shall pay the twenty (20) dollar fee charged by the Federal Bureau of Investigation pursuant to paragraph (d)(1) of this subsection.
(c) Effective until May 19, 2014, or until NBCP grant funds are depleted, the cabinet shall pay all costs identified in paragraph (d) of this subsection if a criminal background check is conducted on behalf of a prospective provider of home and community-based services authorized under KRS Chapter 205. This exemption for providers of home and community-based services is a condition of the NBCP grant.
(d) After May 19, 2014, or after NBCP grant funds are depleted, the total cost of a criminal background check charged to employers shall be sixty-three (63) dollars, divided into the following components:
   1. A fee of twenty (20) dollars charged by the Justice and Public Safety Cabinet;
   2. A fee of six (6) dollars charged by the Federal Bureau of Investigation; and
   3. A fee of thirty-three (33) dollars charged by the cabinet to cover the cost of facilitating the criminal background check.
(4)(a) Upon submission of payment pursuant to subsection (3) of this section, the employer shall print a copy of the Live Scan Fingerprinting Form from the KARES portal and provide the form to the applicant;
(b) The applicant shall:
1. Have thirty (30) calendar days from the date of payment pursuant to subsection (3) of this section to submit his or her fingerprints at an authorized collection site; and
2. Present the Live Scan Fingerprinting Form and driver’s license or government-issued photo identification to the designated agent at the authorized collection site prior to fingerprint submission.
(5) Upon completion of a criminal background check, the cabinet shall:
(a) Provide notice to the employer that the applicant is clear to hire, or not clear to hire if the applicant is found by the cabinet to have a disqualifying offense; and
(b) Not disclose the applicant’s criminal history to the employer.

Section 5. Provisional Employment. (1) If an applicant is not found on a registry and the individual’s license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.
(2) The period of provisional employment shall:
(a) Not commence prior to the date the applicant submitted his or her fingerprints; and
(b) Not exceed sixty (60) days from the date of fingerprint collection.
(3) During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 6. Individuals Ineligible to Be Hired. An employer participating in the KARES program, an agency within the cabinet responsible for conducting inspections of any employer, or a state-owned and operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:
(1) The applicant refuses to provide photo identification or complete the Disclosure Form or Consent and Release Form required by Section 4(1)(a) and (b) of this administrative regulation;
(2) The applicant is found on a registry as defined by Section 1(9) of this administrative regulation;
(3) The applicant’s professional license is not in good standing, if applicable;
(4) The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 4(3) of this administrative regulation;
(5) Upon completion of the criminal background check, the employer, cabinet agency, or state-owned or operated health facility receives notice that the applicant is not clear for hire based on a cabinet determination that the individual has been found to have a disqualifying offense.

Section 7. Notice of a Disqualifying Offense and Appeals. (1) The cabinet shall notify each applicant determined to have a disqualifying offense;
(2) In addition to the cabinet’s notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet’s determination within three (3) business days of receipt of the notice.
(3) An applicant who receives notice of a disqualifying offense may:
(a) Request a rehabilitation review pursuant to Section 9 of this administrative regulation; or
(b) Challenge the accuracy of the cabinet’s determination regarding a disqualifying offense by submitting a written request to the cabinet for an informal review of the cabinet’s determination or file an appeal under KRS Chapter 13B within ten (10) days of the
date of the notice of the disqualifying offense. An applicant may appeal the results of an informal review.

(4) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(5) If an applicant challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 8. Termination of a Provisional Employee Upon Receipt of Notice of a Disqualifying Offense. (1) If a provisional employee has not requested an informal review or an appeal pursuant to Section 7(3)(b) of this administrative regulation, the employer shall:

(a) Terminate the employee no later than six (6) business days after receipt of notice of the disqualifying offense; and

(b) The employer shall inform the employee that termination shall be immediate if the informal review upholds the cabinet’s determination regarding a disqualifying offense, or the employee does not prevail in any appeal requested pursuant to Section 7(3)(b) of this administrative regulation;

(c) The employer shall immediately terminate an employee if the informal review upholds the accuracy of the cabinet’s determination regarding a disqualifying offense or the employee does not prevail in an appeal requested pursuant to Section 7(3)(b) of this administrative regulation; and

(d) The employer shall submit a written attestation statement to the cabinet affirming the individual’s dismissal within three (3) business days of termination.

Section 9. Rehabilitation Review. (1)(a) An applicant found on the child abuse and neglect central registry maintained pursuant to KRS 222 KAR 1:470, or found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying offense that occurred at least seven (7) years prior to the date of the criminal background check;

2. A criminal conviction related to abuse, neglect, or exploitation of an adult or child;

3. Registration as a sex offender under federal law or under the law of any state; or

4. A conviction for a violent crime.

(2) An applicant may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet’s determination regarding a finding on the child abuse and neglect central registry or determination of a disqualifying offense.

(3) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each finding on the child abuse and neglect central registry or each disqualifying offense, including:

1. A description of the events related to the registry finding or disqualifying offense;

2. The number of years since the occurrence of the registry finding or disqualifying offense;

3. The identification of any other individuals involved in the offense;

4. The age of the offender at the time of the registry finding or disqualifying offense; and

5. Any other circumstances surrounding the registry finding or offense;

(b) Official documentation showing that all fines have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, each of whom was not responsible for determining:

(a) The finding of child abuse or neglect that placed the individual on the central registry; or

(b) That the individual has a disqualifying offense.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances that may include but are not limited to:

(a) The amount of time that has elapsed since the child abuse and neglect central registry finding or disqualifying offense, which shall be no less than seven (7) years in the case of a disqualifying offense;

(b) The lack of a relationship between the registry finding or disqualifying offense and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the registry finding or disqualifying offense. The committee shall make a recommendation to the secretary or designee, who shall be responsible for making the final decision.

(6) The secretary or designee may grant a waiver from the provision against employment of an applicant with a child abuse and neglect finding or disqualifying offense. The secretary or designee shall inform the cabinet affirming the individual’s dismissal within three (3) business days of the committee’s recommendation.

(7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the secretary or designee shall send a written determination on the rehabilitation waiver to the applicant.

(8) The decision of the secretary or designee pursuant to subsection (7) of this section shall be subject to appeal under KRS Chapter 13B.

(9) An individual with a finding on the child abuse and neglect central registry or a disqualifying offense shall not be employed by an employer until the employer receives notification from the cabinet that the individual has been granted a waiver.

(10) An employer is not obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

Section 10. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 11. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 12. Immunity from Civil Liability. No person, including the cabinet, the Justice and Public Safety Cabinet, an employer, or an individual acting on behalf of any of these entities shall be liable for civil damages or be subject to any claim, demand, cause of action, or proceeding of any nature as a result of actions taken in good faith to comply with this administrative regulation, including the disqualification of an applicant or provisional employee from employment on the basis of a disqualifying offense.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG 1:190-A, "Agreement to Participate in the KARES Program", May 2013 edition;

(b) OIG 1:190-B, "Disclosure Form", May 2013 edition;

(c) OIG 1:190-C, "Consent and Release Form", May 2013 edition; and
(d) OIG 1:190-D, “Live Scan Fingerprinting Form”, May 2013 edition.

(2) This material may be inspected, copied, or obtained, subject 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: June 13, 2013

FILED WITH LRC: June 13, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 22, 2013, at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 15, 2013, 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 comments regarding this proposed administrative regulation until July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, 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 Persons: Mary Reinle Begley, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: In May 2011, Kentucky was the 12th state to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services. On the date this administrative regulation was filed with the Legislative Research Commission, a total of twenty-three (23) states had received an NBCP grant. The Cabinet for Health and Family Services, Office of Inspector General is charged with responsibility to oversee and coordinate Kentucky’s NBCP grant initiative, called the KARES “Kentucky Applicant Registry and Employment Screening” Program. This administrative regulation establishes procedures for the implementation of KARES as a voluntary program in which the Cabinet encourages long-term care facilities and providers to participate in KARES as the grant program provides employers with a mechanism for obtaining fingerprint-supported state and FBI checks on new employees, which will enhance efforts to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation. The conditions set forth in this administrative regulation for voluntary participants are in addition to the name-based, state only criminal background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

(b) The necessity of this administrative regulation: State law under KRS Chapter 216 currently requires that applicants for employment in long-term care facilities submit a check of the nurse aide abuse registry and a name-based, state only criminal record check at the time of initial hire. Under this administrative regulation, applicants for employment in participating long-term care settings will submit to a check of available abuse registries and a fingerprint-supported, state and FBI criminal background check, thereby limiting the ability of “bad actors” to hide their criminal or abusive actions by crossing state lines.

(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 requirements for employers that elect to participate in the KARES program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing employers with an enhanced pre-employment screening mechanism intended to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation.

(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: Employers that may apply for participation in the KARES program include long-term care facilities, nursing pools and staffing agencies which provide staff to long-term care facilities, adult day health programs, assisted living facilities, home health agencies, hospice providers (including residential hospice), personal services agencies, long-term care hospitals, providers of home and community based services, or any other licensed health facility that applies to participate in the KARES program voluntarily. Additionally, new Cabinet staff who work in state run health facilities will be subject to a background check under KARES.

(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: Using the KARES portal, participating employers will be able to obtain immediate results from available abuse registries and verify the professional licensure status of prospective employees free of charge. “Hits” on an abuse registry or confirmation that an individual’s professional license is not in good standing will be used to disqualify the individual from employment in a long-term care setting, thereby eliminating the need for criminal background checks and the costs associated with such checks. If cleared as a result of the registry check, applicants seeking employment with a participating employer would be subject to a fingerprint-supported state and FBI background check. The anticipated response regarding whether an individual is eligible for employment in long-term care is expected to take from five (5) to seven (7) days from the date of fingerprint collection.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs additional costs will be incurred by voluntarily participating employers initially as employers will continue to pay the twenty (20) dollars fee they are currently accustomed to paying for name based, state only criminal background checks. However, upon depletion of NBCP grant monies used to subsidize the cost of FBI checks and the Cabinet’s administrative cost, a fingerprint-supported state and FBI check will cost a total of sixty-three (63) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participating employers will benefit from an enhanced, pre-employment screening tool intended to limit the ability of “bad actors” to hide their criminal or abusive actions by crossing state lines. Additionally, based on enhancements made to KSP’s system, the anticipated turnaround related to notification of a disqualifying offense is expected to be within 5 to 7 days of fingerprint submission. The results of name-based KSP checks currently take from approximately 30 to 45 days. Finally, employers will not be impacted financially during what the Cabinet estimates will be about the first year and a half of fingerprint collection as grant monies will be used to subsidize the cost of the FBI check and Cabinet’s administrative costs for facilitating fingerprint-supported criminal background checks.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation is funded by NBCP grant monies until the end of the grant’s project period (May 2014), or for five years if an extension is necessary and CMS approves such a request to expend any remaining grant monies that may exist.

(b) On a continuing basis: The Cabinet estimates that approximately $600,000 will be needed on a yearly basis to sustain the KARES program. Such funds will be used to contract with the Department for Workforce Investment to collect fingerprints at Career One Stop Centers, cover costs incurred by the Office of Administrative and Technology Services to maintain the KARES system and database, and support staff salaries.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? NBCP grant funds will be used initially to implement this administrative regulation. Upon conclusion of the grant or depletion of grant monies, continued funding to support KARES will be from fees collected to process fingerprint-supported state and FBI checks on applicants seeking employment with participating long-term care employers.

(7) Provide an assessment of whether an 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 current charge for a name-based, state only criminal record check currently required by state law for applicants seeking employment in long-term care facilities is twenty (20) dollars. Under KARES, the charge for a fingerprint-supported state and FBI criminal background check will remain twenty (20) dollars initially. However, upon depletion of NBCP grant funds used to subsidize the cost of the FBI checks and administrative costs charged by the cabinet, the total cost of the fee charged for a fingerprint-supported state and FBI criminal background check will be sixty-three (63) dollars. Therefore, revenue will be based upon a charge of sixty-three (63) dollars per background check, divided between the Kentucky State Police, FBI, and the Cabinet as previously described.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will be based upon a charge of sixty-three (63) dollars per check as previously described.

(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 as NBCP grant monies will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet estimates that approximately $600,000 will be needed on a yearly basis to sustain the KARES program. Such funds will be used to contract with the Department for Workforce Investment to collect fingerprints at Career One Stop Centers, cover costs incurred by the Office of Administrative and Technology Services to maintain the KARES system and database, and support staff salaries.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1320 a-71 directs the Secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. As of this date, Kentucky is one of twenty-three (23) states to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320 a-71 to implement a fingerprint-supported state and FBI check program for new employees in long-term care settings.

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

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that NBCP grantee states such as Kentucky to implement a fingerprint-supported state and FBI background check program for new employees in long-term care settings.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements than those required by the NBCP grant awarded to Kentucky by CMS under 42 U.S.C. 1320 a-71.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.
VOLUME 40, NUMBER 1 – JULY 1, 2013

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(New Administrative Regulation)

906 KAR 1:200. Use of Civil Money Penalty Funds Collected from Certified Long-term Care Facilities.

RELATES TO: KRS 194A.050(1)

ADMINISTRATIVENESS, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396h(3)(C)(i)(IV)(ff) pertain to the collection and use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) which do not comply with applicable federal health and safety laws and regulations. Except for temporary use in the case of sudden nursing facility relocations, natural disasters, or similar emergencies, states are required to obtain prior approval from CMS for any new project, new grantee, or new use of federally imposed CMP funds, and any state-approved use or project that is currently in effect for a period that will endure more than thirty-six (36) months after December 31, 2011. Upon approval by CMS, states may direct collected CMP funds to a variety of organizations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396h(3)(C)(i)(IV)(ff). This administrative regulation establishes a competitive grant program to provide funding to organizations which offer programs or services approved by CMS for the use of CMP funds, thereby establishing the CMP Fund Grant Program.

Section 1. Definitions. (1) Cabinet means the Cabinet for Health and Family Services.

(2) "EAC" means the Elder Abuse Committee created by KRS 209,005.

(3) "Funding" means a grant from collected CMP funds distributed by the cabinet upon approval by CMS.

Section 2. Funding Opportunities. Collected CMP funds may be used to support activities which benefit Kentucky’s residents of certified long-term care facilities, including:

(1) Assistance to support and protect residents of a certified long-term care facility that closes (voluntarily or involuntarily) or is decertified, and may include offsetting the costs of relocating residents to a home and community-based setting or another facility;

(2) Projects that support resident and family councils;

(3) Consumer involvement activities which assure quality care in long-term care facilities; or

(4) Facility improvement initiatives approved by CMS, which may include:

(a) Joint training of facility staff and the cabinet’s long-term care facility surveyors;

(b) Technical assistance for facilities implementing quality assurance programs; or

(c) The appointment of temporary management firms.

Section 3. Prohibited Uses of CMP Funds. CMP funds shall not be approved:

(1) For a project for which a conflict of interest exists or the appearance of a conflict of interest;

(2) If the applicant is currently paid by a federal or state source to perform the same function as the proposed CMP project or use;

(3) For capital improvements to a long-term care facility, or to build a long-term care facility;

(4) To pay for services or supplies that are the responsibility of the long-term care facility, including laundry, linen, food, heat, or staffing costs;

(5) To pay the salaries of temporary managers who are actively managing a long-term care facility; or

(6) To recruit or provide Long-Term Care Ombudsman certification training for staff or volunteers, or investigate and work to resolve complaints.

Section 4. Applicants. (1) An entity that applies for and receives funding shall be qualified and capable of carrying out the intended project or use described in the State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes.

(2) Entities that may qualify for funding include:

(a) Consumer advocacy organizations;

(b) Resident or family councils;

(c) Professional or state long-term care facility organizations;

(d) State Long-Term Care Ombudsman programs;

(e) Quality improvement organizations;

(f) Private contractors;

(g) Academic or research institutions;

(h) Certified long-term care facilities; or

(i) State, local, or tribal governments; or

(j) Profit or not-for-profit organizations.

Section 5. Application Process. To apply for funding, an applicant shall:

(1) Download a copy of the application titled State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes from the cabinet’s Web site at http://chfs.ky.gov/oig/cmpfunds.htm; and

(2) Complete and email the application to the cabinet at the following web address: CMPAPPLICATION_OIG@KY.GOV.

Section 6. Review of Applications. (1) Upon receipt of an application, the cabinet shall:

(a) Review the application and determine if the application meets the criteria for use of collected CMP funds pursuant to:

1. Sections 2 through 4 of this administrative regulation; and

2. The application’s instructions;

(b) Present each application that meets the criteria for use of collected CMP funds at the next scheduled EAC meeting following receipt of the application;

(c) Advise the EAC of each application not approved for review by the EAC due to the receipt of an:

1. Incomplete application; or

2. Application that does not meet the criteria for use of collected CMP funds; and

(d) Notify each applicant electronically if an application is not approved for review by the EAC, including the reason the application was not approved.

(2) The EAC shall:

(a) Review each application presented by the cabinet based on the criteria for use of collected funds; and

(b) Make a recommendation to the cabinet secretary regarding the ability of the applicant’s proposal to:

1. Improve resident outcomes; and

2. Advance the care and services provided in certified long-term care facilities.

(3) Upon consideration of the recommendation made by the EAC and review of the application based on the criteria for use of collected CMP funds, the cabinet secretary shall forward the application to CMS, including the secretary’s recommended award decision.

Section 7. Reporting. If an application is approved by CMS, the organization or entity from which the application originated shall:

(1) Submit a quarterly report on the status of the project to the CMS regional office and the cabinet;

(2) Submit a follow-up report within five (5) calendar days of conclusion of the funded project to the CMS regional office and the cabinet; and

(3) Submit a final report within five (5) calendar days of conclusion of the funded project to the CMS regional office and the cabinet.

Section 8. Denials. An application that is denied shall not be
subject to an appeal.

Section 9. Incorporation by Reference. (1) The Centers for Medicare and Medicaid Services, Region IV Atlanta, "State Requ-(2) This material may be inspected, copied, or obtained, sub-ject to applicable copyright law, at the Cabinet for Health and Fami-ly Services, 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: May 31, 2013 FILED WITH LRC: May 31, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 22, 2013, at 9:00 a.m. in Auditorium A, Health Ser-vices Building, First Floor, 275 East Main Street, Frankfort, Ken-tucky. Individuals interested in attending this hearing shall notify this agency in writing by July 15, 2013, 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 at-tends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will 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 July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7753.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT Contact Persons: Mary Reinle Begley, Stephanie Brammer-Barnes (1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-tive regulation establishes the procedures for cabinet distribution of civil money penalty (CMP) funds in the form of grants upon ap-proval by CMS.
(b) The necessity of this administrative regulation: This adminis-trative regulation is necessary to establish requirements related to cabinet distribution of CMP funds in the form of grants upon approval by CMS.
(c) How this administrative regulation conforms to the content of the authorizing statutes: 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(iii)(IV)(ff) pertain to the collection and use of CMPs imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) which do not comply with applicable federal health and safety laws and regulations. Upon approval by CMS, states may direct collected CMP funds to a variety of organi-zations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(iii)(IV)(ff). This administrative regulation conforms to the content of the authorizing statutes by establishing requirements related to cabinet distribution of CMP funds upon final approval by CMS.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-trative regulation assists in the effective administration of the sta-tutes by establishing requirements related to cabinet distribution of CMP funds upon final approval by CMS.
(2) If this is an amendment to an existing administrative regula-tion, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new 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 autho-

rizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administra-tion of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organi-zations, or state and local governments affected by this administra-tive regulation: Entities that may apply and qualify for funding from collected CMP funds include consumer advocacy organizations, resident or family councils, professional or state long-term care facility organizations, State Long-term Care Ombudsman pro-grams, quality improvement organizations, private contractors, academic or research institutions, certified long-term care facilities, state, local, or tribal governments, or profit or not-for-profit organi-zations.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-tive 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 seeking funding for proposals that benefit Kentucky’s residents of certified long-term care facili-ties are required to download an application from the cabinet’s website and submit the application electronically for review and consideration.
(b) In complying with this administrative regulation or amend-ment, how much will it cost each of the entities identified in ques-tion (3): No costs will be incurred by any applicants.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Successful applicants will be awarded funding in the form of a grant approved by CMS to im-plement proposals which benefit Kentucky’s residents of certified long-term care facilities.
(5) Provide an estimate of how much it will cost the administra-tive body to implement this administrative regulation:
(a) Initially: No costs are necessary to implement this adminis-trative regulation.
(b) On a continuing basis: No costs are necessary to imple-ment this administrative regulation.
(6) What is the source of the funding to be used for the imple-mentation and enforcement of this administrative regulation: Col-lected civil money penalties imposed by CMS on certified long-term care facilities which do not comply with applicable federal health and safety laws and regulations.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-tion, if new, or by the change if it is an amendment: No fees or funding will be necessary to implement this administrative regula-tion.
(8) State whether or not this administrative regulation estab-lished any fees or directly or indirectly increased any fees: 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 entities which may apply and qualify for funding, including consumer advocacy organizations, resident or family councils, professional or state long-term care facility organizations, State Long-term Care Ombudsman programs, quality improvement organizations, private contractors, academic or research institutions, certified long-term care facilities, state, local, or tribal gov-ernments, or profit or not-for-profit organizations.

2. Identify each state or federal statute or federal regulation that authorizes or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff), and 42 U.S.C. 1396r(h)(3)(C)(iii)(IV)(ff)

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? Successful applicants will be awarded funding in the form of a grant approved by CMS to implement proposals which benefit Kentucky’s residents of certified long-term care facilities.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Successful applicants will be awarded funding in the form of a grant approved by CMS to implement proposals which benefit Kentucky’s residents of certified long-term care facilities.

(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:
The Administrative Regulation Review Subcommittee met on Tuesday, June 11, 2013, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

In response to a question by Representative Damron, Mr. Goldman stated that the board did not receive any public comments on these administrative regulations during the public comment period.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:070. Licensure by examination.

In response to a question by Co-Chair Harris, Mr. Goldman stated that nursing students expecting to graduate were encouraged to apply for the required FBI report six (6) months prior to the expected graduation date.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

In response to a question by Co-Chair Harris, Mr. Goldman stated that the expiration period for nursing licenses or credentials was being changed in order to give the license or credential holders more time to renew.

201 KAR 20:110. Licensure by endorsement.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish
301 KAR 1:015. Boat and motor restrictions. Ron Brooks, fisheries director, and Margaret Everson, assistant attorney general, represented the department.

In response to questions by Senator Bowen, Mr. Brooks stated that approximately six (6) landowners who lived adjacent to these waters had been unaware of requirements and had purchased twenty-four (24) foot pontoon boats. In order to assist those landowners, this administrative regulation was amended to allow for those boats already purchased by adjacent landowners. Certain Kentucky lakes had specific standards for the size of boats and the permitted horsepower. Many of those requirements were the result of requests of adjacent landowners. Enforcement was the decision of the local wildlife officer, who determined if a boat was being used safely and according to department administrative regulations.

301 KAR 1:122. Importation, possession, and prohibited aquatic species.

In response to questions by Co-Chair Harris, Mr. Brooks stated that the department was not aware of anyone intentionally raising Asian Carp. This was a cleanup amendment because previous language was ambiguous. Kentucky was experiencing tremendous problems related to Asian Carp, especially regarding the Ohio River and its tributaries. The department was working on an Asian Carp management plan.

In response to a question by Co-Chair Bell, Mr. Brooks stated that the department encouraged destroying Asian Carp, as long as each fish was properly disposed of. There were no other limits.

In response to a question by Senator Bowen, Mr. Brooks stated that Asian Carp canaries would help manage the Asian Carp problems. Asian Carp were delicious and nutritious, especially because they are low in contaminants. The department was doing public relations work to improve the public perception of Asian Carp as a food source. This was not only a Great Lakes problem. Harvesting and processing over time, if properly managed in conjunction with the department, should control, but never eliminate, the Asian Carp population.

A motion was made and seconded to approve the following amendments: to amend Sections 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.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Kentucky Building Code
815 KAR 7:120. Kentucky Building Code. Michael Davis, general counsel; Gary Feck, director of building code enforcement; and Ambrose Wilson, commissioner, represented the division.

Co-Chairs Harris and Bell thanked the Division for working to develop an agreement on this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make technical corrections; (2) to amend Sections 1, 2, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 5 to make a technical correction; and (4) to amend Sections 2 and 5 to update the Kentucky Building Code, to amend sprinkler requirements in single and two (2) story, multi-family dwellings over two (2) units, to revert requirements to those in the 2006 version of the Kentucky Building Code. Without objection, and with agreement of the agency, the amendments were approved.

Division of Plumbing: Plumbing
815 KAR 20:020. Parts or materials list. Michael Davis, general counsel; David Moore, director of Plumbing; and Ambrose Wilson, commissioner, represented the division.

In response to a question by Senator Bowen, Mr. Moore stated that both of these administrative regulations helped plumbers.

815 KAR 20:120. Water supply and distribution.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Provider Operations: Payment and Services
307 KAR 3:015 & E. Supplemental payments for certain primary care and vaccines. Stuart Owen, regulation coordinator, represented the division.

In response to questions by Co-Chair Harris, Mr. Owen stated that the $65 million cost was 100 percent federally funded for 2013 and 2014. The mandate ended December 31, 2014. States then had the option to continue the program or not, but it was difficult to remove a program once in place. If Kentucky continued the program after 2014, the cost would be funded seventy (70) percent from the federal government and thirty (30) percent from state funds; therefore, after 2014 the program would have a negative fiscal impact. The program provided incentives to ensure enough Medicaid providers, especially because many citizens were expected to be newly eligible. The federal government had yet to establish funding plans for after 2020.

Co-Chair Harris expressed concerns about what may happen to the program after 2020.

In response to a question by Co-Chair Bell, Mr. Owen stated that, in order to have full funding after 2014, the federal government would have to take direct legislative action.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
Dep
artment for Community Based Services: Division of Family Support: Food Stamp Program
921 KAR 3:090 & E. Simplified assistance for the elderly program or "SAFE". Elizabeth Caywood, internal policy analyst, represented the department.

In response to questions by Senator Bowen, Ms. Caywood stated that the Commissioner’s Office administered the SNAP program. There were numerous provisions in place for citizens and retailers to report suspected abuse, including anonymous reporting. Most complaints thus far pertained to improper reporting of income. The department would follow up with information regarding other fraud and abuse data.

In response to questions by Co-Chair Bell, Ms. Caywood stated that federal regulations governed some aspects of fraud and abuse prevention. For example, federal requirements prohibited requiring photo identification to use the benefit card. The benefit card was distributed in the name of the head of household, but could be used by other family members; therefore, requiring photo identification may inhibit necessary benefit card use. The department was primarily responsible for determining who was eligible for the benefit card.

Co-Chair Harris stated that it was clear from the discussion that the federal government was not serious about preventing abuse of the benefit cards.

Representative Damron stated that photo identification had not been required during the eight (8) to ten (10) years that the program had been in place. The benefit card reduced some of the fraud and abuse that occurred under the previous food stamp-style program. Some benefit card abuse was from retailers that processed charges on the cards after store hours. In response to Representative Damron’s statements, Ms. Caywood stated that the federal government regulated retailers, not the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 6 to make minor clarifications; and (2) to amend Section 8 to comply with the 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 July 9, 2013, meeting of the Subcommittee:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Board of Emergency Medical Services: Board 202 KAR 7:520. Allocation of block grant funding assistance for emergency medical services.


PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Quotas
804 KAR 9:040. Retail liquor package license quota.

804 KAR 9:050. Retail liquor drink license quota.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Child Welfare
922 KAR 1:140 & E. Foster care and adoption permanency services.

922 KAR 1:400 & E. Supportive services.

Division of Child Care: Day Care
922 KAR 2:020. Child Care Assistance Program (CCAP) improper payments, claims, and penalties.


922 KAR 2:180. Requirements for registered child care pro-
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 NATURAL RESOURCES AND ENVIRONMENT
Meeting of June 6, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of June 6, 2013, having been referred to the Committee on June 5, 2013, pursuant to KRS 13A.290(6):

301 KAR 2:049
301 KAR 2:122

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 June 6, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of June 19, 2013

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 June 19, 2013, having been referred to the Committee on June 5, 2013, pursuant to KRS 13A.290(6):

201 KAR 2:074
201 KAR 20:059
201 KAR 20:500
921 KAR 2:015 & E

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 June 19, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates  A - 2

The Locator Index lists all administrative regulations published in VOLUME 40 of the Administrative Register of Kentucky from July 2013 through June 2014. 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 39 are those administrative regulations that were originally published in VOLUME 39 (last year's) issues of the Administrative Register of Kentucky but had not yet gone into effect when the 2013 Kentucky Administrative Regulations Service was published.

KRS Index  A - 6

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 40 of the Administrative Register of Kentucky.

Technical Amendment Index  A - 8

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2013 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  A - 9

The Subject Index is a general index of administrative regulations published in VOLUME 40 of the Administrative Register of Kentucky, and is mainly broken down by agency.
## LOCATOR INDEX - EFFECTIVE DATES

The administrative regulations listed under VOLUME 39 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 2013 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:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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(r) Repealer regulation: KRS 13A.310 on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation
## VOLUME 40

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Decision: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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**Note:** This list includes all regulations that are currently in effect, as of the date of publication. Regulations that have been amended or repealed will be noted accordingly.
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