

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 40, NUMBER 2  
THURSDAY, AUGUST 1, 2013

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, July 15, 2013.

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## **MEETING NOTICE: ARRS**

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet August 5, 2013 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 215-217 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2013 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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

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**VOLUME 40, NUMBER 2 – AUGUST 1, 2013**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, August 5, 2013, at 1:00 p.m., Room 149 Capitol Annex**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services**

**Kentucky Loan Program**

11 KAR 3:100. Administrative wage garnishment.

**KHEAA Grant Programs**

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

11 KAR 5:140. KTG award determination procedure.

11 KAR 5:145. CAP grant award determination procedure.

**Teacher Scholarship Loan Program**

11 KAR 8:030. Teacher scholarships.

**Commonwealth Merit Scholarship Program**

11 KAR 15:040. Kentucky Educational Excellence Scholarship award determination procedure.

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

**Early Childhood Development Scholarship Program**

11 KAR 16:001. Definitions for 11 KAR Chapter 16.

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

11 KAR 16:040. Early Childhood Development Scholarship Program recordkeeping requirements.

11 KAR 16:050. Early Childhood Development Scholarship Program costs.

11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives.

**AGRICULTURAL EXPERIMENT STATION**

**Seeds**

12 KAR 1:116. Sampling, analyzing, testing, and tolerances.

12 KAR 1:135. Tags available for purchase from the director.

12 KAR 1:140. Permits, reports, and fees for persons using own tags.

12 KAR 1:145. Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners.

12 KAR 1:150. Stop sale orders.

12 KAR 1:155. Schedule of charges for samples submitted for testing.

12 KAR 1:165. Germination standards for vegetable seed.

**GENERAL GOVERNMENT CABINET  
Board of Medical Licensure**

**Board**

201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.

**Board of Physical Therapy**

**Board**

201 KAR 22:045. Continued competency requirements and procedures.

201 KAR 22:055E. Interim standards for supervision for physical therapists. ("E" expires 11/11/2013)

201 KAR 22:130. Per diem of board members.

**Real Estate Appraisers Board**

**Board**

201 KAR 30:040. Standards of practice.

201 KAR 30:120. Temporary appraisal licenses and certificates.

201 KAR 30:125. Continuing education for appraisers.

201 KAR 30:150. Education provider approval.

201 KAR 30:200. Reciprocity requirements for applicants licensed or certified in another state.

201 KAR 30:360. Operation of an appraisal management company.

**Board of Registration for Professional Geologists**

**Board**

201 KAR 31:010. Fees. (Deferred from July)

201 KAR 31:020. Compensation of board members. (Deferred from July)

201 KAR 31:040. Applications and examinations. (Deferred from July)

201 KAR 31:050. Renewals. (Deferred from July)

201 KAR 31:060. Code of professional conduct. (Deferred from July)

201 KAR 31:080. Geologist-in-training. (Deferred from July)

201 KAR 31:090. Complaint management process. (Deferred from July)

**Applied Behavior Analysis Licensing Board**

**Board**

201 KAR 43:010. Application procedures for licensure.

**Board of Licensed Diabetes Educators**

**Board**

201 KAR 45:001. Definitions.

201 KAR 45:070. Application procedures for current practitioners.

201 KAR 45:100. Fees.

201 KAR 45:110. Supervision and work experience.

201 KAR 45:120. Renewal, reinstatement, and inactive status.

201 KAR 45:130. Continuing education.

201 KAR 45:140. Code of ethics.

201 KAR 45:150. Complaint procedures.

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201 KAR 45:160. Scope of practice.

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

**Game**

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers. (Comments Received)

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Technical and Administrative Support**

**General Administrative Procedures**

418 KAR 1:010. Definitions for 418 KAR Chapter 1.

418 KAR 1:040. Grant applications.

418 KAR 1:050. Procedures for acquisitions of land.

**TRANSPORTATION CABINET  
Office of Audits  
Division of Road Fund Audits**

**Motor Carriers**

601 KAR 1:147. Auditing of U-drive-it permit holders.

**Department of Vehicle Regulation  
Division of Motor Vehicle Licensing**

**Motor Vehicle Tax**

601 KAR 9:200. Registration and titling of rebuilt or salvage motor vehicles.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM  
Kentucky Fire Commission**

**Commission on Fire Protection Personnel Standards and Education**

739 KAR 2:080. Candidate physical ability test.

**LABOR CABINET  
Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and Health Education and Training**

**Occupational Safety and Health**

803 KAR 2:300. General.

803 KAR 2:307. Hazardous materials.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:314. Machinery and machine guarding.

803 KAR 2:320. Toxic and hazardous substances.

803 KAR 2:400. Adoption of 29 C.F.R. 1926.1-6.

803 KAR 2:403. Occupational health and environmental controls.

803 KAR 2:404. Personal protective and lifesaving equipment.

803 KAR 2:407. Adoption of 29 C.F.R. Part 1926.250-252.

803 KAR 2:411. Scaffolds.

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

803 KAR 2:419. Adoption of 29 C.F.R. Part 1926.850-860.

803 KAR 2:425. Toxic and hazardous substances.

803 KAR 2:500. Maritime employment.

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control**

**Licensing**

804 KAR 4:031. Repeal of 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.

804 KAR 4:250. Special temporary licenses.

804 KAR 4:390 & E. License renewals. ("E" expires 12/11/2013)

804 KAR 4:430E. Issuance of Licenses. ("E" expires 12/11/2013)

**Transportation of Alcoholic Beverages**

804 KAR 8:011. Repeal of 804 KAR 8:010, 804 KAR 8:020, and 804 KAR 8:030.

**Quotas**

804 KAR 9:010. Quota retail license limits.

**Department of Housing, Buildings, and Construction  
Division of Building Code Enforcement**

**Kentucky Building Code**

815 KAR 7:125. Kentucky Residential Code.

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

**Certificate of Need**

900 KAR 6:030. Certificate of Need expenditure minimums.

900 KAR 6:120. Certificate of Need angioplasty two (2) year trial program.

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

## **VOLUME 40, NUMBER 2 – AUGUST 1, 2013**

### **Office of the Kentucky Health Benefit Exchange**

#### **Kentucky Health Benefit Exchange**

900 KAR 10:020 & E. Kentucky Health Benefit Exchange Small Business Health Options Program. ("E" expires 12/4/2013)

#### **Department for Public Health**

#### **Division of Maternal and Child Health**

#### **Kentucky Early Intervention System**

902 KAR 30:120. Evaluation and eligibility. (Deferred from July)

902 KAR 30:200. Coverage and payment for services. (Deferred from July)

#### **Office of the Inspector General**

#### **Office**

906 KAR 1:190. Kentucky Applicant Registry and Employment Screening Program.

906 KAR 1:200. Use of Civil Money Penalty Funds collected from certified Long-term Care facilities.

#### **Department for Medicaid Services**

#### **Payment and Services**

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

#### **Department for Community Based Services**

#### **Child Welfare**

922 KAR 1:130 & E. Kinship Care Program. ("E" expires 10/25/2013) (Not Amended After Comments)

922 KAR 1:140 & E. Foster care and adoption permanency services. ("E" expires 9/24/2013) (Deferred from June)

922 KAR 1:320 & E. Service appeals. ("E" expires 10/25/2013) (Not Amended After Comments)

922 KAR 1:400 & E. Supportive services. ("E" expires 9/24/2013) (Deferred from June)

#### **Division of Child Care**

#### **Day Care**

922 KAR 2:020. Child Care Assistance Program (CCAP) improper payments, claims, and penalties. (Deferred from June)

922 KAR 2:090 & E. Child-care center licensure. ("E" expires 10/24/2013) (Amended After Comments)

922 KAR 2:100. Certification of family child-care homes. (Amended After Comments)

922 KAR 2:110. Child-care center provider requirements. (Amended After Comments)

922 KAR 2:120. Child-care center health and safety standards. (Deferred from June)

922 KAR 2:160 & E. Child Care Assistance Program. ("E" expires 10/24/2013) (Amended After Comments)

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program. (Deferred from June)

### **DEFERRED FROM AUGUST 2013 AGENDA**

#### **ENERGY AND ENVIRONMENT CABINET**

#### **Department for Environmental Protection**

#### **Division of Water**

#### **Water Quality Standards**

401 KAR 10:030. Antidegradation policy implementation methodology. (Not Amended After Comments) (Deferred from December)

### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

#### **Kentucky Board of Education**

#### **Department of Education**

#### **School Terms, Attendance and Operation**

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. (Comments Received; SOC Ext)

#### **Office of Instruction**

704 KAR 3:303. Required core academic standards. (Comments Received; SOC Ext)

### **CABINET FOR HEALTH AND FAMILY SERVICES**

#### **Office of the Kentucky Health Benefit Exchange**

#### **Kentucky Health Benefit Exchange**

900 KAR 10:010 & E. Exchange participation requirements and certification of qualified health plans and qualified dental plans. ("E" expires 12/10/2013) (Comments Received; SOC Ext)

#### **Department for Public Health**

#### **Division of Maternal and Child Health**

#### **Kentucky Early Intervention System**

902 KAR 30:001. Definitions for 902 KAR Chapter 30. (Comments Received; SOC Ext)

902 KAR 30:110. Point of entry and service coordination. (Comments Received; SOC Ext)

902 KAR 30:130. Assessment, service planning, and assistive technology. (Comments Received; SOC Ext)

902 KAR 30:150. Personnel qualifications. (Comments Received; SOC Ext)

902 KAR 30:160. Covered services. (Comments Received; SOC Ext)

902 KAR 30:180. Procedural safeguards. (Comments Received; SOC Ext)

#### **Department for Medicaid Services**

#### **Payment and Services**

#### **Medicaid Services**

907 KAR 1:563. Medicaid covered services appeals and hearings unrelated to managed care. (Comments Received; SOC Ext)

#### **Payments and Services**

907 KAR 3:225 & E. Specialty intermediate care (IC) clinic service and coverage policies and requirements. ("E" expires 12/5/2013)  
(Comments Received; SOC Ext)

**ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW**  
**(See KRS Chapter 13A for specific provisions)**

**Filing and Publication**

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

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

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

**Review Procedure**

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

**VOLUME 40, NUMBER 2 – AUGUST 1, 2013**  
**EMERGENCY ADMINISTRATIVE REGULATIONS**

**STATEMENT OF EMERGENCY**  
**30 KAR 5:010E**

This emergency administrative regulation is being promulgated to establish the definitions for 30 KAR Chapter 5 which is necessary to implement the revisions made to Article 9 of KRS Chapter 355. KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355. The Article 9 revisions of KRS Chapter 355 are effective on July 1, 2013. This administrative regulation must be promulgated on an emergency basis so that the Office of Secretary of State can timely implement the Article 9 revisions of KRS Chapter 355 by the July 1, 2013, deadline. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Office of Secretary of State to timely implement the Article 9 revisions as required and administer its ministerial duties pursuant to Article 9 of KRS Chapter 355. 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  
ALISON LUNDERGAN GRIMES, Secretary of State

**OFFICE OF KENTUCKY SECRETARY OF STATE**  
**(Emergency Amendment)**

**30 KAR 5:010E. Definitions for 30 KAR Chapter 5.**

RELATES TO: KRS Chapter 355.9[Article 9]  
STATUTORY AUTHORITY: KRS 355.9-526(1)  
EFFECTIVE: June 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing ~~Article 9 of~~ KRS Chapter 355.9[355]. This administrative regulation establishes the definitions for 30 KAR Chapter 5.

Section 1. Definitions. (1) "Active Record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the searchable indexes.

(2) "Address" means either:

(a) A street address, route number or PO Box number plus the city, state, and zip code; or

(b) An address that purports to be a mailing address outside the United States of America.

(3) "Amendment statement" means a UCC record[~~, including an assignment, continuation, or termination,~~] that amends the information contained in a financing statement and includes an ~~assignment, continuation, or termination.~~

(4)[(2)] "Assignment statement" means an amendment that assigns all or part of a secured party's power to authorize an amendment to a financing statement.

(5)[(3)] "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

(4) "Filing office" or[and] "filing officer" is defined by KRS 355.9-102(1)(ak)[mean the Secretary of State].

(6)[(5)] "Filing officer statement" means a statement [of correction] entered into the filing office's information system to correct an error made by the filing office.

(7) "Information statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

(8)[(6)] "Individual" means a human being, or a decedent in the case of a debtor that is a decedent's estate.

(7) "Initial financing statement" means a UCC record ~~that~~[containing the information required to be an initial financing statement which, when filed,] causes the filing office to establish the initial record of filing of a financing statement[in the filing office's UCC information management system.

(8) "Organization" is defined by KRS 355.1-201(28)].

(9) "Remitter" means a person who[~~-(a)~~] tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing, and does not include a person responsible merely for the delivery of the record to the filing office, including the postal service or a courier service process.

(10) "Searchable indexes" means the searchable index of individual debtor names and the searchable index of organization debtor names maintained in the UCC information management system.

(11) "Secured party of record" means a secured party as defined in KRS 355.9-102(1)(bu) who meets the additional requirements established in KRS 355.9-511.

(12)[~~-(a)~~ and

(b) is not responsible merely for the delivery of the record to the filing office, such as the postal service, and who does not act as the filer's representative in the filing process.

(49) "UCC" means the Uniform Commercial Code as adopted in this state.

(13) "UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements as required by 30 KAR 5:040.

(14)[(44)] "UCC record" means an initial financing statement, an amendment, an assignment, a continuation ~~statement~~, a termination statement, a filing officer statement, or an information[a correction] statement, and includes a record thereof maintained by the filing office, without being limited[~~shall not be deemed to refer exclusively~~] to paper or paper-based writings.

(15) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system and that has not yet lapsed under KRS 355.9-515 with respect to all secured parties of record.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

CONTACT PERSON: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for 30 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355 and to define terms that are utilized in 30 KAR Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of Article 9 of KRS Chapter 355.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statute by defining terms that are utilized in 30 KAR Chapter 5 and Article 9 of KRS Chapter 355.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This amendment adds definitions for new terms that are used in 30 KAR Chapter 5 and Revised Article 9 of KRS Chapter 355 and removes phrases and definitions that are no longer applicable to Revised Article 9 of KRS Chapter 355.

(a) How the amendment will change this existing administrative regulation: The existing administrative regulation will change with the addition of the following defined terms: Active record, Address,

Searchable indexes, Secured party of record, UCC information management system, and Unlapsed record. Additionally, there were minor wording and phrasing changes made to the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355 and to define terms that are utilized in 30 KAR Chapter 5.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will simply have to familiarize themselves with the new terms that have been added 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): Entities identified in question (3) will experience costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will benefit from this amendment because it provides new terms that are utilized throughout 30 KAR Chapter 5 and Article 9 of KRS 355.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### STATEMENT OF EMERGENCY 30 KAR 5:020E

This emergency administrative regulation is being promulgated to establish the general provisions governing 30 KAR Chapter 5 relating to deliveries, approved forms, payments, and public services which are necessary to implement the revisions made to Article 9 of KRS Chapter 355. KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355. The Article 9 revisions of KRS Chapter 355 are effective on July 1, 2013. This administrative regulation must be promulgated on an emergency basis so that the Office of Secretary of State can timely implement the Article 9 revisions of KRS Chapter 355 by the July 1, 2013, deadline. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Office of Secretary of State to timely implement the Article 9 revisions as required and administer its ministerial duties pursuant to Article 9 of KRS Chapter 355. 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

ALISON LUNDERGAN GRIMES, Secretary of State

#### OFFICE OF KENTUCKY SECRETARY OF STATE (Emergency Amendment)

#### 30 KAR 5:020E. General provisions.

RELATES TO: KRS Chapter 355.9[Article 9]

STATUTORY AUTHORITY: KRS 355.9-526(1)

EFFECTIVE: June 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing[Article 9—of] KRS Chapter 355.9[355]. This administrative regulation establishes the general provisions governing 30 KAR Chapter 5 relating to deliveries, approved forms, payments, and public[record] services.

Section 1. UCC Record Delivery. (1) UCC records may be tendered for filing at the filing office as follows:

(a)[(4)] Personal delivery by remitter, at the filing office's street address. The file time for a UCC record delivered by this method shall:



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1. Be when delivery of the UCC record is ~~taken~~accepted by the filing office (even though the UCC record ~~has~~may not~~yet have~~ been accepted for filing and subsequently may be rejected); and

2. Apply only to a remitter who tenders a UCC record to the filing office and awaits an immediate determination of whether or not the UCC record will be taken;[-]

(b)[(2)] Courier delivery by a person other than a remitter, at the filing office's street address.

1. The file time for a UCC record delivered by this method shall be, notwithstanding the time of delivery, at the earlier of the time the UCC record is first examined by a filing officer for processing~~[the next close of business following the time of delivery]~~ (even though the UCC record ~~has~~may not~~yet have~~ been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery.

2. A UCC record delivered after regular business hours or on a day the filing office is not open for business, if not examined for processing sooner, shall have a filing time of the close of business on the next day the filing office is open for business;[-]

(c)[(3)] Postal service delivery, to the filing office's mailing address.

1. The file time for a UCC record delivered by this method shall be the next close of business following the time of delivery (even though the UCC record ~~has~~may not~~yet have~~ been accepted for filing and may be subsequently rejected).

2. A UCC record delivered after regular business hours or on a day the filing office is not open for business shall have a filing time of the close of business on the next business day~~[the filing office is open for business]~~.

(d)[(4)] Electronic filing. UCC records, excluding ~~information statements and filing officer~~correction statements, may be transmitted electronically using the XML format~~[standard]~~ approved by the International Association of Corporation Administrators~~[or through on-line entry]~~.

1. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office.

2. The file time for a UCC record delivered by ~~this method~~these methods shall be the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable; or

(e) Through direct on-line and Web page data entry.

1. UCC records may be delivered by on-line data entry using the filing office's Web site on the internet.

2. The file time for a UCC record delivered by this method shall be the time the entry of all required elements of the UCC record in the proper format is acknowledged by the on-line entry system.

(2) Means of communication. Regardless of the method of delivery, a financing statement or amendment form shall designate separate fields for:

(a) Organization and individual names; and

(b) The surname, first personal name, additional names, initials, and suffixes for individual names.

(3) Transmitting utility, manufactured-home, and public-finance transactions.

(a) The appropriate box on a financing statement shall be marked to indicate that:

1. An initial financing statement is being filed in connection with a manufactured-home or public-finance transaction; or

2. A financing statement is being or has been filed against a debtor that is a transmitting utility.

(b) The requisite information shall be transmitted in the proper field in an electronic filing that is an initial financing statement or part of a financing statement to indicate that:

1. An initial financing statement is being filed in connection with a manufactured-home or public-finance transaction; or

2. A financing statement is being or has been filed against a debtor that is a transmitting utility.

(c) If the requirements of paragraph (a) or (b) of this subsection are not met, the filing shall not affect the filing office's determination of the lapse date under 30 KAR 5:040, Section 7 or 8.

Section 2. Search Request Delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office, in accordance with Section 1 of this administrative regulation.

Section 3.~~[Approved]~~ Forms. ~~(1) The forms~~[The filing office shall only accept the forms] prescribed by KRS 355.9-521 ~~shall be accepted by the filing office.~~

~~(2) A paper-based form approved~~[or forms adopted] by the International Association of Corporation Administrators ~~shall be accepted.~~

Section 4. Fees. The fee for filing a UCC record shall be the amount prescribed by KRS 355.9-525.

Section 5. Methods of Payment. Filing fees and fees for public records services~~[copies of UCC records]~~ may be paid by the following methods:

(1) Cash. Payment in cash shall be accepted if paid in person at the filing office;[-]

(2) Checks. Personal checks, cashier's checks and money orders made payable to the Kentucky State Treasurer shall be accepted for payment if the drawer, or the issuer if it is a cashier's check or money order, is deemed creditworthy by the filing office in its discretion;~~[if they are drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.]~~

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for the transfers and who authorize the relevant transfer pursuant to the arrangements and rules;[-]

(4) Prepaid account. A remitter may open an account for prepayment of fees by submitting a completed Application for Prepaid Account and prepaying an amount not less than \$250. The filing officer shall issue an account number to be used by a remitter who chooses to pay filing fees by this method. The filing officer shall deduct filing~~[and copying]~~ fees from the remitter's prepaid account if authorized to do so by the remitter;[-]

(5) Debit and credit cards. The filing office shall accept payment by debit cards and credit cards issued by approved issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the card issuer, the name of the person or entity to whom the card was issued, and the billing address for the card. Payment shall not be deemed tendered until the issuer or its agent has confirmed payment; or

(6) Interaccount. The filing office shall accept payment by inter-account from state agencies. The agency shall provide the inter-account number at the time of filing.

Section 6~~[5]~~. Overpayment and Underpayment Policies. (1) Overpayment. The filing officer shall refund the amount of an overpayment.

(2) Underpayment. Upon receipt of a UCC record with an insufficient fee, the filing officer shall do one (1) of the following:

(a) A notice of deficiency shall be sent to the remitter and the UCC record shall be held for a period of ten (10) days from the date of the notice for receipt of the fee. Upon receipt of the fee, the UCC record shall be filed as of the time and date of receipt of the full filing fee. If the fee is not received within ten (10) days of the date of the notice, the record shall be returned to the remitter with a written explanation for the refusal to accept the record; or

(b) The UCC record shall be returned to the remitter as provided in 30 KAR 5:030, Section 4. ~~A~~[The] refund shall be included with the UCC record or delivered under separate cover.

Section 7~~[6]~~. Public Records Services. Public records services shall be provided on a nondiscriminatory basis to any member of the public in accordance with this section. The following methods shall be available for obtaining copies of UCC records and copies of data from the UCC information management system:

(1) Individually-identified documents. Copies of individually-identified documents shall be available in the following forms:

(a) Paper; or

(b) JPG files via the web.

(2) Text data from the UCC information management system. A list of available text data elements from the UCC information management system, and the file layout of the text data elements, shall be available from the filing office upon request. Text data from the UCC information management system shall be available as follows:

(a) Full extract. A bulk text data extract of information from the UCC information management system shall be available on a weekly basis.

(b) Update extracts. Updates of text data from the UCC information management system shall be available on a weekly basis.

(c) Format. Text data extracts from the UCC information management system shall be available in the following formats:

1. CD-ROM; or
2. FTP file transfer.

Section 8[7]. Incorporation by Reference. (1) "Application for Prepaid Account," Secretary of State, Uniform Commercial Code Branch, 10-5-11[07-04-04], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State, UCC Branch, 700 Capital Avenue, State Capitol, Suite 152[363C-Ver-sailles-Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

CONTACT PERSON: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the general provisions governing 30 KAR Chapter 5 relating to deliveries, forms, payments, and public services.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of the statutes that fall under Article 9 of KRS Chapter 355.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will assist in the effective administration of Article 9 of KRS Chapter 355 by providing more detailed instruction and guidance in the following areas: UCC record delivery, forms, fees, payments and public services.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by providing more detailed guidance in the following areas: UCC record delivery, forms, fees, payments and public services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the new UCC forms and the additional methods of UCC record delivery that will be available.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will incur costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will benefit from this amendment because it provides additional avenues of UCC record delivery and more specific guidance on fees, payments, and public services.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no cost to implement this amended administrative regulation

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first

year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

# STATEMENT OF EMERGENCY 30 KAR 5:030E

This emergency administrative regulation is being promulgated to establish the requirements relating to the acceptance and refusal of UCC records and these requirements are necessary to implement the revisions made to Article 9 of KRS Chapter 355. KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355. The Article 9 revisions of KRS Chapter 355 are effective on July 1, 2013. This administrative regulation must be promulgated on an emergency basis so that the Office of Secretary of State can timely implement the Article 9 revisions of KRS Chapter 355 by the July 1, 2013, deadline. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Office of Secretary of State to timely implement the Article 9 revisions as required and administer its ministerial duties pursuant to Article 9 of KRS Chapter 355. 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  
ALISON LUNDERGAN GRIMES, Secretary of State

## OFFICE OF KENTUCKY SECRETARY OF STATE (Emergency Amendment)

### 30 KAR 5:030E. Acceptance and refusal of records.

RELATES TO: KRS Chapter 355.9-515, 355.9-516, 355.9-520

STATUTORY AUTHORITY: KRS 355.9-526(1)

EFFECTIVE: June 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing ~~Article 9~~ of KRS Chapter ~~355.9~~[355]. This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

Section 1. Role of Filing Officer. The duties and responsibilities of the filing officer with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record pursuant to the UCC and 30 KAR Chapter 5, the filing officer shall not:

(1) Determine the legal sufficiency or insufficiency of the UCC[a] record;

(2) ~~[Determine that a security interest in collateral exists or does not exist; (3)]~~ Determine that information in the record is correct or incorrect, in whole or in part; or

(3)[4] Create a presumption that information in the record is correct or incorrect, in whole or in part.

Section 2. Time for filing a continuation statement[Timeliness of Continuation].(1) First day permitted. The first day on which a continuation statement may be filed shall be the date corresponding to the date upon which the related financing statement would lapse, six (6) months preceding the month in which the financing statement would lapse. If there is no corresponding date, the first

day[date] on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The foregoing rule shall be subject to the ability of the filing office to take delivery of the continuation statement as tendered and pursuant to 30 KAR 5:020.

(2) Last day permitted. The last day on which a continuation may be filed is the date upon which the related financing statement lapses. The foregoing rule shall be subject to the ability of the filing office to take delivery of the continuation statement as tendered and pursuant to 30 KAR 5:020. Accordingly, the time of filing of the continuation statement under 30 KAR 5:020 shall be on or prior to the date upon which the related financing statement lapses and delivery by certain means of communication shall not be available on the last day if the filing office is not open for business on that day.

Section 3. Grounds for Refusal. In addition to refusing a record for any reason, or multiple reasons, as set forth in KRS 355.9-516 and 355.9-516A, a filing office[The filing officer] shall refuse to accept a UCC record that fails to provide an address that meets the minimum requirements set forth in 30 KAR 5:010[for the reasons specified in KRS 355.9-516. In accordance with KRS 355.9-516(2)(a), the filing officer shall refuse a UCC record if:

(1) ~~The record contains more than one (1) secured party or assignee name or address and some names or addresses are missing or illegible; or~~

(2) ~~No address is given in the address field. An address shall include street address, city, state and postal code]~~.

Section 4. Procedure Upon Refusal. (1) Except as provided in 30 KAR 5:020, Section 5(2)(b), if the filing officer finds grounds to refuse a UCC record, the filing officer shall refund the filing fee and return the record or a copy of the record in accordance with KRS 355.9-520(2).

(2) Communication of the refusal. The reason for the refusal and other related information shall be made to the remitter as soon as practicable and in any event within three (3) business days after the refused UCC record was received by the filing office, by the same means by which the UCC record was delivered to the filing office, or by mail or a more expeditious means as the filing office shall determine.

(3) Records of refusal, including a copy of the refused UCC record and the ground for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

Section 5. Notification of Defects. (1) A filing officer may communicate to a filer or remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing.

(2) The filer or remitter shall be responsible for the legal effectiveness of a filing. The filing office shall not bear responsibility for the effectiveness of records.

Section 6. Refusal Errors. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused under subsection (3) of this section, the filing officer shall file the UCC record with the filing date and time the UCC record was originally tendered for filing[assigned when the filing occurs. The filing officer shall file] A filing officer statement record relating to the relevant initial financing statement shall be placed in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system[that states the effective date and time of filing which shall be the date and time the UCC record was originally tendered for filing].

ALISON LUNDERGAN GRIMES, Secretary of State  
APPROVED BY AGENCY: June 27, 2013

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

CONTACT PERSON: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355 and to specifically establish the requirements relating to the acceptance and refusal of records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of KRS 355.9-515, 355.9-516, 355.9-516A, and 355.9-520.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the above statutes by providing more detailed guidance for the requirements that relating to the acceptance and refusal of records.

(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 changes wording and phrasing in the existing regulation. Additionally, this amendment provides more detailed guidance as to when a continuation statement can be appropriately filed. Under the "Grounds for Refusal Section," this amended regulation accounts for KRS 355.516A, which establishes additional grounds for refusal of a UCC record. Finally, this amendment provides additional guidance as to the procedure to which the filing officer must adhere when refusing a UCC record and when a refusal was made in error.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355 and to establish the requirements relating to the acceptance and refusal of records.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the wording and phrasing changes and the additional grounds for refusal that have been established by KRS 355.9-516A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will experience costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will collectively benefit from this amendment because it provides

them with more detailed information and guidance as to the requirements relating to the acceptance and refusal of records.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

**STATEMENT OF EMERGENCY  
30 KAR 5:040E**

This emergency administrative regulation is being promulgated to establish the requirements for the UCC Information Management System and these requirements are necessary to implement the revisions made to Article 9 of KRS Chapter 355. KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355. The Article 9 revisions of KRS Chapter 355 are effective on July 1, 2013. This administrative regulation must be promulgated on an emergency basis so that the Office of Secretary of State can timely implement the Article 9 revisions of KRS Chapter 355 by the July 1, 2013, deadline. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Office of Secretary of State to timely implement the Article 9 revisions as required and administer its ministerial duties pursuant to Article 9 of KRS Chapter 355. 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  
ALISON LUNDERGAN GRIMES, Secretary of State

**OFFICE OF KENTUCKY SECRETARY OF STATE  
(Emergency Amendment)**

**30 KAR 5:040E. UCC Information Management System.**

RELATES TO: KRS Chapter 355.9-515, 355.9-519, 355.9-526  
STATUTORY AUTHORITY: KRS 355.9-526(1)

EFFECTIVE: June 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing ~~Article 9~~ of KRS Chapter 355.9[355]. This administrative regulation establishes the requirements for the UCC Information Management System.

Section 1. General ~~Provisions~~. The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors included on financing statements that are active records. The requirements in this administrative regulation describe the UCC Information Management System.~~The Information Management System shall:~~

- ~~(1) Be used by the filing officer to store, index, and retrieve information relating to financing statements;~~
- ~~(2) Include an index of the names of debtors named on the financing statements which have not lapsed; and~~
- ~~(3) Comply with the requirements of this administrative regulation.~~

Section 2. Primary Data Elements. The primary data elements used in the UCC Information Management System shall be the following:

- (1) Identification numbers.

(a) Each initial financing statement shall be identified by its file number. ~~Identification of the initial financing statement~~~~[which]~~ shall be stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC Information Management System. A record shall be created in the Information Management System for each initial financing statement and all information comprising the record shall be maintained in the system. The record shall be identified by the same information assigned to the initial financing statement.

(b) A UCC record other than an initial financing statement shall be identified by a unique file number assigned by the filing officer. In the UCC Information Management System, records of all UCC records other than initial financing statements shall be linked to the record of their related initial financing statement.

(2) Type of record. The type of UCC record from which data is transferred shall be identified in the UCC Information Management System from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC records shall be stored in the UCC Information Management System. Calculation of the lapse date of an initial financing statement shall be based upon the filing date and in accordance with KRS 355.9-515.

(4) Identification of parties. The names and addresses of debtors and secured parties shall be transferred from UCC records to the UCC Information Management System~~[using one (1) or more data entry or transmittal techniques]~~.

(5) Page count. The total number of pages in a UCC record is maintained in the UCC Information Management System.~~[Status of financing statement. In the Information Management System, each financing statement shall list a status of active or inactive].~~

(6) Lapse indicator. An indicator shall be maintained by which the Information Management System identifies whether or not a financing statement will lapse and, if it does, when it will lapse.

(7) Indexes of names. The filing office maintains in the UCC Information Management System a searchable index of organization debtor names, and a searchable index of individual debtor names.

(8) Status of financing statement. In the UCC Information Management System, each financing statement shall list a status of active or inactive.

Section 3. Individual Debtor Names~~[of Debtors or Secured Parties Who are Individuals]~~. For purposes of these rules, an "individual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Individual name fields. Individual debtor names~~[The names of individuals]~~ shall be stored in files that include only the individual debtor names~~[of individuals]~~, and not organization debtor names~~[the names of organizations]~~. Separate data entry fields shall be established for surnames (last or family names), first personal names (given), and additional names and initials~~[first (given), middle (given), and last names (surnames or family names)]~~ of individuals. ~~[A filer shall place]~~ The name of a debtor with a single name (e.g., Cher) shall be treated as a surname and shall be entered in the individual surname [in the last name] field. The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the date in accordance with the filer's designations~~[shall]~~:

(a) Not assume responsibility for the accurate designation of the components of a name; and

(b) Accurately enter the data in accordance with the filer's designation).

(2) Titles~~[and]~~ prefixes and suffixes~~[before names]~~. Titles~~[and]~~ prefixes (e.g. "Ms."), and suffixes or indications of status (e.g. "M.D.") are not typically part of a debtor's name~~[such as "doctor", "reverend", "Mr.", and "Mrs.", shall not be provided by filers on a UCC record]~~. Suffixes used to distinguish between family members with identical names (e.g. "JR.") shall be provided in the suffix field. However, when entering a "name" into the UCC Information Management System~~[If a UCC record is submitted with titles or prefixes in the designated name fields]~~, the data shall be entered exactly as it appears.

(3) Extended debtor name field. The financing statement form has limited space for individual debtor names. If any portion of the individual debtor name is too long for the corresponding field, the filer is instructed to check the box that indicates the name was too long and enter the name in item ten (10) of the Addendum. A filing officer shall not refuse to accept a financing statement that lacks debtor information in item one (1) or item two (2) if the record includes an Addendum that provides a debtor name in item ten (10)~~[Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" shall not be provided by filers on a UCC record. If a UCC record is submitted with titles or indications of status in the designated name fields, the data shall be entered exactly as it appears. Suffixes that indicate which individual is being named, such as "senior", "junior", "I", "II", and "III", shall be provided by filers in the field designated for name suffixes]~~.

(4) Truncation ~~[of]~~ individual names. Personal name fields in the UCC Information Management System shall be fixed in length.

Although filers shall continue to provide full names on their UCC records, a name that exceeds the fixed length shall be entered as presented to the filing officer, up to the maximum length of the data entry field[fields]. The lengths of data entry name fields shall be as follows:

- (a) Surname[First name]: fifty (50) characters.
- (b) First personal[Middle] name: fifty (50) characters.
- (c) Additional name(s) or initial(s)[Last name]: fifty (50) characters.
- (d) Suffix: fifty (50) characters.

Section 4. Organization Debtor Names[of Debtors or Secured Parties that are Organizations]. For purposes of these rules, an "organization debtor name" shall be any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Single field. Organization debtor names[The names of organizations] shall be stored in files that include only organization debtor names[the names of organizations] and not individual debtor names. A single field shall be used to store an organization debtor name[not the names of individuals].

(2) Truncation [of] organization names. The organization debtor name field in the UCC Information Management System shall be fixed in length. The maximum length shall be 300 characters. Although filers shall continue to provide full names on their UCC records, a name that exceeds the fixed length shall be entered as presented to the filing officer, up to the maximum length of the organization debtor name[data entry] field.

Section 5. Collateral Being Administered by a Decedent's Personal Representative. The debtor name to be provided on a financing statement when the collateral is being administered by a decedent's personal representative shall be the name of the relevant decedent. In order for the UCC Information Management System to function in accordance with the usual expectations of filers and searchers, the filer shall provide the debtor name as an individual debtor name. However, the filing office shall enter data submitted by a filer in the fields designated by the filer exactly as it appears in the fields[Estates. An estate shall be treated as if the decedent were the debtor under Section 3 of this administrative regulation].

Section 6. Collateral Held in a Trust. (1) The debtor name to be provided when the collateral is held in a trust that is not a registered organization shall be the name of the trust as set forth in its organic record, if the trust has a name in its organic record or, if the trust is not so named, the name of the trust's settlor.

(2) In order for the UCC Information Management System to function in accordance with the usual expectations of filers and searchers, the name of a trust or of a settlor that is an organization shall be provided as an organization debtor name, and the name of a settlor who is an individual shall be provided as an individual debtor name, in each case without regard to the nature or character of the debtor. However, the filing office shall enter data submitted by a filer in the fields designated by the filer exactly as it appears in the fields[Trusts. (1) If the trust is named in its organic record, its full legal name, as set forth in the record, shall be used and the trust shall be treated as an organization.

(2) If the trust is not named in its organic record, the name of the settlor shall be used.

(a)1. If a settlor is indicated to be an organization, the name shall be treated as an organization name.

2. If the settlor is an individual, the name shall be treated as an individual name.

(b) A UCC record that uses a settlor's name shall include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor.

(3) All financing statements filed against trusts or trustees acting with respect to property held in trusts shall indicate the nature of the debtor].

Section 7. Initial Financing Statement. Upon the filing of an initial financing statement, the status of the parties and the status

of the financing statement shall be as follows.

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. Each debtor name provided by the initial financing statement shall be indexed in the UCC Information Management System if the financing statement is an active record.

(3) Status of financing statement. The financing statement shall be an active record as provided in KRS 355.9-519(7). A lapse date shall be calculated in accordance with KRS 355.9-515[Upon the filing of an initial financing statement, the status of the financing statement shall be active.

(2) The lapse date shall be calculated in accordance with KRS 355.9-515.

(3) A financing statement shall remain active as provided in KRS 355.9-519(7)].

Section 8. Amendments Generally[Amendment]. (1) Upon the filing of an amendment, the status of the parties shall be as follows:

(a) Unchanged, except that in the case of an amendment that adds a debtor or a secured party, the new debtor or secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC Information Management System, and an amendment that designates an assignee shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC Information Management System.

(b) Notwithstanding the filing of an amendment that deletes a debtor or a secured party from a financing statement, no debtor or secured party of record is deleted from the UCC Information Management System.

(c) A deleted secured party shall be treated by the filing office as a secured party of record as the filing office cannot verify the effectiveness of an amendment.

(2) The filing of an amendment shall not affect the status of the financing statement. An amendment that indicates that the debtor is a transmitting utility shall cause the filing office to reflect in the UCC Information Management System that the amended financing statement has no lapse date[and the status of the financing statement shall be as follows:

(1) Status of secured party and debtor. An amendment shall affect the status of its debtor and secured party as follows:

(a) Collateral amendment or address change. An amendment that amends only the collateral description or one (1) or more address shall not affect the status of any debtor or secured party.

(b) Debtor name change. An amendment that changes a debtor's name shall not affect the status of a debtor or secured party. If the debtor's name is changed, the related initial financing statement and all UCC records that include an identification of the initial financing statement shall be cross-indexed in the UCC Information Management System so that a search under either the debtor's old name or the debtor's new name will reveal the initial financing statement and the related UCC records.

(c) Secured party name change. An amendment that changes the name of a secured party shall not affect the status of a debtor or a secured party. The new name shall be added to the index as if it were a new secured party.

(d) Addition of a debtor. An amendment that adds a new debtor name shall not affect the status of any party to the financing statement. The new debtor name shall be added as a new debtor on the financing statement.

(e) Addition of secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement. The new secured party name shall be added as a new secured party on the financing statement.

(f) Deletion of debtor. An amendment that deletes a debtor shall not affect the status of any party to the financing statement, even if the amendment purports to delete all debtors.

(g) Deletion of secured party. An amendment that deletes a secured party shall not affect the status of any party to the financing statement, even if the amendment purports to delete all secured parties.

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~~(2) Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement].~~

Section 9. Assignment of Powers of Secured Party. (1) Status of the parties. An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party.

(2) Status of financing statement. An assignment shall have no effect upon the status of the financing statement.

Section 10. Continuation Statement. (1) Continuation of lapse date. Upon the timely filing of one (1) or more continuation statements[continuations] by a[any] secured party, the lapse date of the financing statement shall be postponed for five (5) years. The lapse date shall be postponed once notwithstanding the fact that more than one (1) continuation statement is filed within a given six (6) month period prior to a lapse date. Notwithstanding the immediate postponement of the lapse date with respect to one (1) or more secured parties of record who file timely a continuation statement within a given six (6) month period prior to a lapse date, the lapse date shall remain effective solely for purposes of determining whether or not a subsequent continuation statement filed in the same six (6) month period is timely.

(2) Status[~~of parties~~]. The filing of a continuation shall have no effect upon the status of any party to the financing statement or upon the status of the financing statement.[(3) Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement shall remain active.]

Section 11. Termination.[(4) Status of parties.] The filing of a termination shall have no effect upon the status of any party to the financing statement or upon the status of the financing statement.[(2) Status of financing statement. A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active for the time period established in Section 7(3) of this administrative regulation.]

Section 12. Information statement.[~~Correction Statement.~~ (1) Status of parties.] The filing of an information statement[~~a correction statement~~] shall have no effect upon the status of any party to the financing statement, the status of the financing statement, or to the information maintained in the UCC Information Management System.[(2) Status of financing statement. A correction statement shall have no effect upon the status of the financing statement.]

Section 13. Filing Officer Statement. A filing officer statement affects the status of parties and of the relevant financing statement as provided in the corrective action described as having been taken in the filing officer statement.

Section 14. Procedure upon Lapse. If there is no timely filing of a continuation with respect to a financing statement[~~a continuation statement is not timely filed~~], the financing statement shall lapse on its lapse date but no action shall be taken by the filing office.

Section 15. Removal of Record. A financing statement shall remain as an active record until at least one (1) year after it lapses, or if it is indicated to be filed against a transmitting utility, until at least one (1) year after it is terminated with respect to all secured parties of record. On or after the first anniversary of the lapse or termination date, the filing office or the UCC Information Management System shall remove the financing statement and all related UCC records from the searchable indexes or from the UCC Information Management System and upon the removal, the removed UCC records shall cease to be active records.[~~On the first anniversary of the lapse date, the Information Management System shall render the financing statement inactive and the financing statement shall no longer be made available to a searcher unless:~~

~~(1) Inactive statements are requested by the searcher; and~~

~~(2) The financing statement is still retrievable by the Information Management System].~~

Section 16.[14.] XML Documents. The XML format as adopted by the International Association of Corporation Administrators shall be used for electronic transmission of UCC records except correction statements. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office.

Section 17.[15.] Direct On-line (Non-XML) Data Entry Procedures. A UCC record except correction statements may be filed electronically by accessing the Secretary of State's Web site.

Section 18. Incorporation by Reference. (1) "Addendum," Secretary of State, Uniform Commercial Code Branch, 07-01-2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State, UCC Branch, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

CONTACT PERSON: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the requirements for the UCC Information Management System.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates to the implementation of KRS 355.9-515, 355.9-519, 355.9-526.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will assist in administering the above statutes by providing a more detailed description of the UCC Information Management System which includes an index of the names of debtors included on financing statements which are active records.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a searchable index of organization debtors and a searchable index of individual debtor names in the UCC Information Management System. Individual debtor names and organization debtor names are more clearly defined by this amendment. Additionally, this amendment establishes the debtor name to be provided when collateral is being administered by a decedent's personal representative or when collateral is held in a trust. Moreover, the status of parties upon the filing of an initial financing statement, an amendment and a filing officer statement are clearly defined by this amendment. Finally, this amendment clarifies that a correction statement is now referred to as an information statement and defines the process for the removal of a UCC record.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the new UCC forms and the requirements for the UCC Information Management System.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will experience costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will collectively benefit from this amendment because it provides them with more detailed information and guidance as to the requirements for the UCC Information Management System.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no cost to implement this amended administrative regulation

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### STATEMENT OF EMERGENCY 30 KAR 5:050E

This emergency administrative regulation is being promulgated to establish the requirements for the UCC filing and data entry procedures and these requirements are necessary to implement the revisions made to Article 9 of KRS Chapter 355. KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355. The Article 9 revisions of KRS Chapter 355 are effective on July 1, 2013. This administrative regulation must be promulgated on an emergency basis so that the Office of Secretary of State can timely implement the Article 9 revisions of KRS Chapter 355 by the July 1, 2013, deadline. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Office of Secretary of State to timely implement the Article 9 revisions as required and administer its ministerial duties pursuant to Article 9 of KRS Chapter 355. 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

ALISON LUNDERGAN GRIMES, Secretary of State

#### OFFICE OF KENTUCKY SECRETARY OF STATE (Emergency Amendment)

#### 30 KAR 5:050E. Filing and data entry procedures.

RELATES TO: KRS 355.9-526

STATUTORY AUTHORITY: KRS 355.9-526(1)

EFFECTIVE June 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.9[355]. This administrative regulation establishes requirements relating to filing and data entry procedures.

Section 1. Errors of the Filing Officer. (4) The filing office may correct data entry and indexing the errors of filing office personnel in the UCC Information Management System at any time. (2) If a correction is made to a record of a financing statement after the filing office has issued a search report with a through date and time that is on or after the filing date and time of the financing statement, the filing office shall associate with the record of the financing statement in the UCC Information Management System a filing officer statement on the date that the corrective action was taken providing the date and an explanation of the correction the correction occurs after the filing officer has issued a certification date, the filing officer shall file a filing officer statement in the UCC Information Management System identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The filing officer statement shall be preserved as long as the record of the initial financing statement is preserved in the UCC Information Management System].



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Section 2. Data Entry[of Names]. (1) Data shall be entered into the UCC Information Management System exactly as provided in a UCC record, without regard to apparent errors.

(2) Data provided in electronic form shall be transferred to the UCC Information Management System exactly as submitted by the remitter[A record shall designate whether a name is the name of an individual or an organization. If the name is that of an individual, the first, middle and last names and any suffix shall be given.

(1) Organization names. Organization names shall be entered into the UCC Information Management System exactly as set forth in the UCC record, even if it appears that:

(a) Multiple names are set forth in the record; or

(b) The name of an individual has been included in the field designated for an organization name.

(2) Individual names. The filing officer shall enter the names of individuals into the first, middle, and last name and suffix fields in the UCC Information Management System exactly as set forth on the record].

Section 3. Verification of Data Entry. The filing office shall verify accuracy of the data from UCC records entered in accordance with Section 2 of this administrative regulation into the UCC Information Management System. Data entry performed by remitters with respect to electronically filed UCC records shall be the responsibility of the remitter and is not verified by the filing office.

Section 4. Notice of Bankruptcy. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC Information Management System.

Section 5. Redaction of Certain Information. The filing officer shall redact certain information from the information it provides to searchers and bulk data purchasers in accordance with applicable privacy and identity theft protection laws. Such information shall not be included in UCC records and shall be redacted in accordance with such laws.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

CONTACT PERSON: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the requirements related to filing and data entry procedures.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of 355.9-526, Filing Office Rules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will assist in administering the above statute by providing more detailed guidance for filing and data entry procedures.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes that the filing office may correct "data entry and indexing errors" of the filing office. Additionally, this amendment establishes that data is to be entered into

the UCC Information Management system exactly as it is provided for without regard to errors. Finally, this amendment clarifies that the process for verifying data has changed and that redaction of certain information in UCC records by the filing office is required.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the changes in the requirements relating to filing and data entry procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will incur costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will collectively benefit from this amendment because it provides them with more detailed information and guidance as to the requirements for filing and data entry procedures.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no estimated cost to implement this amended administrative regulation

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

(3) Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### STATEMENT OF EMERGENCY 30 KAR 5:060E

This emergency administrative regulation is being promulgated to establish the requirements governing UCC search requests and reports and these requirements are necessary to implement the revisions made to Article 9 of KRS Chapter 355. KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355. The Article 9 revisions of KRS Chapter 355 are effective on July 1, 2013. This administrative regulation must be promulgated on an emergency basis so that the Office of Secretary of State can timely implement the Article 9 revisions of KRS Chapter 355 by the July 1, 2013, deadline. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Office of Secretary of State to timely implement the Article 9 revisions as required and administer its ministerial duties pursuant to Article 9 of KRS Chapter 355. 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  
ALISON LUNDERGAN GRIMES, Secretary of State

#### OFFICE OF KENTUCKY SECRETARY OF STATE (Emergency Amendment)

#### 30 KAR 5:060E. Search requests and reports.

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

EFFECTIVE: June 28, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing [Article 9] of KRS Chapter 355. This administrative regulation establishes the requirements governing search requests and reports.

Section 1. General Requirements. The filing officer shall maintain for public inspection a searchable index of active records in the UCC Information Management System. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement, and each active record related to an initial financing statement shall be retrieved with the initial fi-

ancing statement using either retrieval method[for all UCC records. The index shall provide for the retrieval of:

(1) A record by the name of the debtor and by the file number of the initial financing statement; and

(2) Each filed UCC record relating to the initial financing statement].

Section 2. [Standardized] Search Requests – Required Information. [Standardized] Search requests shall include the following[contain the following information]:

(1) Name searched. A search request shall set forth the[correct] name of the debtor to be searched using designated fields for organization or individual surname, first personal name, and additional name(s) or initial(s)[and shall specify whether the debtor is an individual or an organization]. A search request shall be processed using the data and designated fields exactly as[name in the exact form it is] submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is subject of the search.

(2) Requesting party. The[search request shall include the] name and address of the person to whom the search report is to be sent[if the request is in writing].

(3) Fee. The appropriate fee shall be tendered[enclosed] if the request is in writing.

(4) Search Logic. The request shall specify if a search methodology other than that described in Section 4 of this administrative regulation is to be applied in conducting the search. If no such methodology is specified, the one described in Section 4 of this administrative regulation shall be applied[Search request with filing. If a filer requests a search at the time a UCC record is filed, the name searched shall be the debtor name as set forth on the record. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the certification date and time, which is normally two (2) business days prior to the date of the search. The search shall not include any active financing statements against the designated debtor or debtors filed after that certificate date and time and shall not include the current financing statement].

Section 3. Search requests - Optional Information. A search request may include the following:

(1) Copies. The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:

(a) Include a particular debtor address;

(b) Include a particular city in the debtor address;

(c) Were filed on a particular date or within a particular range of dates; or

(d) Include a particular secured party name.

(2) Scope of search. A requesting party may ask for a search that reports all active records retrieved by the search rather than only unexpired records retrieved by the search.

(3) Mode of delivery. A search request may specify a mode of delivery for search results and that request will be honored if the requested mode is made available by the filing office, and all requisite fees are tendered.

Section 4. Search Methodology. (1) Search results shall be produced by the application of search logic to the name presented to the filing officer. Human judgment shall not play a role in determining the results of the search.

(2) Standard search logic. The following rules describe the filing office's standard search logic and apply to all searches except for those where the search request specifies that a nonstandard search logic be used:

(a) There shall be no limit to the number of matches that may be returned in response to the search criteria;

(b) No distinction shall be made between upper and lower case letters;

(c) The character "&" (the ampersand) shall be deleted and replaced with the characters "and" each place it appears in the name;

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(d) Punctuation marks and accents shall be disregarded. For the purposes of this administrative regulation, punctuation and accents include all characters other than the numerals zero through nine (9) and the letters A through Z (in any case) of the English alphabet;

(e) The word "the" at the beginning of an organization debtor name shall be disregarded;

(f) All spaces shall be disregarded;

(g) For first personal name and additional name(s) or initial(s) of individual debtor names, initials shall be treated as the logical equivalent of all names that begin with such initials, and first personal name and no additional name(s) or initial(s) is equated with all additional name(s) or initial(s). For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with the initial "A" or any name beginning with "A" in the additional name(s) or initial(s) field. If the search request were for "John Smith" (first personal name and surnames with no designation in the additional name(s) or initial(s) field), the search would retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname and with any name or initial or no name or initial in the additional name(s) or initial(s) field;

(h) If the name being searched is the surname of an individual debtor name without any first personal name or additional name(s) or initial(s) provided, the search shall retrieve from the UCC Information Management System all financing statements with individual debtor names that consist of only the surname; and

(i) After using the requirements outlined in paragraphs (a) through (h) of this subsection to modify the name being searched, the search shall retrieve from the UCC Information Management System all unexpired records, or, if requested by the searcher, all active records, that pertain to financing statements with debtor names that, after being modified as provided in Section 5 of this administrative regulation, exactly match the modified name being searched. Rules Applied to Standardized Search Requests. Standardized search results shall be produced by the application of standardized search logic, without application of human judgment, to the name presented to the filing officer. The following rules shall apply to standardized searches:

(1) There shall not be a limit to the number of matches that may be returned in response to the search criteria.

(2) Distinction shall not be made between upper and lower case letters.

(3) Punctuation marks and accents shall be disregarded.

(4) Words and abbreviations at the end of a name that indicate the existence or nature of an organization shall be disregarded.

(5) The word "the" at the beginning of the search criteria shall be disregarded.

(6) All spaces shall be disregarded.

(7) For first and middle names of individuals, initials shall be treated as the logical equivalent of all names that begin with the initials, and first names and no middle name or initial is equated with all middle names and initials.

(8) After using the requirements established in subsections (1) to (7) of this section to modify the name to be searched, the search shall reveal only names of debtors that are contained in active financing statements and exactly match the name requested, as modified.

Section 4. Optional Information. A search request may contain any of the following information:

(1) The request may limit the records requested by limiting them by the address of the debtor, the city of the debtor, the date of filing or range of filing dates or the identity of the secured party on the financing statement.

(2) The request may ask for copies of UCC records identified on the primary search response if the search request is tendered in writing.

(3) Instruction on the mode of delivery desired, if other than by ordinary mail, which request may be honored if the requested mode is available to the filing office].

Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its

standard search logic in a manner that will alter search results, the filing office shall provide public notice of such change.

Section 6.[Standardized] Search Responses. Responses to a[Reports created in response to a standardized] search[request] shall include the following:

(1) Copies. Copies of all UCC records retrieved by the search unless only limited copies are requested by the searcher. Copies shall reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(a) Filing office identification[officer]. Identification of the filing office responsible for the search response;

(b) Unique search report identification number. Unique number which identifies the search report;

(c)[officer and the certification of the filing officer. (2)] Report date and time. The date and time the report was generated;

(d) Through date and time. The date and time at or prior to which a UCC record must have been filed with the filing office in order for it to be reflected on the search.

(e)[(3) Name searched. Identification of the name searched. (4)] Certification date. The certification date and time for which the search is effective;

(f) Scope of search;

(g) Search logic used;

(h) Search logic disclaimer language;

(i) Name provided. Name as provided by searcher;

(j) Search string. Normalized name as provided by Section 4 of this administrative regulation;

(k) Lien type searched. UCC or other type of documents searched; and

(l)[- (5) Identification of initial financing statements. Identification of each active initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

(6) History of financing statement. For each initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or prior to the certification date.

(7) Copies. Copies of all UCC records revealed by the search and requested by the searcher. Copies of UCC records shall not be available for electronic search requests.

(3) Report. The search report shall contain the following:

(a) Identification. Identification of the filing office responsible for the search report;

(b) Search report identification number. Unique number assigned under subsection (2)(b) of this section; and

(c) Identification of financing statement. Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria (including whether the searcher has requested active records or only unexpired records). Financing statement information shall include the following:

1. Initial financing statement file number. The initial financing statement file number;

2. Initial financing statement filing date and time. The date and time it was filed;

3. Lapse date. Provide lapse date;

4. Debtor name. The debtor name(s) that appear(s) of record;

5. Debtor address. The debtor address(s) that appear(s) of record;

6. Secured party name. The secured party name(s) that appear(s) of record;

7. Secured party address. The secured party address(es) that appear(s) of record;

8. Amendment type. An indication of type of each amendment, if any;

9. Amendment filing date and time. The date and time each amendment, if any, was filed;

10. Amendment file number. The amendment file number of each amendment, if any;

11. Information statement filing date and time. The date and

time a correction statement, if any, was filed; and

12. Filing officer statement filing date and time. The date and time a filing officer statement, if any, was filed.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

CONTACT PERSON: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the requirements governing UCC search requests and reports.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of 355.9-519, 355.9-523, and 355.9-525.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will assist in administering the above statutes by providing more detailed guidance for the requirements that govern UCC search requests and reports.

(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 changes some wording and phrasing of the existing regulation such as replacing the phrase "first, middle, last name" with "first personal name, additional name(s) or initial(s), surname." This phrasing change conforms to the language outlined in the statutes above. Moreover, this amended regulation defines what information is required and what information is optional when conducting a search. This amended regulation also establishes the rules for the filing office's standard search logic that is used to conduct a UCC search. Finally, this amended regulation establishes the information that the filing office shall include in a UCC search report.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the changes in the requirements that govern UCC search requests and reports.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): Entities identified in question (3) will incur costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will collectively benefit from this amendment because it provides them with more detailed information and guidance as to the requirements that govern UCC search requests and reports.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no cost to implement this amended administrative regulation

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

**STATEMENT OF EMERGENCY  
105 KAR 1:140E**

Pursuant to KRS 13A.190, the proposed amendment to the administrative regulation is an emergency. This emergency amendment to the administrative regulation amends the current regulation to provide for procedures to implement the provisions of 2013 Ky. Acts ch. 120, sec 10 (Senate Bill 2). An emergency amendment to the administrative regulation is necessary to provide the procedures to implement 2013 Ky. Acts ch. 120, sec 10 as of the effective date provided in the statute. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to the administrative regulation. The ordinary amendment to the administrative regulation was filed with the Regulations Compiler on July 1, 2013. The ordinary amendment to the administrative regulation is not identical to this emergency amendment to the administrative regulation.

STEVEN L. BESHEAR, Governor  
RANDY OVERSTREET, Chair

**KENTUCKY RETIREMENT SYSTEMS  
Finance and Administration Cabinet  
Kentucky Retirement Systems  
(Emergency Amendment)**

**105 KAR 1:140E. Employer's administrative duties.**

RELATES TO: KRS 16.645(18), 18A.105, 61.546, 61.552(23), 61.565, 61.569, 61.598, 61.637(17), 61.675, 61.685, 61.702, 78.545(33), (37), 78.616, 78.625, 78.652, 26 U.S.C. 3121(b)(10), 26 C.F.R. 31.3121(b)(1)-2, 29 C.F.R. 519.2(a), 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. 160, 162, 164, 26 U.S.C. 401(a)(17), 401(a)(31), 403(b), 408(a), (b) 414(g)(6), 457(b), Pub. L. 104-191, Pub. L. 111-5, Div., A Title XIII, Div. B, Title IV

STATUTORY AUTHORITY: KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), 78.625

EFFECTIVE: July 1, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required by KRS 16.645(18), 61.565, 61.675, 78.545(33), and 78.625 to make contributions to the retirement systems, to report creditable compensation to the retirement systems and other information that the Board of Trustees may require, and perform other duties and responsibilities as participating employers. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site by:

(a) The Enter Report Details Module; or

(b) Uploading an electronic file that meets the requirements of the Employer Contribution Record Layout. The employer shall submit a test file to the retirement systems, which shall be reviewed for compliance with the requirements of the Employer Contribution Record Layout. If the test file is in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall certify the electronic file and inform the employer of the month when the employer may begin using the electronic file for submitting reports. If the test file is not in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall inform the employer of the needed corrections to the test file. The employer shall not submit a report by electronic file pursuant to this subsection until the test file is certified by the retirement systems.

(2) The retirement systems shall notify each employer of the

Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site changes.

(3) Each employer shall submit the contributions required by KRS 61.675 and KRS 78.625:

(a) Electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site;

(b) By mailing or hand delivering a check;

(c) By the eMARS system maintained by the Finance and Administration Cabinet; or

(d) By wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the tenth day of the following month.

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting if the month the creditable compensation was earned is the month in which the employee:

1. Became employed;

2. Became eligible to participate in one of the systems administered by Kentucky Retirement Systems;

3. Was transferred to hazardous coverage from nonhazardous participation;

4. Was transferred from hazardous coverage to nonhazardous participation;

5. Terminated from employment; or

6. Became ineligible to participate in one (1) of the systems administered by Kentucky Retirement Systems.

(b) If the employee is paid creditable compensation in a lump sum or nonrecurring payment, the employer shall designate the reason for the lump sum or nonrecurring payment.

1. If the lump sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump sum or nonrecurring payment was earned.

2. If the employer fails to designate a specific time period during which the lump sum or nonrecurring payment was earned, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(5) The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.

(6) Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.

(7) Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(1)-2; and

(b) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).

Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.

(b) Personal information includes the member's first name or first initial and last name in combination with the member's:

1. Social Security number;
2. Driver's license number;
3. Personal Identification Number permitting access to the member's account; or
4. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery.

(d) The employer shall notify the retirement systems of a disclosure upon discovery.

(e) The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.

(f) The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.

(g) If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.

(h) In transmitting any medically related personal information, the employer shall comply by all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.

(b) The employer shall remit payment to the retirement systems by the due date provided on the invoice.

(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.

Section 4. (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

Section 5. If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:

(1) Any funds due to the employer; or

(2) Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.

Section 6. (1) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer

or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(2) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(3) Effective with respect to plan years beginning on and after July 1, 2002, a plan member's annual compensation that exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B)) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(4) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

(a) The member's creditable compensation has exceeded the maximum annual compensation limit contained in 25 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

(b) The member has filed a notification of retirement; and

(c) The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 7. (1) An employer may request that the retirement systems make a determination if a change in position or hiring of an employee is a bona fide promotion or career advancement prior to the employee's change of position or hiring as provided in KRS 61.598.

(2) An employer may submit a Form 6480, Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement, describing the proposed change in position or hiring of an employee or potential employee including:

(a) The employee's or potential employee's full name;

(b) The employee's or potential employee's Kentucky Retirement Systems Member Identification Number or Social Security Number;

(c) The potential employee's current employer;

(d) The employee's current job description;

(e) The job description for the employee's proposed job;

(f) Documentation of additional training, skills, education, or expertise gained by the employee or potential employee;

(g) Employer's organizational chart; and

(h) Any additional information the employer wants to be considered by the retirement systems.

(3) The employer shall provide any additional information requested by the retirement systems.

(4) The retirement systems may require the employer to make

certifications regarding the information and documentation submitted.

(5) In determining if a change in position or hiring would be a bona fide promotion or career advancement, the retirement systems shall consider the following factors:

(a) If the employee's or potential employee's proposed job duties represent a significant increase in responsibility from the employee's previous job duties;

(b) If the employee or potential employee has gained training, skills, education, or expertise to justify a change in position; and

(c) If the employee's proposed job represents a promotion within the employee's organization from the employee's previous job.

(6) Increases or proposed increases in an employee's creditable compensation caused by overtime, compensatory time other than lump-sum payment made at the time of termination, or bonuses shall not be a bona fide promotion or career advancement.

(7) The retirement systems shall issue a final administrative decision in writing to the employer if an employee's change in position or potential employee's hiring is a bona fide promotion or career advancement. The retirement systems' determination shall be specific to the employee or potential employee and shall be based on the information and documentation provided by the employer. If the information or documentation provided by the employer is not accurate, the final administrative decision of the retirement systems shall not be binding on the retirement systems pursuant to KRS 61.685.

(8) An employer who disagrees with the retirement systems' final administrative decision may request an administrative hearing in accordance with KRS Chapter 13B. The request for administrative hearing shall be made in writing within thirty (30) days of the date of the final administrative decision of the retirement systems.

Section 8. (1) After the member retires, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(2) If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.

(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within thirty (30) days of the date of the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.

(4) The employer shall provide any additional information requested by the retirement systems.

(5) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(6) In determining if a change in position or hiring would be a bona fide promotion or career advancement, the retirement systems shall consider the following factors:

(a) If the employee's or potential employee's proposed job duties represent a significant increase in responsibility from the

employee's previous job duties;

(b) If the employee or potential employee has gained training, skills, education, or expertise to justify a change in position; and

(c) If the employee's proposed job represents a promotion within the employee's organization from the employee's previous job.

(7) The retirement systems shall issue a final administrative decision in writing advising the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(8) If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within thirty (30) days of the date of the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(9) If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the final administrative decision.

(10) If the employer fails to file a written request for administrative hearing within thirty (30) days of the date of the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(11) The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.

(12) If at the time of his retirement the member was employed by more than one (1) participating employer, the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last participating employers.

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

(a) Form 6480, "Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement", July 2013; and

(b) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", July 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: July 1, 2013

FILED WITH LRC: July 1, 2013 at 3 p.m.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for employers to provide reports and contributions to

Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that employers must file contributions and reports at the retirement systems. This administrative regulation provides the procedures and requirements for employers to file reports and contributions at the retirement systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by providing the procedures and requirements for employers to file reports and contributions with the retirement systems.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member's retirement.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member's retirement.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member's retirement.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member's retirement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1800 participating employers of Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers may request a determination regarding whether or not a proposed change in position or hiring will be a bona fide promotion or career advancement and will know the procedures for refund of incomplete contributions and classification of employees under KRS 61.510(21) and 78.510(21).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost to employers should be minimal because they already report electronically. It is within the employer's discretion to request a determination or administrative appeal of a determination of bona fide promotion or career advancement. Kentucky Retirement Systems will have a cost of staff time and resources to make the determination of bona fide promotion or career advancement if an employer makes a request for determination.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employer's will know how to request determination or administrative appeal of a determination of bona fide promotion or career advancement and will know how to correctly report non-participating positions and process refunded employee contributions.

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

(a) Initially: zero

(b) On a continuing basis: zero

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and 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: There is no increase in fees or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Procedures are the same for all participating employers; therefore, 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? All state and local government employers participating in Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), and 78.625.

(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? The additional cost to employers should be minimal because they already report electronically. It is within the employer's discretion to request a determination or administrative appeal of a determination of bona fide promotion or career advancement. Kentucky Retirement Systems will have a cost of staff time and resources to make the determination of bona fide promotion or career advancement if an employer makes a request for determination.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost as employers have always been required by statute to report.

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 405 KAR 10:001E

On March 22, 2013 House Bill 66 was signed into effect establishing the Kentucky Reclamation Guaranty Fund (KRGF) and Kentucky Reclamation Guaranty Fund Commission (KRGFC). The statute required the appointment of the KRGFC on July 1, 2013, with KRGF capitalization measures beginning shortly thereafter. Administrative regulations are necessary to establish the protocols and operating procedures to be followed by the new commission as well as the participants in the KRGF. Without further action, the cabinet is in jeopardy of losing federal funds distributed by the OSMRE to the Department for Natural Resources as part of a matching grant, the ability to set bonding amounts for Kentucky mining operations, and loss of funding for Kentucky's abandoned



mine lands program. This emergency administrative regulation is necessary to immediately implement amendments to match other emergency administrative regulations filed simultaneously. The emergency administrative regulation will be replaced by an ordinary administrative regulation which is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
LEONARD K. PETERS, Secretary

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(Emergency Amendment)**

**405 KAR 10:001E. Definitions for 405 KAR Chapter 10.**

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291  
STATUTORY AUTHORITY: KRS[Chapter 13A,] 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291  
EFFECTIVE: July 3, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation defines[provides for the defining of] certain essential terms used in 405 KAR Chapter 10.

Section 1. Definitions. (1) "Acquisition" means the purchase, lease, or option on the land for the purpose of conducting or allowing through resale, lease, or option the action of conducting surface coal mining and reclamation operations.

(2) "Active Acre" means an acre of land or fraction thereof, permitted and bonded for surface disturbance under a surface coal mining permit as of July 1, 2013. Active acre shall not include:

(a) Acreage contained in a permit for which the entire permit has not been initially disturbed by the permittee after permit issuance;

(b) Acreage contained in a permit, or increment thereof, that has completed initial reclamation and received a minimum of a Phase 1 bond release;

(c) Undisturbed acreage completely released from liability as a result of a bond release or bond reduction; or

(d) Acreage of a permit that is permitted and bonded for underground acreage only.

(3) "Actuarial soundness" is defined by KRS 350.500(1).

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation, or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5)[(2)] "Administrator" or "bond pool administrator", as used in 405 KAR 10:200, means the cabinet employee named by the secretary to assist the commission and to perform certain administrative functions in connection with the bond pool, as required by KRS 350.745. (3) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property

or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6)[(4)] "Applicant" [as used in 405 KAR 10:010,] means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7)[(5)] "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755. (6) "Cabinet" is defined in KRS 350.010(10).

(8)[(7)] "C.F.R." means Code of Federal Regulations.

(9)[(8)] "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(10) "Coal mined and sold" means coal severed or removed as a result of surface coal mining operations and subsequently sold, transferred, or used by the permittee or operator.

(11)[(9)] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(12)[(10)] "Commission" or "bond pool commission" means the body established at KRS 350.705. (11) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(13)[(12)] "Day" means calendar day unless otherwise specified to be a working day.

(14)[(13)] "Department" means the Department for Natural Resources.

(15)[(14)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(16) "Dormancy fee" means the annual fee established in KRS 350.518(2)(f).

(17)[(15)] "FDIC" means Federal Deposit Insurance Corporation.

(18)[(16)] "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(19) "Final disposition" means the status of an enforcement action taken by the cabinet pursuant to KRS Chapter 350 for which a final secretary's order has been entered and the time for appeal has expired or all appeals have been exhausted, or an agreed order has been entered.

(20)[(17)] "FSLIC" means Federal Savings and Loan Insurance Corporation.

(21) "Full-cost bonding" means performance bonds that have been submitted by a permittee for its surface coal mining operation permits in lieu of participation and membership in the Kentucky Reclamation Guaranty Fund.

(22) "Historically used for cropland" means land that:

(a) Has been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting surface coal mining and reclamation operations;

(b) Would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; or

(c) The cabinet determines, on the basis of additional cropland history of the surrounding land and the land under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion[(18) "Historically used for cropland."]

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(23)[(19)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(24) "KRGF" means the Kentucky Reclamation Guaranty Fund.

(25)[(20)] "KAR" means Kentucky administrative regulations.

(21) "KRS" means Kentucky Revised Statutes. (22)] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(26) "Member" means a permittee in the Kentucky Reclamation Guaranty Fund.

(27) "Non-production fee" means the annual fee established in KRS 350.518(2)(e).

(28)[(23)] "Month of operation," as used in 405 KAR 10:200, Section 7, means a calendar month in which a duty exists to reclaim a disturbed area for which a permit was issued under KRS Chapter 350. It is not necessary that coal extraction occur during the month. (24)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(29)[(25)] "Operations" is defined in KRS 350.010(6).

(30)[(26)] "Operator" is defined in KRS 350.010(7).

(31) "Opt-out" means the decision by a permittee to not participate in the KRGF and to provide full-cost bonding pursuant to 405 KAR 10:080, Section 2(1)(a)1.

(32)[(27)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of non-

compliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(33) "ORGF" means the Office of the Reclamation Guaranty Fund.

(34)[(28)] "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(35)[(29)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund (405 KAR 10:070)[Kentucky Bond Pool Program (405 KAR 10:200)], KRS 350.595, and 350.500 – 350.521[KRS 350.700 through 350.755], by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(36)[(30)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(37)[(31)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(38)[(32)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(39)[(33)] "Person" is defined in KRS 350.010(9).

(40)[(34)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(41)[(35)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which

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have been "historically used for cropland" as that phrase is defined above.

(42)[(36)] "Reclamation" is defined in KRS 350.010(12).

(43)[(37)] "Secretary" is defined in KRS 350.010(11).

(44)[(38)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(45)[(39)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(46)[(40)] "Surface coal mining and reclamation operations" is defined in KRS 350.010(3).

(47)[(41)] "Surface coal mining operations" is defined in KRS 350.010(1).

(48)[(42)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(49)[(43)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(50)[(44)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(51)[(45)] "U.S. EPA" means United States Environmental Protection Agency.

(52) "Voluntary Bond Pool" is defined in KRS 350.500(5).

(53)[(46)] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator  
#2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502), 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation necessary to correctly interpret the requirements of 405 KAR Chapter 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to correctly interpret the requirements of 405 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation provides definitions for 405 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation is necessary to provide definitions for regulated entities to fully understand the requirements of 405 KAR Chapter 10.

(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 amends definitions to comply with KRS 13A and also adds definitions that are related to the promulgations of two new administrative regulations in 405 KAR Chapter 10, 405 KAR 070 and 405 KAR 080.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary define terms that are related to administrative regulations promulgated in response to the passage of HB 66.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment defines terms used in 405 KAR Chapter 10. 405 KAR Chapter 10 is necessary to maintain the permanent regulatory program authorized by KRS 350.465.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to a permanent regulatory program. This amendment defines terms related to administrative regulations promulgated in response to the passage of HB 66 which will help the Cabinet maintain the permanent regulatory program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require the entities listed above to use the new definitions to correctly interpret the requirements of the new administrative regulations.

(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 directly 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 the amendments to this administrative regulation by having terms that will enable the regulated entity to correctly interpret the new administrative regulations and amendments to existing administrative regulations.

(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 agency additional funds to implement.

(b) On a continuing basis: This amendment will not cost the agency additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this 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: 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 new definitions will apply to the regulated entities in the same manner.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.064 and 350.500.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation defines terms that are not part of the corresponding federal regulatory program.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional terms are Kentucky specific terms related to the passage of House Bill 66 from the 2013 Legislative Session.

#### STATEMENT OF EMERGENCY 405 KAR 10:070E

On March 22, 2013 House Bill 66 was signed into effect establishing the Kentucky Reclamation Guaranty Fund (KRGF) and Kentucky Reclamation Guaranty Fund Commission (KRGFC). The statute required the appointment of the KRGFC on July 1, 2013, with KRGF capitalization measures beginning shortly thereafter. Administrative regulations are necessary to establish the protocols and operating procedures to be followed by the new commission as well as the participants in the KRGF. Without further action, the cabinet is in jeopardy of losing federal funds distributed by the Office of Surface Mining, Reclamation, and Enforcement (OSMRE) to the Department for Natural Resources as part of a matching grant, the ability to set bonding amounts for Kentucky mining operations, and loss of funding for Kentucky's abandoned mine lands program. This emergency administrative regulation is necessary to immediately implement the provisions of House Bill 66 related to the establishment of the KRGF and the KRGFC. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

LEONARD K. PETERS, Secretary

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of the Reclamation Guaranty Fund (New Emergency Administrative Regulation)

#### 405 KAR 10:070E. Kentucky reclamation guaranty fund.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.500 – 350.521

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.500 – 350.521

EFFECTIVE: July 3, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. This administrative regulation provides information related to the operation of the Kentucky Reclamation Guaranty Fund, classification of permits, reporting and payment of fees, and penalties.

Section 1. Classification of Mine Permit Types. (1) The commission shall review and assign classification of mine types pursuant to KRS 350.509(1)(e) for the purposes of assessing the fees in accordance with KRS 350.518. Permits shall be assigned to one (1) of the following classifications:

(a) Surface coal mining operations containing activities defined in 405 KAR 8:001, Section 1(125), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(b) Underground coal mining operations containing activities defined in 405 KAR 8:001, Section 1(135), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(c) Combined surface and underground mining operations containing activities defined in both 405 KAR 8:001, Section 1(125) and 1(135), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(d) Non-production permits include operations approved for mining support, maintenance and other facilities, or operations or activities pursuant to KRS 350.010(1), but do not include permitted coal removal operations, as described in paragraphs (a), (b), and (c) of this subsection; or

(e) Dormant permits, including expired permits, which shall include the following:

1. Permits for which all coal removal operations are complete, but an initial release of performance bond has not been granted, pursuant to 405 KAR 10:040, Section 2;

2. Permits in temporary cessation, pursuant to 405 KAR 16:010, Section 7 and 405 KAR 18:010, Section 5;

3. Permits for which a deferment has been granted, pursuant to 405 KAR 16:020, Section 5(1); and

4. Permits in paragraphs (a), (b), and (c) of this subsection that report no production in a quarter.

(f) Permits subject to KRS 350.518(2)(e) and (f) shall be exempt from the requirements of 405 KAR 10:090.

(2) Upon initial disturbance of an issued permit or resumption of coal production operations following a period of temporary cessation or deferment, pursuant to 405 KAR 16:020, Section 5(1), the permittee shall notify the ORGF within ten (10) days of the initial disturbance or resumption on Kentucky Reclamation Guaranty Fund Notification of Permit Activity, Form RGF -3. The suspension provisions of Section 5(2) of this administrative regulation shall apply for failure to provide notification to the ORGF.

(3) The commission shall assign classifications, pursuant to KRS 350.509(1)(e), utilizing the following information:

(a) Member production records submitted pursuant to Section 3 of this administrative regulation;

(b) Issued permits;

(c) Cabinet inspection records;

(d) Permit, license, and other records on file with the Kentucky Office of Mine Safety and Licensing, and the U.S. Mine Safety and Health Administration; and

(e) Any other permittee documents and records as deemed necessary by the Commission, pursuant to KRS 350.509(7).

Section 2. Initial Capitalization. (1) All members of the Kentucky Reclamation Guaranty Fund as of July 1, 2013, except the former Voluntary Bond Pool members and those permittees that opt-out, shall be subject to a one (1) time assessment of \$1,500 due and payable to the fund within thirty (30) days after receipt of the assessment notice. Assessment notices shall be issued by the ORGF to each member along with directions for payment and proper crediting to the fund. Payment of the assessment more than

thirty (30) days from receipt of the notice that it is due, or non-payment, shall subject the permittee to penalties in Section 5(1) of this administrative regulation.

(2) All permittees in the Kentucky Reclamation Guaranty Fund as of July 1, 2013, except the former Voluntary Bond Pool members and those permittees that opt-out, shall be subject to a one (1) time assessment of ten (10) dollars per active acre (or fraction thereof) on each permit, or expired permit, held by the permittee on July 1, 2013. The assessment shall be a total of active acres multiplied by ten (10) dollars. Assessment notices shall be issued by the ORGF to each permittee along with directions for payment and proper crediting to the fund. Assessment notices from the fund and payments by permittees may be combined with the assessment identified in subsection (1) of this section. Payment of the assessment more than thirty (30) days from receipt of the notice that it is due, or non-payment, shall subject the permittee to penalties in Section 5(1) of this administrative regulation.

(a) Payments under this section shall be in the form of a check, cashier's check, certified check, or money order made payable to the Kentucky State Treasurer.

(b) A permittee shall be allowed thirty (30) days after receipt of the notice in this subsection to provide written notice to the ORGF to contest the one (1) time assessment. The written notice shall include an explanation of the nature of the contest, the documentation relied upon by the permittee, and the specific permit and increments where the alleged error exists. The ORGF shall review the information provided by the permittee and provide a response in writing of its decision to retain or modify the assessment. The permittee shall not be subject to penalties for late payment should a decision not be issued by the ORGF prior to the payment due date.

Section 3. Member Production Records, Fee Reporting, and Payments. (1) Each permittee in the Kentucky Reclamation Guaranty Fund shall:

(a) Report coal production from each permitted surface coal mining operation on a quarterly basis for coal mined and sold, beginning January 1, 2014;

(b) Maintain records on a quarterly basis that report the tonnage of coal mined and sold for each permit. Coal producing permits shall be assigned a classification by the commission in accordance with Section 1 of this administrative regulation. Tonnage shall be reported based on the weight of coal at the time of sale. Coal mined and sold from permits that combine surface and underground operations shall report both underground and surface production separately;

(c) Retain records of coal mined and sold for a period of six (6) years from the end of the quarter in which a report was due; and

(d) Provide records necessary to substantiate the accuracy of reports and payments upon the request of the ORGF.

(2) Reporting of tonnage and payment of fees shall be recorded on the Kentucky Reclamation Guaranty Fund Quarterly Fee Report, RGF-1, for each permit for which coal was mined and sold during the previous quarter or has coal reserves available to be mined. The reporting of tonnage shall be accompanied by the fee required in 405 KAR 10:090.

(a) The reporting and payment period shall be quarterly with the first quarterly reporting period being January 1st through March 31st. The report shall be submitted, and fees shall be received, no later than the 30th day of the month following the end of a reporting period. A permittee shall submit all reports and payments for permits issued with the same permittee name on one (1) form. The report shall be submitted even if the member has no coal mined and sold during the reporting period. Reports are not required to be submitted for permits that have expired and a permit renewal is not being pursued, or for permits that have achieved at least a phase I bond release for the entire permit area.

(b) Payments received by the fund after the 30th day of the month following the reporting quarter, non-payment of fees, or underpayment of fees shall be subject to the penalty provisions of Section 5(1) of this administrative regulation.

(3) Members of the former Voluntary Bond Pool shall report coal mined and sold from each surface coal mining operations permit on a monthly basis on the Kentucky Reclamation Guaranty

Fund Monthly Production Report, Form RGF-2. Beginning January 1, 2014, former Voluntary Bond Pool members shall report coal mined and sold on a quarterly basis in accordance with subsection (2)(a) of this section.

#### Section 4. Non-production and Dormancy Fees and Payments.

(1) Beginning January 1, 2014 permittees in the KRGF are required to pay non-production and dormancy fees to the KRGF for surface coal mining permits not subject to the tonnage fees in 405 KAR 10:090.

(a) Non-production and dormancy fees shall not apply to permits or increments that have been granted phase I bond release, have not been initially disturbed by the permittee after permit issuance, or contain underground acreage only. Payment of the non-production and dormancy fees shall be in four (4) quarterly installments. For non-production permits issued and not initially disturbed, the non-production annual fee shall be assessed for the calendar quarter after initial disturbance and be pro-rated for the remaining quarters of the calendar year.

(b) Permits that are used exclusively for coal preparation and processing operations, loading activities, disposal of refuse operations, coal haulage and access roads, mine maintenance and other support facilities, and other permits not subject to the tonnage fees in 405 KAR 10:090, Section 1, as determined by the commission shall pay the non-production fee of ten (10) dollars per acre.

(c) Any permits, or expired permits, not subject to the ten (10) dollar non-production fee in paragraph (b) of this subsection, and the tonnage fees in 405 KAR 10:090, Section 1, shall pay a dormancy fee of six (6) dollars per acre.

(d) The commission shall evaluate a permit that may meet multiple classifications and assign the permit a classification for assessment of fees.

(e) Members which provided written notice to the ORGF that they will opt-out of the fund and subsequently post full cost performance bonds prior to April 30, 2014 on all permits held by the member, shall not be subject to the fees listed in paragraphs (b) and (c) of this subsection.

(2) Non-production and dormancy fees shall be assessed to each eligible permit based on the total bonded acreage, or fraction thereof, on record with the DNR as of January 1st of each calendar year. Permits that have coal production and pay tonnage fees in accordance with Section 3 of this administrative regulation in each calendar quarter shall not be subject to the payment of dormancy fees assessed under this section. A permittee that receives an assessment notification for dormancy fees in accordance with subsection (1)(d) of this section, and does not report coal mined and sold in a calendar quarter, shall pay the dormancy fee for that quarter.

(a) Payment of the non-production and dormancy fees shall be made in four (4) separate equal quarterly installments beginning with the January 1st through March 31st, 2014 quarter. Members shall be allowed to prepay the entire annual dormancy and non-production fees in a lump sum prior to April 30th of each calendar year. Fees received from prepayments shall not be refundable to the member.

(b) The ORGF shall notify each member on or before January 31 of each calendar year those permits that are classified and subject to dormancy or non-production fees. The notification shall include the permit classification, total bonded acreage subject to assessment for each permit, and the quarterly payment amount due by permit.

(c) A permittee shall be allowed thirty (30) calendar days after receipt of the initial assessment each year to provide written notice to the ORGF to contest the assessed dormancy or non-production fees. The written notice shall include an explanation of the nature of the contest, the documentation relied upon by the permittee, and the specific permit and increments where the alleged error exists. The ORGF shall review the information provided by the permittee and provide a response in writing of its decision to retain or modify the assessment. The permittee shall not be subject to penalties for late payment should a decision not be issued by the ORGF prior to the payment due date.

(d) Quarterly installment payments shall be received in the ORGF no later than the 30th day of the month following the pre-

vious calendar quarter on the Kentucky Reclamation Guaranty Fund Quarterly Fee Report, RGF-1.

(e) Late payment or non-payment of fees shall subject members to penalties in Section 5(1) of this administrative regulation.

(f) All payments shall be in the form of a check, cashier's check, certified check, money order, or electronic funds transfer, and be made payable to the Kentucky State Treasurer.

Section 5. Penalties. (1) Late Payment or Non-Payment of Fees and Initial Assessments.

(a) Permittees shall be subject to penalties of five (5) percent of the original fee for each month or fraction thereof elapsing between the due date and the date on which the payment is submitted for the failure to submit the following records and fees:

1. Quarterly production records within thirty (30) days of the end of the reporting quarter;

2. Payment of required tonnage fees within thirty (30) days of the end of the reporting quarter;

3. Non-production fees within thirty (30) days of the end of the reporting quarter;

4. Dormancy fees within thirty (30) days of the end of the reporting quarter; or

5. Initial capitalization assessments within thirty (30) days of the date of receipt of notice.

(b) Upon a determination by the ORGF that a permittee has underreported production or underpaid the amount due in any reporting quarter, the permittee shall submit the corrected information or payment within ten (10) days of notification that the report or payment is deficient or insufficient.

(c) A penalty of five (5) percent of the fee shall be assessed for the underpayment of tonnage fees if the payment is not received within ten (10) days of notification.

(d) Penalties for late payment, underpayment, or non-payment of fees or initial assessments shall be at a minimum of \$100.

(e) Payments of fees, penalties, or initial assessments that are more than thirty (30) days in arrears shall render the permittee subject to permit suspension pursuant to 405 KAR 12:020.

(2) Defrauding the commission. Any permittee submitting fraudulent production reports, misidentifying the method of coal production to obtain a lower fee payment, withholding documentation requested by the commission, or otherwise attempting to defraud the fund or commission shall be subject to permit suspension by the cabinet upon receipt of notification by the commission.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Reclamation Guaranty Fund Quarterly Fee Report", RGF-1, June 2013;

(b) "Kentucky Reclamation Guaranty Fund Monthly Production Report", RGF-2, June 2013; and

(c) "Kentucky Reclamation Guaranty Fund Notification of Permit Activity", Form RGF -3, June 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator  
#2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides information related to the operation of the Kentucky Reclamation Guaranty Fund, classification of permits, reporting and payment of fees, and penalties.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of HB

66.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.515 requires participation in the newly established Kentucky Reclamation Guaranty Fund. This administrative regulation sets up the provisions of the Kentucky reclamation guaranty fund and how those impacted entities shall comply with its requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary detail for regulated entities to comply with the requirements of KRS 350.500 – 350.521.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question 3 will be mandatory participants in the KRGF unless they choose to opt-out. The requirements in this administrative regulation will impact those participants. The actions range from complying with reporting requirements, maintain production records, provide initial assessments, pay fees, comply with penalty provisions, and complete and submit required forms.

(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 each permittee will vary depending the number of permits, number of acres, and the tons of coal produced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KRGF members will benefit by participating in the KRGF. The KRGF will provide members with coverage for reclamation costs that are over the amount required by 405 KAR 10:015.

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

(a) Initially: The total expenditures of the Office of Reclamation Guaranty Fund (ORGF) will initially be \$718,100. The ORGF will be responsible for proving support to the KRGF commission.

(b) On a continuing basis: Future costs would remain essentially unchanged for operation of the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(7) Provide an assessment of whether an 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 were established in HB 66. These fees will be used to fund the KRGF and for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation implements fees established in KRS 350.518.

(9) TIERING: Is tiering applied? No. All members of the KRGF will be required to meet the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine

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Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.500 – 350.521.

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 proposal should generate approximately \$2,662,000 by the initial capitalization, active acre fees and the startup assessment fees.

(b) How 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 Department is uncertain how much revenue will be generated by this proposal in subsequent years. However, based upon the 2012 tonnages and dormant and nonproducing permits the proposal would generate \$5,225,000.

(c) How much will it cost to administer this program for the first year? The total expenditure for the ORGF is estimated at \$718,100.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 730

2. State Compliance Standards. KRS 350.064 and KRS 350.500 – 350.521.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. This administrative regulation will not impose additional or stricter standards on permittees. The federal Office of Surface Mining, Reclamation and Enforcement (OSM) requires permittees to provide full cost bonding. By participating in the KRGF members will be meeting OSM standards for reclamation bonding in the Commonwealth of Kentucky.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

### STATEMENT OF EMERGENCY 405 KAR 10:080E

On March 22, 2013 House Bill 66 was signed into effect establishing the Kentucky Reclamation Guaranty Fund (KRGF) and Kentucky Reclamation Guaranty Fund Commission (KRGFC). The statute required the appointment of the KRGFC on July 1, 2013, with KRGF capitalization measures beginning shortly thereafter. Administrative regulations are necessary to establish the protocols and operating procedures to be followed by the new commission as well as the participants in the KRGF. Without further action, the cabinet is in jeopardy of losing federal funds distributed by the Office of Surface Mining, Reclamation, and Enforcement to the Department for Natural Resources as part of a matching grant, the ability to set bonding amounts for Kentucky mining operations, and loss of funding for Kentucky's abandoned mine lands program. This emergency administrative regulation is necessary to immediately implement the provisions of House Bill 66 allowing permit-

tees to not participate in the KRGF and provide full-cost reclamation bonds for coal mine surface disturbances. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

LEONARD K. PETERS, Secretary

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of the Kentucky Reclamation Guaranty Fund (New Emergency Administrative Regulation)

#### 405 KAR 10:080E. Full-cost bonding.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.515(5)

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.515(5)

EFFECTIVE: July 3, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. KRS 350.515(5) creates a provision that allows members the option to provide full-cost bonds in lieu of maintaining membership in the fund. This administrative regulation provides information to members that elect to provide full-cost bonds rather than remain in the Kentucky Reclamation Guaranty Fund.

Section 1. Applicability. This administrative regulation applies to permittees electing to provide full-cost bonds to the cabinet in lieu of participation in the Kentucky Reclamation Guaranty Fund.

Section 2. Decision to Opt-out. Pursuant to KRS 350.515(5), a member may elect to opt-out of the Kentucky Reclamation Guaranty Fund and provide a full cost bond.

(1) A member with permits issued prior to July 1, 2013 shall:

(a) Notify the commission in writing no later than September 1, 2013 of the decision to opt-out of the Kentucky Reclamation Guaranty Fund; and

(b) Submit all revisions for the purpose of providing a full-cost reclamation bonding estimate to the cabinet by November 1, 2013, in accordance with 405 KAR 10:015, Section 10(1); 405 KAR 8:010, Section 20(1); and Section 4 of this administrative regulation. Failure to submit and obtain the required revision shall render a permit subject to suspension, as provided by KRS Chapter 350.

(2) A member joining the KRGF after July 1, 2013, shall declare the decision to opt-out on the Technical Information for a Mining Permit, Form MPA-03, incorporated by reference in 405 KAR 8:010, Section 26. This subsection shall not apply to those permits issued pursuant to 405 KAR 8:010, Section 22.

Section 3. Full-Cost Reclamation Bonding Estimate. (1) The requirements of 405 KAR 10:015, Section 7 and Section 8(7); 405 KAR 16:060, Section 8; 405 KAR 18:060, Section 12; and 405 KAR 18:210, Section 3, shall apply to the calculation of the estimate. The provisions of 405 KAR 10:015, Section 11, shall not apply when calculating a full-cost bonding reclamation estimate.

(2) Full-cost reclamation bonding estimates shall be calculated pursuant to the Kentucky Department for Natural Resources Full-cost Reclamation Bond Calculation Manual.

(3) The calculations shall be submitted on one (1) of the following forms:

(a) Technical Information for a Mining Permit, Form MPA-03, incorporated by reference in 405 KAR 8:010, Section 26;

(b) Application to Transfer a Mining Permit, MPA-07, incorporated by reference in 405 KAR 8:010, Section 26; or

(c) Application for a Coal Marketing Deferment, MPA-10, incorporated by reference in 405 KAR 8:010, Section 26.

(4) The reclamation bonding estimate shall be certified by a registered professional engineer, as defined in KRS 322.010, in good standing.

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(5) A member shall provide the full-cost reclamation bond upon notification that the full-cost reclamation estimate has been accepted by the department.

(6) A member with permits issued prior to July 1, 2013 shall post full cost reclamation bonds with the department before April 30, 2014 on all permits held by the member.

Section 4. Incorporation by Reference. (1) "Kentucky Department for Natural Resources Full-cost Reclamation Bond Calculation Manual", July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator  
#2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides information to members that elect to provide full-cost bonds rather than remain in the Kentucky Reclamation Guaranty Fund.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify members of the KRGF of the requirements associated with opting-out and providing full-cost bonds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.515(5) provides members of the KRGF the option of opting-out of the fund and providing full-cost bonds. This administrative regulation provides the necessary information for taking this option.

(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 establishing the requirements and information on how a permittee can opt-out of the KRGF and calculates full-cost bonds.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Members of the KRGF that choose to opt-out of the KRGF will be required to provide a full-cost bond. This administrative regulation provides the information permittees will use to calculate their full cost bond. This amount will differ depending on site conditions.

(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 each permittee will vary depending on the site conditions.

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

entities identified in question (3): By choosing to take this option permittees will be exempt from the other fees that are required of KRGF members.

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

(a) Initially: The total expenditures of the Office of Reclamation Guaranty Fund (ORGF) will initially be \$718,100.

(b) On a continuing basis: Future costs would remain essentially unchanged for operation of the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(7) Provide an assessment of whether an 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 were established in HB 66. These fees will be used to fund the KRGF. These funds will be used for implementation.

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

(9) TIERING: Is tiering applied? No. All members of the KRGF that elect to opt-out will meet the same requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.515.

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 new administrative regulation does 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 new administrative regulation does not generate any revenue.

(c) How much will it cost to administer this program for the first year? The total expenditure for the ORGF is estimated at \$718,100.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.064 and 350.515(5).

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation will not impose additional or more strict standards on permittees. The federal Office of Surface Mining, Reclamation and Enforcement (OSM) require permittees to provide full cost bonding. By opting-out of the KRGF permittees will be required to meet those same standards.



5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

**STATEMENT OF EMERGENCY**  
**405 KAR 10:090E**

On March 22, 2013 House Bill 66 was signed into effect establishing the Kentucky Reclamation Guaranty Fund (KRGF) and Kentucky Reclamation Guaranty Fund Commission (KRGFC). The statute required the appointment of the KRGFC on July 1, 2013, with KRGF capitalization measures beginning shortly thereafter. Administrative regulations are necessary to establish the protocols and operating procedures to be followed by the new commission as well as the participants in the KRGF. Without further action, the cabinet is in jeopardy of losing federal funds distributed by the Office of Surface Mining, Reclamation, and Enforcement (OSMRE) to the Department for Natural Resources as part of a matching grant, the ability to set bonding amounts for Kentucky mining operations, and loss of funding for Kentucky's abandoned mine lands program. This emergency administrative regulation is necessary to immediately set the amount of the tonnage fees required by Section 7(2)(a) and (b) of HB 66. The emergency administrative regulation will be replaced by an ordinary administrative regulation which is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
LEONARD K. PETERS, Secretary

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Office of the Reclamation Guaranty Fund**  
**(New Emergency Administrative Regulation)**

**405 KAR 10:090E. Production Fees.**

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.515, 350.518

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, KRS 350.518(2)(a) and (b)

EFFECTIVE: July 3, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. KRS 350.503 created the Kentucky Reclamation Guaranty Fund which will receive production fees established in KRS 350.518(2)(a) and (b). This administrative regulation provides information on production fees established in KRS 350.518(2)(a) and (b), and the schedule payments are to be remitted.

Section 1. (1) Each member with surface or underground coal mining operations shall remit to the ORGF a fee based on the tons of coal mined and sold from each permit. This production fee shall be paid by the 30th day of the month immediately following the end of the quarter.

(2) Production fees shall be assessed in the following manner:

(a) Surface coal mining operations shall pay seven and fifty-seven hundredths (7.57) cents per ton of coal.

(b) Underground coal mining operations shall pay three and fifty-seven hundredths (3.57) cents per ton of coal.

(c) Permits consisting of surface and underground coal mining operations shall be assessed the tonnage fees in accordance with the predominant method of coal extraction during the quarterly reporting period.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator,  
#2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the rates for the production fees established in KRS 350.518(2)(a) and (b).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the rates for the production fees established in KRS 350.518(2)(a) and (b). These rates may change as a result of an actuarial analysis required by KRS 350.509(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.518(2) requires the Kentucky Reclamation Guaranty Fund Commission (KRGFC) to set rates that each member of the Kentucky Reclamation Guaranty Fund (KRGF) shall pay based on the tonnage of coal produced. Those permittees are classified by underground or surface and pay different rates accordingly. This administrative regulation sets those rates.

(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 establishing the rates required by KRS 350.518(2). These rates can be increased or decreased depending on the results of an actuarial study.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require the 325 permittees that are participating in the KRGF to make quarterly payments to the fund based on the tons of coal produced and the type of mine they operate.

(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 each permittee will vary depending on the amount of coal produced in a quarter and the type of mine they operate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By paying the production fees set by this administrative regulation a permittee will maintain good standing in the KRGF and not be subject to permit suspension.

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

(a) Initially: the total expenditures of the Office of Reclamation Guaranty Fund (ORGF) will initially be \$718,100.

(b) On a continuing basis: Future costs would remain essentially unchanged for operation of the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(7) Provide an assessment of whether an 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 establishes the rates for the production fees that were established in KRS 350.518(2).

(8) State whether or not this administrative regulation estab-

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lished any fees or directly or indirectly increased any fees: This administrative regulation establishes the rates for the production fees that were established in KRS 350.518(2).

(9) TIERING: Is tiering applied? Yes. These fees were tiered in KRS 350.518(2). Different rates were applied to mines depending on the predominant mining type.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.518(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will generate funds that will be deposited into the KRGF. The ORGF will utilize these funds.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will continue to use the funds from the KRGF as a source of revenue.

(c) How much will it cost to administer this program for the first year? The total expenditures for the ORGF is estimated at \$718,100.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 730

2. State Compliance Standards. KRS 350.064 and KRS 350.518(2).

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes. This administrative regulation establishes rates for production fees which are not included in the corresponding federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements are related to the passage of HB 66 from the 2013 legislative session.

### STATEMENT OF EMERGENCY 405 KAR 10:201E

On March 22, 2013 House Bill 66 was signed into effect repealing KRS 350.700 through KRS 350.755. As part of this regulatory package the cabinet is repealing 405 KAR 10:200 which applies to the Voluntary Bond Pool which was promulgated under the authority of those repealed statutes. This emergency administrative regulation is necessary to remove requirements that are no longer applicable as part of Kentucky's bonding program and prevent

overlapping requirements for those former members. The emergency administrative regulation will not be replaced by an ordinary repealer administrative regulation.

STEVEN L. BESHEAR, Governor  
LEONARD K. PETERS, Secretary

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Emergency Repealer)

#### 405 KAR 10:201E. Repeal of 405 KAR 10:200.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 2013 Ky. Acts ch. 78, Section 12

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 2013 Ky. Acts ch. 78, Section 12

EFFECTIVE: July 3, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the cabinet to promulgate administrative regulations in order to accomplish the purposes of KRS Chapter 350. The department is promulgating new administrative regulations in response to the passage of HB 66 which establishes the Kentucky Reclamation Guarantee Fund. The Kentucky Bond Pool, established in KRS 350.700, was abolished by the passage of HB 66 and therefore this administrative regulation is no longer needed.

Section 1. 405 KAR 10:200, Kentucky Bond Pool, is hereby repealed.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 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 September 3, 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 repeals 405 KAR 10:200.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the administrative regulation that relates to the operations of the Kentucky Bond Pool which was repealed by Section 12 of 2013 Ky Acts ch. 78.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Section 12 of 2013 Ky Acts ch. 78 repealed KRS 350.700 through 350.755 which was established the Kentucky Bond Pool and The Kentucky Bond Pool Commission. This administrative regulation repeals 405 KAR 10:200.

(d) How this administrative regulation currently assists or will

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assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by repealing 405 KAR 10:200 which is related to the Kentucky Bond Pool which was repealed by the Section 12 of 2013 Ky Acts ch. 78.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will not necessarily impact any individuals. With the abolishment of the Kentucky Bond Pool by Section 12 of 2013 Ky Acts ch. 78, 405 KAR 10:200 is no longer relevant.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation repeals 405 KAR 10:200.

(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 associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit by the removal of this administrative regulation that is no longer relevant.

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

(a) Initially: Administering this administrative regulation will not result in a cost to the agency.

(b) On a continuing basis: There will not be any future costs associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used to fund the administrative regulations that will replace this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation repeals an 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 Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for 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? This new administrative regulation will not generate revenue for the agencies.

(b) How 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 revenue for the agencies 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

### STATEMENT OF EMERGENCY

#### 804 KAR 4:400E

This emergency administrative regulation amends an existing administrative regulation to incorporate the new basic license applications for all alcoholic beverage licenses issues by the Department of Alcoholic Beverage Control. This emergency administrative regulation is necessary to implement the new licensing applications in a timely manner 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.

STEVEN L. BESHEAR, Governor

TONY DEHNER, Distilled Spirits Administrator

ROBERT D. VANCE, Secretary

### PUBLIC PROTECTION CABINET

#### Department of Alcoholic Beverage Control (Emergency Amendment)

**804 KAR 4:400E. ABC basic application form incorporated by reference.**

RELATES TO: KRS 164.772, 241.060(1), 243.380, 243.390  
STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390[~~EO 2008-507~~]

EFFECTIVE: June 25, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the board [effice] to promulgate an administrative regulation to establish the license application form. [~~Executive Order 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 Alcohol Beverage Control as the Department of Alcohol Beverage Control.~~] This administrative regulation prescribes the basic form to be used to apply for an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete, have notarized, and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage Licenses, with the exception of an applicant for:

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state produc-

~~er/supplier of malt beverage license~~[An agent's, solicitor's, out-of-state brewer, out-of-state microbrewer, or beer importer license];

(2) A[special] temporary license:[or]

(3) ~~An extended hours, supplemental bar, special Sunday, or sampling license: or~~

(4) ~~A secondary malt beverage license~~[A transporter's license].

Section 2. In addition to the Basic Application for Alcoholic Beverage Licenses ~~required~~[require] by Section 1 of this administrative regulation, an applicant[applying for an alcoholic beverage license] shall complete and submit to the Department of Alcoholic Beverage Control the ~~special application~~[schedule ~~or~~] form required by 804 KAR 4:410[for the specific license type for which the applicant is applying].

Section 3. Incorporation by Reference. (1) "[The] Basic Application ~~for~~[for] Alcoholic Beverage Licenses", ~~June 2013~~[January 2009], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the ~~department's~~[authority's] Web site, <http://www.abc.ky.gov/>.

FREDERICK A. HIGDON, Commissioner  
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 24, 2013

FILED WITH LRC: June 25, 2013 at 9 a.m.

CONTACT PERSON: Trey Hieneman, 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 regulation incorporates the forms required when applying for an alcoholic beverage license created under 2013 SB 13.

(b) The necessity of this administrative regulation: 2013 SB 13 changed the number of licenses and requirements for various licenses. This regulation is needed to establish the forms required when applying for an alcoholic beverage license.

(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. 2013 SB 13 combined, repealed, and created licenses to streamline the licensing process for alcoholic beverage licenses. This regulation incorporates the forms needed for issuing alcoholic beverage licenses as established under 2013 SB 13.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the form required for alcoholic beverage licenses.

(b) The necessity of the amendment to this administrative regulation: 2013 SB 13 changed the number of licenses and requirements for various licenses. This regulation is needed to establish the forms required when applying for an alcoholic beverage license.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(d) How the amendment will assist in the effective administration of the statutes: 2013 SB 13 combined, repealed and created licenses to streamline the licensing process for alcoholic beverage licenses. This regulation incorporates the forms needed for issuing alcoholic beverage licenses as established under 2013 SB 13.

(3) List the type and number of individuals, businesses, organi-

zations, 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 applicants for alcoholic beverage licenses will have to complete the new application form for an alcoholic beverage license.

(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: No funding is used for the implement the 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not 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 or 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.

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:

**STATEMENT OF EMERGENCY  
804 KAR 4:410E**

This emergency administrative regulation amends an existing administrative regulation to incorporate the additional license applications for all alcoholic beverage licenses issued by the Department of Alcoholic Beverage Control. This emergency administrative regulation is necessary to implement the new licensing applications in a timely manner 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.

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

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

**804 KAR 4:410E. Special applications[ABC schedules] and registration forms incorporated by reference.**

RELATES TO: KRS 241.060(1)

STATUTORY AUTHORITY: KRS 241.060, 243.380, 243.390

EFFECTIVE: June 25, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms[the schedules and forms to be used to apply for specific license types].

Section 1. Special application forms[In addition to the "ABC Basic" application form incorporated by reference in 804 KAR 4:400,] An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the Department[Office] of Alcoholic Beverage Control the applicable special application[schedule or] form for the specific license type for which the application is made[he is applying]. The special application[schedules and] forms are listed below:

- (1) Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application[Schedule "A" A-Special Agent's, Solicitor's, Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License];
- (2) Special Temporary License Application[Schedule "B" Beer Retail Only License];
- (3) Secondary Malt Beverage License Application Addendum[Schedule "F" Food-Related License];
- (4) Supplemental License Application[Schedule "I" Industrial Alcohol and Nonbeverage Alcohol Vendor License];
- (5) Schedule "L" Limited 70% Food Restaurant and Golf Course Voted Wet by Special Election License;
- (6) Schedule "M" Manufacturer and Producer License;
- (7) Schedule "R" Retail License;
- (8) Schedule "S" Storage and Warehouse License;
- (9) Schedule "S/R" Special Retail Sales; Motel, Private Club, Riverboat, and Rail & Airliner License;
- (10) Schedule "T" Transporter License;
- (11) Schedule "Temporary" License;
- (12) Schedule "Transitional" License;
- (13) Schedule "W" Liquor and Wine Wholesaler and Beer Distributor License;
- (14) Schedule "X" Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License;
- (15) "ABC Form 714" Beer Brand Registration; and

(16) "ABC Form 715" Distilled Spirits and Wine Brand Registration].

Section 2. Registration Forms. An applicable licensee shall complete and submit the following registration forms:

- (1) Microbrewer's Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue;
- (2) ABC Form 714 to be submitted to the Department of Alcoholic Beverage Control; or
- (3) ABC Form 715 to be submitted to the Department of Alcoholic Beverage Control.

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

- (a) "Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application", June 2013[Schedule A Agent's, Solicitor's Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License", 01/01/07];
  - (b) "Special Temporary License Application", June 2013[Schedule B Beer Retail Only License", 01/01/07];
  - (c) "Secondary Malt Beverage License Application Addendum", June 2013[Schedule F Food-Related License", 01/01/07];
  - (d) "Supplemental License Application", June 2013[Schedule I Industrial Alcohol and Nonbeverage Alcohol Vendor License", 01/01/07];
  - (e) "Microbrewer's Retail Gross Receipts Report to Distributor", June 2013;
  - (f) "ABC Form 714", June 2013; and
  - (g) "ABC Form 715", June 2013[Schedule L Limited 70% Food Restaurants and Golf Courses Voted Wet by Special Elections", 6/26/07];
  - (f) "Schedule M Manufacturer and Producer License", 01/01/07;
  - (g) "Schedule R Retail License", 01/01/07;
  - (h) "Schedule S Storage and Warehouse License", 01/01/07;
  - (i) "Schedule S/R Special Retail Sale; Motel, Private Club, Riverboat, and Rail & Airliner License", 01/01/07;
  - (j) "Schedule T Transporter License", 01/01/07;
  - (k) "Schedule Temporary License", 01/01/07;
  - (l) "Schedule Transitional License", 01/01/07;
  - (m) "Schedule W Liquor and Wine Wholesaler and Beer Distributor License", 01/01/07;
  - (n) "Schedule X Airport, Automobile Race Track, Convention Center, Convention Hotel Complex, Entertainment, Qualified Historic Site Destination Center, Horse Race Track, and License";;
  - (e) "ABC Form 714 Beer Brand Registration", 01/01/07; and
  - (p) "ABC Form 715 Distilled Spirits and Wine Brand Registration", 01/01/07.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [Office] of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's[office's] Web site, <http://www.abc.ky.gov>.

FREDERICK A. HIGDON, Commissioner  
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 24, 2013

FILED WITH LRC: June 25, 2013 at 9 a.m.

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 regulation incorporates by reference the forms to be used to apply for various license types.

(b) The necessity of this administrative regulation: KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

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(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. 2013 SB 13 combined, repealed, and created licenses to streamline the licensing process for alcoholic beverage licenses. This regulation incorporates the forms needed for issuing alcoholic beverage licenses as established under 2013 SB 13.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the form required for alcoholic beverage licenses. It also includes the additional documentation required to be filed with the licensing form.

(b) The necessity of the amendment to this administrative regulation: 2013 SB 13 changed the number of licenses and requirements for those various licenses. This regulation is needed to establish the forms and documentation required when applying for an alcoholic beverage license.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(d) How the amendment will assist in the effective administration of the statutes: 2013 SB 13 combined, repealed and created licenses to streamline the licensing process for alcoholic beverage licenses. This regulation incorporates the forms needed for issuing alcoholic beverage licenses as established under 2013 SB 13.

(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: An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 will be required to complete the applications included in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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: Agency funding is used for the implementation of the 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.

(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 or 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.

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:

### STATEMENT OF EMERGENCY 815 KAR 4:030E

This emergency administrative regulation amends an existing administrative regulation to incorporate new licensing and renewal requirements for elevator contractor licenses issued by the Department of Housing, Buildings and Construction. On March 19, 2013 13 RS HB 162 GA was signed into law amending KRS 198B.400 and 198B.4013 to establish an accessibility and residential elevator mechanic license. This bill will become effective on June 25, 2013. This emergency administrative regulation is necessary to implement the new licensing and renewal applications in a timely manner once this new license type becomes 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.

STEVEN L. BESHEAR, Governor  
AMBROSE WILSON IV, Commissioner  
ROBERT D. VANCE, Secretary

### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Emergency Amendment)

#### 815 KAR 4:030E. Elevator contractor licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4023, 198B.4025, 198B.4027, 198B.4033

STATUTORY AUTHORITY: KRS 198B.4009, 198B.4011, 198B.4023, 198B.4025

EFFECTIVE: June 25, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator contractors to be licensed, and KRS 198B.4011 provides the eligibility requirements to be met for issuance of an

elevator contractor's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing ~~education~~[educations] requirements for elevator licensee renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. KRS 198B.4009(3) authorizes fees for the elevator licensure program to implement KRS 198B.400 through 198B.540. This administrative regulation establishes the licensure requirements for elevator contractors.

Section 1. General Requirements. (1) Supervision. The elevator contractor shall supervise generally, and be primarily responsible for, all elevator work performed by the mechanics, employees, and subcontractors of the licensee.

(2) Company license. A licensee who is an employee of a company and whose license represents the company shall notify the department, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on that license and paying the change of information fee established in Section ~~6~~[5](5) of this administrative regulation.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator contractor license shall submit to the department:

1. A completed, signed, and notarized Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license.

a. The initial license fee may be prorated.

b. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;

3. Proof of applicant's experience as required by KRS 198B.4011;

4. A ~~recent~~[recent] passport-sized color photograph of the applicant taken within the past six (6) months; and

5. Proof of insurance as required by KRS 198B.4027.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is ~~received by the department~~[submitted].

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the elevator contractor license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 4. Experience requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have:

(a) A minimum of three (3) years of verifiable experience as an elevator mechanic; or

(b) A current license, certification, or registration as an elevator contractor in another state whose standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4.

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by W-2s.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.

Section 5. Renewal and Reactivation Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator contractor shall submit to the department:

(a) A completed, signed and notarized Elevator License Renewal Application on Form EV-7;

(b) A renewal fee of \$240 made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) Each application for license renewal shall be ~~submitted~~[filed] by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal application ~~submitted~~[filed] late, but with a United States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section ~~6~~[(6)](1) of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section 6(2) of this administrative regulation, shall be added to the annual renewal fee.

(5) Inactive elevator contractor status and renewal requirements.

(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of \$120.

(b) An inactive elevator contractor shall not:

1. Secure an elevator permit;

2. Advertise; or

3. Represent himself as an elevator contractor currently authorized to contract elevator work in the commonwealth.

~~(6)[If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro-rata basis. (7)]~~ Continuing education requirements shall not be required for renewal, if the initial license was issued within twelve (12) months of renewal.

~~(7)[(8)]~~ The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;

(b) Comply with elevator contractor continuing education requirements;

(c) Provide the current insurance certificates required by KRS 198B.4027; or

(d) ~~Submit~~[File] the renewal application as required by this section.

~~(8)[(9)]~~ To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, an additional \$120, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 6. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be \$100.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be \$120.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee.

(a) The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars.

(b) If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 7. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons established in KRS 198B.4033.

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

(a) "Elevator Contractor License Application", Form EV-3, October 2011; and

(b) "Elevator License Renewal Application" Form EV-7, June 2013[August 2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[5405], Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 25, 2013 at 11 a.m.

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, 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 licensure requirements and fees for elevator contractors.

(b) The necessity of this administrative regulation: This amendment is necessary to administer the elevator licensure program including renewals of licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application and maintenance of an elevator contractor license and renewals.

(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 the form to be used for renewals of elevator contractors' licenses in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: To provide a standardized renewal form for renewals of elevator contractors' licenses in the Commonwealth in accordance with statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.4023 provides that a licensee shall renew his/her contractor's license annually on or before the final day of the licensee's birth month.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a standardized form for renewal.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Code Enforcement, Elevator Section, and elevator 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:

(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: Elevator contractors will be required to comply with all requirements of this regulation in order to obtain or maintain licensure (including annual renewals).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and offset the expenditures to the Department, Division, and Section. These fees were previously enacted and have not been amended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: As renewal rates mirror initial application fees, the agency anticipates no significant changes in revenues from the initial year which totaled \$8,160 for FY 11-12.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds of the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an 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 (restricted funds) have been established and are sufficient to offset expenditures for this program. The agency has no anticipated need for an increase in fees or funding to continue the administration of this program through this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation established fees for the program in 2011. There are no new fees established nor increases in existing fees as a result of this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevator contractors are treated equally under the provisions of this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Codes Enforcement and Elevator section will be impacted by this amended administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.4009, 198B.4011, 198B.4023, and 198B.4025.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes revenues for elevator contractor licensing which are estimated to offset expenditures for implementing and enforcement of the contractor licensing program. These fees were established at the onset of the elevator licensure program and went into effect following legislative review November



30, 2011.

(a) How much 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. As the fees are to remain constant, revenues are anticipated to remain consistent with the initial year's revenues which totaled \$8,160 for FY 11-12.

(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? The cost of administering the elevator contractor licensure program are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for the program.

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:

#### STATEMENT OF EMERGENCY 815 KAR 4:040E

This emergency administrative regulation amends an existing administrative regulation to incorporate new licensing and renewal requirements for elevator mechanic licenses issued by the Department of Housing, Buildings and Construction. On March 19, 2013 13 RS HB 162 GA was signed into law amending KRS 198B.400 and 198B.4013 to establish an accessibility and residential elevator mechanic license. This bill will become effective on June 25, 2013. This emergency administrative regulation is necessary to implement the new licensing and renewal applications in a timely manner once this new license type becomes 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.

STEVEN L. BESHEAR, Governor  
AMBROSE WILSON IV, Commissioner  
ROBERT D. VANCE, Secretary

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Emergency Amendment)

#### 815 KAR 4:040E. Elevator mechanic licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: KRS 198B.4009, 198B.4013, 198B.4023, 198B.4025

EFFECTIVE: June 25, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator mechanics to be licensed and KRS 198B.4013 provides the eligibility requirements to be met for issuance of an elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator licensee renewals. This administrative regulation establishes the licensure requirements for elevator mechanics and es-

tablishes procedures for license renewal.

Section 1. Initial Application Requirements. (1) Filing the application. An applicant seeking an elevator mechanic license or an accessibility and residential elevator mechanic license shall submit to the department:

(a) A completed, signed, and notarized Elevator Mechanic License Application on Form EV-4;

(b) An initial license application fee of ninety-six (96) dollars for a twelve (12) month license~~[-1. The initial license fee may be prorated.~~

~~2. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months];~~

(c) Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

(d) A~~recent~~ passport-sized, color photograph of the applicant taken within the past six (6) months.

(2) Proration of fees.

(a) The initial license fee may be prorated.

(b) If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months.

(3) Termination of application.

(a) The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is received~~submitted~~.

(b) At the end of one (1) year, the application shall be void.

Section 2. Examination Requirements. (1)~~[(1)]~~ An applicant who applies for licensure under the provisions of KRS 198B.4013(2)(a)~~[-1. the applicant]~~ shall take and pass the examination known as the Kentucky Elevator Mechanic Examination administered in compliance with this section. ~~[(4)]~~The Kentucky Elevator Mechanic Examination shall test the applicant's basic knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators and elevator systems.

(2) An applicant who applies for licensure under the provisions of KRS 198B.4013(2)(b) shall take and pass the examination known as the Kentucky Accessibility and Residential Elevator Mechanic Examination. The Kentucky Accessibility and Residential Elevator Mechanic Examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of accessibility lifts and private residential elevators.

(3) The department or its designee shall develop, administer, and score the Kentucky Elevator Mechanic Examination and the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(4) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(5)~~[(3)]~~ Except as provided by subsection (9)~~[(7)]~~ of this section, an applicant shall successfully complete with a passing score of at least seventy (70) percent the Kentucky Elevator Mechanic Examination or Kentucky Accessibility and Residential Elevator Examination, as applicable~~[the examination known as the "Kentucky Elevator Mechanic Examination", which is developed, administered, and scored by the department or its designee].~~

(6)~~[(4)]~~(a) A request to sit for the Kentucky Elevator Mechanic Examination or the Kentucky Accessibility and Residential Elevator Mechanic Examination shall be made directly to the department-approved testing facility.

(b) A list of facilities and contact information shall be provided to applicants following receipt of the~~examination~~ application.

(7)~~[(5)]~~ The cost shall not exceed \$100 for either the Kentucky Elevator Mechanic Examination or for the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(8)~~[(6)]~~ A passing score on an approved elevator~~[the]~~ examination shall be valid for a period of two (2) years.

(9)~~[(7)]~~ Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department or department's designee if the person or group submitting the examination demonstrates that the exami-

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nations cover the same material and require the same level of knowledge as the department's examinations.

Section 3. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.4013(2).

(2) Records of experience.

(a) Proof of listed experience shall be provided by W-2s or an affidavit from a licensed elevator contractor or the equivalent.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department finds reason to believe that the experience shown is insufficient or nonexistent.

Section 4. Renewal Requirements and Procedures. (1) Filing for renewal. Each license shall be renewed annually~~[each year]~~. To renew an elevator mechanic or accessibility and residential elevator mechanic~~[a]~~ license, the licensee~~[an elevator mechanic]~~ shall submit to the department:

(a) A completed, signed, and notarized Elevator License Renewal Application on Form EV-7;

(b) A renewal fee of ninety-six (96) dollars made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing education provider evaluation forms for each continuing education class attended.

(2) Each application for license renewal shall be submitted to the department~~[filed]~~ by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal fee of ninety-six (96) dollars shall be paid prior to renewal. The department shall send a renewal application to each licensee annually~~[each year]~~ to be returned with the required fee.

(4) A renewal application submitted~~[filed]~~ late, but with a United States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 5(1) of this administrative regulation, shall be added to the annual renewal fee.

(5) Failure to renew by sixty-one (61) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 1 of this administrative regulation for reinstatement and a reinstatement fee, in accordance with Section 5(2) of this administrative regulation, shall be added to the annual renewal fee.

(6) Inactive elevator mechanic or accessibility and residential elevator mechanic renewal.

(a) To place an elevator mechanic's or accessibility and residential~~[the]~~ elevator mechanic's license in inactive status, the~~[an]~~ elevator mechanic or accessibility and residential elevator mechanic shall pay annually an inactive fee of forty-eight (48) dollars.

(b) An inactive elevator mechanic or accessibility and residential elevator mechanic shall not perform work within the Commonwealth if the work requires an elevator mechanic's or accessibility and residential elevator~~[a]~~ mechanic's license.

~~(7)[If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro-rata basis. (8)]~~Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

~~(8)[(9)]~~ The application for renewal or reactivation of a licensed elevator mechanic or accessibility and residential elevator mechanic shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal and restoration, if applicable;

(b) Comply with applicable~~[elevator mechanic]~~ continuing education requirements; or

(c) Submit~~[File]~~ the renewal application as required by this section.

~~(9)[(40)]~~ Reactivation of Inactive Elevator Mechanic's or Accessibility and Residential Elevator Mechanic's License. To reactivate an elevator mechanic or accessibility and residential elevator

mechanic license, the inactive elevator mechanic or accessibility and residential elevator mechanic shall pay the annual renewal fee, an additional forty-eight (48) dollars, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 5. Limitation on Applicability. A licensed elevator mechanic may perform work on accessibility and residential elevators without obtaining an accessibility and residential elevator license.

Section 6. Special Services and Fees. In addition to the other fees required by this administrative regulation, the following special fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be twenty-five (25) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be twenty-five (25) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be forty-eight (48) dollars.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

Section 7[6]. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the commissioner for any of the reasons stated in KRS 198B.4033.

Section 8[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Elevator Mechanic License Application", Form EV-4, June 2013~~[September, 2014]~~; and

(b) "Elevator License Renewal Application", Form EV-7, June 2013~~[August 2012]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-~~5412~~5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 25, 2013 at 11 a.m.

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, 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 licensure requirements and fees for elevator mechanics.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program including renewals of licenses for accessibility and residential elevator mechanics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application, renewal, and maintenance of an elevator mechanic license.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides the requirements and form to be used for initial licenses and renewals of accessibility and resi-

dential elevator mechanics' licenses in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: To provide initial application and renewal forms for accessibility and residential elevator mechanics' licenses in the Commonwealth in accordance with statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.4023 provides that a licensee shall renew his/her mechanic's license annually on or before the final day of the licensee's birth month.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the procedures and requirements for issuance of accessibility and residential elevator mechanic's licenses and provides standardized applications for licenses and renewals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This amendment to the existing administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Code Enforcement, Elevator Section, and accessibility and residential elevator mechanics.

(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 Department, Division and Section will implement the elevator licensure program and ensure compliance with licensure requirements (including annual renewals) while carrying out inspection duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and are anticipated to offset the expenditures to the Department Division, and Section for ensuring compliance with licensure laws.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: There is no anticipated increase in cost for the administration and implementation of this regulation's amendments.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds of the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an 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 (restricted funds) have been established and are sufficient to offset expenditures for this program. The agency has no anticipated need for an increase in fees or funding to continue the administration of this program through this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation established fees for the program in 2011. The Administrative regulation establishes fees for licensing of accessibility and residential elevator mechanics.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevator licensees are treated equally under the provisions of this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Housing, Buildings and Construction, Division of Building Codes Enforcement and Elevator section will be impacted by this amended administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by 13 RS HB 162 GA, KRS 198B.4009, 198B.4013, and 198B.4023.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes revenues for elevator mechanic licensing which are estimated to offset expenditures for implementing and enforcement of the mechanic licensing program.

(a) How much 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 department does not anticipate an increase in revenues for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. As the fees are to remain constant, revenues are anticipated to remain consistent.

(c) How much will it cost to administer this program for the first year? The costs to administer the elevator licensure program are anticipated to remain consistent with costs from prior years to the Division of Building Codes Enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost of administering the elevator mechanic licensure program are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for the program.

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:

#### STATEMENT OF EMERGENCY 900 KAR 10:050E

This emergency administrative regulation is being promulgated to establish the policies and procedures of the Office of the Kentucky Health Benefit Exchange relating to the registration of an individual agent or business entity in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155. 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 forth 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 establish the policies and procedures relating to the registration of a business entity or individual agent seeking to participate on the Kentucky Health Benefit Exchange. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Exchange to register individual agents or business entities in a timely manner. These individual agents and business entities are necessary to provide assistance to qualified individuals enrolling in a Qualified Health Plan offered through KHBE or applying for advance payments of the premium tax credit and cost-sharing reductions, as well as provide assistance to qualified employers in selecting a QHP and enrolling qualified employees in a QHP. 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 10:050E. Individual Agent or Business Entity  
Participation with the Kentucky Health Benefit Exchange.**

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155

STATUTORY AUTHORITY: KRS 194A.050(1)

EFFECTIVE: July 10, 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 of the Office of the Kentucky Health Benefit Exchange relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

Section 1. Definitions. (1) "Advanced payment of premium tax credits" or "APTC" means payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange in accordance with section 1412 of the Affordable Care Act.

(2) "Agent" means an individual described in KRS 304.9-020(1).

(3) "Business entity" is defined by KRS 304.9-020(5).

(4) "Certified application counselor" or "CAC" means an individual employed by, or a volunteer of, an entity designated by the office and the Department for Medicaid Services.

(5) "Cost-sharing reductions" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in an exchange or for an individual who is an Indian enrolled in a qualified health plan in an exchange.

(6) "Date of the notice" means the date on the notice plus five (5) calendar days.

(7) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(8) "Individual market" is defined by KRS 304.17A-005(26).

(9) "In-Person Assister" means an entity performing functions described in 45 C.F.R. 155.205 selected by the Office of KHBE.

(10) "Insurance Affordability Program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the act;

(b) A state children's health insurance program (CHIP) under title XXI of the act;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act.

(11) "Issuer" is defined by 45 C.F.R. 144.103.

(12) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange conditionally approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP beginning January 1, 2014.

(13) "Kentucky Insurance Code" means KRS Chapter 304 and associated administrative regulations.

(14) "Kentucky Online Gateway" means the system for authentication services for users requesting access to the KHBE portal.

(15) "Kynectors" means CACs, in-person assisters, or navigators.

(16) "Navigator" means an entity as described in 45 C.F.R. 155.210 selected by the Office of KHBE.

(17) "Office of the Kentucky Health Benefit Exchange" or "office" or "OKHBE" means the office created to administer the Kentucky Health Benefit Exchange.

(18) "Participating agent" means an agent defined by KRS 304.9-020(1) who has been certified by the office to participate on the KHBE.

(19) "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

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

(21) "Qualified health plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification issued by the OKHBE.

(22) "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market.

(23) "Small group" is defined by KRS 304.17A-005(42).

(24) "Training" means the training established by the office for individual agents and kynectors.

Section 2. Requirements to be a Participating Individual Agent or Business Entity. (1) An individual agent seeking to be a participating agent shall:

(a) Be licensed by DOI with a health line of authority;

(b) Complete the OKHBE approved agent training in accordance with 45 C.F.R. 155.220(d)(2);

(c) Sign an individual agent participation agreement;

(d) Comply with the privacy and security standards of 45 C.F.R. 155.260;

(e) 1. Maintain an appointment with at least two (2) QHP issuers participating on the KHBE; or

2. Maintain a designation with a business entity having an appointment with at least two (2) QHP issuers participating on the KHBE; and

(f) Register with the KHBE through the Kentucky Online Gateway.

(2) A business entity licensed as an agent with a health line of authority seeking to participate with the KHBE shall:

(a) Select an individual to serve as the participating business entity representative who shall:

1. Register with KHBE through the Kentucky Online Gateway as the individual authorized by the business entity;

2. Serve as a primary contact for the office;

3. Ensure that the business entity signs a participation agreement with the office; and

4. Be responsible for ensuring that only an active Kentucky licensed agent designated with the business entity is provided access to the KHBE through the Kentucky Online Gateway;

(b) Designate the individual agents who shall participate on the KHBE through the participating business entity and who shall:

1. Complete the OKHBE agent training provided by the office or an approved party;

2. Sign an agent participation agreement;

3. Comply with the privacy and security standards of 45 C.F.R. 155.260; and

4. Register with the KHBE through the Kentucky Online Gateway; and

(c) Maintain an appointment with at least two (2) QHP issuers participating on the KHBE.

Section 3. Permitted Activities of a Participating Individual Agent or Business Entity. (1) Upon completion of the registration requirements as set forth in Section 2 of this administrative regulation, a participating individual agent or business entity may:

(a) Enroll a qualified individual in any QHP offered through the KHBE in the individual market; or

(b) Assist qualified employers in selecting a QHP and enroll qualified employees in a QHP offered through the KHBE in the small group market; and

(c) Assist an individual in applying for advance payments of the premium tax credit and cost-sharing reductions.

(2) A qualified individual may be enrolled in a QHP through the KHBE by a participating individual agent or business entity if the participating individual agent or business entity ensures the applicant's completion of an application as described in 42 C.F.R. 155.405.

(3) A participating individual agent or business entity shall:

(a) Disclose to potential applicants any relationships the individual agent or business entity has with QHP issuers, insurance affordability programs, or other potential conflicts of interest identified by the OKHBE; and

(b) Not:

1. Impose any charge or fee on an applicant for assistance in completing an application or enrolling in a QHP;

2. Provide compensation or a referral fee to a kynector; and

3. Enter into an exclusive referral agreement with a kynector.

(4) If the office finds noncompliance with the terms and conditions of the individual agent participation agreement, business entity participation agreement, or an administrative regulation of the office, the office shall withdraw an agent's or business entity's registration and participation with the KHBE after:

(a) Giving notice to the participating individual agent or participating business entity; and

(b) An opportunity to respond in accordance with Section 5 of this administrative regulation.

Section 4. Renewal of Participation and Registration with the OKHBE. To maintain registration with the office, a participating individual agent or participating business entity shall:

(1) Comply with annual training prescribed by the office;

(2) Sign an agent or business entity participation agreement; and

(3) Maintain licensure, appointments, and designations as identified in Section 2 of this administrative regulation.

Section 5. Withdrawal of Registration and Appeals. (1) (a) Except as provided in subsection (2) of this section, if the office finds noncompliance with the terms and conditions of an individual agent participation agreement, a business entity participation agreement, or an administrative regulation of the office, the office shall:

1. Provide the participating individual agent or the participating business entity with notice that the applicable registration shall be withdrawn as of the date of notice;

2. Allow the participating individual agent or participating business entity an opportunity to submit evidence of compliance or additional information within ten (10) business days;

3. Review any information submitted by the participating individual agent or participating business entity; and

4. Based on a review of the information provided, issue a decision to withdraw or reinstate the applicable registration of a participating individual agent or participating business entity.

(b) A participating individual agent or participating business entity shall have the right to appeal a decision to withdraw registration in accordance with paragraph (a) of this subsection through the office.

(2) (a) If the health line of authority or licensure of an agent or business entity is suspended, revoked, or has expired, the OKHBE registration of the agent or business entity shall be withdrawn by the OKHBE based on DOI's administrative action.

(b) Any appeal or request of an action by DOI pursuant to paragraph (a) of this subsection shall be made to DOI in accordance with the Kentucky Insurance Code.

(3) After one (1) year following a decision to withdraw the registration of a participating individual agent or participating business entity, the individual agent or business entity may reapply in accordance with Section 2 of this administrative regulation.

WILLIAM J. NOLD

For CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 10, 2013 at 3 p.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 of the Office of the Kentucky Health Benefit Exchange relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform individual agents and business entities of the registration requirements for participation on the Kentucky Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to provide the registration requirements for individual agents and business entities seeking to participate on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed information about the registration requirements for individual agents or business entities seeking to participate on the Kentucky Health Benefit Exchange to comply with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

(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 7,500 individual agents and/or business entities that may request to be registered to participate on the Kentucky Health Benefit Exchange.

(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 individual agent or business entity will be licensed by DOI, complete OKHBE training, sign a participation agreement, meet privacy and security standards, register with KHBE through the Kentucky Online Gateway, and maintain an appointment with at least 2 QHP issuers participating on the KHBE.

(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 individual agent or business entity for participation on the KHBE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual agent or business entity that seeks to participate on the Kentucky Health Benefit by providing detailed instructions regarding the registration requirements.

(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. Part 155.

(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. Part 155.

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 of the Office of the Kentucky Health Benefit Exchange relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

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 to offer a Qualified Health Plan (QHP) in Kentucky beginning January 1, 2014. An Exchange must make qualified health plans available to qualified individuals and qualified employers. At a minimum, an Exchange must implement procedures for participation of individual agents and business entities seeking to participate on the Ex-

change. This registration may be done if the individual agent or business entity is licensed by DOI, completes OKHBE training, signs a participation agreement, meets privacy and security standards, registers with KHBE through the Kentucky Online Gateway, and maintains an appointment with at least two (2) QHP issuers participating on the KHBE.

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.

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

PERSONNEL CABINET  
Office of the Secretary  
(As Amended at ARRS, July 9, 2013)

**101 KAR 2:076. Vacancies, detail to special duty and temporary overlap.**

RELATES TO: KRS 18A.005, 18A.110(1)(g), (7), 18A.115, 18A.120

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(g) and (7) requires the Secretary of Personnel to promulgate administrative regulations to[which] govern the types of appointments as[and are] necessary to implement KRS Chapter 18A. This administrative regulation establishes the requirements for filling a vacancy, for detail to special duty, and for temporary overlap.

Section 1. Filling of Vacancies. A vacancy in the classified service, which is not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, reemployment of a career or laid-off employee, reversion, or reinstatement.

Section 2. Detail to Special Duty. (1) With prior approval of the secretary, if the services of an employee with status are needed in a position within an agency other than the position to which the employee is regularly assigned, the employee may be detailed to that position. If detailed to that position, the period shall not[for a period not to] exceed one (1) year[with prior approval of the secretary].

(2) For detail to special duty, the secretary may waive the minimum requirements if requested and justified by the appointing authority in writing.

(3) Upon approval by the secretary, the appointing authority shall notify the employee, in writing, of:

- (a) The detail to special duty;
- (b) The reasons for the action; and
- (c) The employee's retention of status in the position from which he was detailed to special duty.

Section 3. Temporary Overlap. For training purposes or if it is in the best interests of the service, with the approval of the secretary, an agency may place an employee in a position currently occupied by another employee. If an employee is so placed, the period shall[for a period] not [to]exceed ninety (90)[sixty (60)] calendar days[, for training purposes or if it is in the best interests of the service].

TIM LONGMEYER, Cabinet Secretary

APPROVED BY AGENCY: May 14, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

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

PERSONNEL CABINET  
Office of the Secretary  
(As Amended at ARRS, July 9, 2013)

**101 KAR 2:095. Classified service general requirements[administrative regulations].**

RELATES TO: KRS 18A.030(2), 18A.110, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110

requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs[which govern] the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Definitions. (1) ["Approved-charitable-federation" means a charitable organization which:

(a) Qualifies as a charitable federation with a substantial Kentucky presence; and

(b) Has been approved by the Secretary of Personnel for participation in the campaign pursuant to Section 8(3) of this administrative regulation.

(2) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

(a) Qualify as exempt voluntary charitable organizations pursuant to[under] 26 U.S.C. 501(c)(3); and

(b) Have a substantial Kentucky presence.

(2) [(3)] "Designated nonprofit agency" means an organization with proof of tax-exempt status pursuant to[under] 26 U.S.C. 501(c)(3) [which is] written in on a pledge card by a state employee as a choice to receive contributions.

(3) [(4)] "State employee" means a person, including an elected public official, who is employed by a department, board, agency, or branch of state government, except one (1) relating to a state college or university.

(4) [(5)] "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 8(2) of this administrative regulation.

Section 2. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that[which] requires more than one (1) shift or seven (7) days a week operation may be reassigned from one shift to another or from one post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from a work station.

Section 3. Work Station and Temporary Assignment. (1) Each employee shall be assigned a work station by the appointing authority.

(2) A work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different work station in a different county.

(a) If an employee is temporarily assigned to a different work station in a different county, the assignment shall not last more than[for a period of up to] sixty (60) calendar days.

**(b)** Temporary assignment may be renewed with the approval of the Secretary of Personnel.

**(c)** A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with **200 KAR 2:006, [regulatory provisions]** and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment.

Section 4. Dual Employment. (1) An employee holding a full-time position with the Commonwealth shall not hold another state position except upon recommendation of the appointing authority and the written approval of the secretary.

(2) A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary.

Section 5. Notice of Resignation and Retirement. (1) An employee who desires to terminate his service with the state shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the personnel action effecting the separation and be filed in the employee's service record in the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days notice with his resignation or notice of retirement may result in forfeiture of accrued annual leave, **based on:**

**(a) If the fourteen (14) day deadline was:**

**1. Practicable under the circumstances;**

**2. Appropriate for the situation; and**

**3. Complied with; or**

**(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.**

(4) The effective date of a separation shall be the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 6. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or other leave with or without pay.

Section 7. Telecommuting. (1) Telecommuting shall be a work arrangement **in which[where]** a selected state employee is allowed to perform the normal duties and responsibilities of his position through the use of computer or telecommunications at home or another place apart from the employee's usual work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe

workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall be arranged in advance.

Section 8. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies; or

3. Assistance to those who are impoverished and in need of food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status **pursuant to[under]** 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors, **which shall meet[which-meets]** regularly and whose members **shall** serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.



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(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employee Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved federation;

(c) The format of the brochure, pledge card, or[and] other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be detailed in the budget, and which shall be borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall make application by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign. This shall include preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that[which] would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that[which] create a risk

to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Pay[Paychecks] to State Employees.

(1) Pay[A—paycheck] shall be issued to[a] state employee[s] on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay[a—paycheck—shall be issued] on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, pay[a—paycheck] shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) "Personnel Action Notification", PAN, August 2011, is incorporated by reference.

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

TIM LONGMEYER, Cabinet Secretary

APPROVED BY AGENCY: May 14, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

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

### PERSONNEL CABINET

#### Office of the Secretary

(As Amended at ARRS, July 9, 2013)

#### 101 KAR 2:102. Classified leave general requirements[administrative regulations].

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201 – 219[et seq.], 2601 – 2654[et seq.]

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 U.S.C. 201 – 219[et seq.], 2601 – 2654[et seq.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations that[which] govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service

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prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to ~~under~~ this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance ~~pursuant to~~ under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits ~~pursuant to~~ under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, the leave shall be calculated as provided in this paragraph:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) 1. If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- a. Not be paid to the employee or converted to sick leave; and
- b. Be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next

workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

### Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated, or reemployed, other than a former employee receiving benefits pursuant to ~~under~~ a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave [with pay].

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform his duties for the days or hours sick leave is requested. If requested by the appointing authority, the employee shall provide [The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce] a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional [The appointing authority may require the employee to provide a doctor's statement] certifying the em-

ployee's need to care for a family member; or

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance pursuant to~~under~~ the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to~~under~~ the provisions of KRS Chapter 18A shall have worked or been paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff, or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The ~~total continuous~~ leave does not exceed thirty (30) continuous calendar days~~one (1) year~~; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) An appointing authority shall~~may~~ grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional~~For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status. (c)]~~The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.~~[(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.]~~

(e) If an employee has given notice of his ability to resume his duties following sick leave by personnel action~~without pay~~, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;
2. The position to which the employee is being returned; and
3. The employee's salary upon return to work.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed~~considered to have~~ resigned if he:

1. Has been on one (1) year continuous sick leave by personnel action~~without pay~~;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of ~~sick~~ leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to~~under~~ this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who is deemed~~has been~~ resigned pursuant to~~under~~ paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

~~(5)~~~~[(4)]~~ Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 ~~– 2654~~~~et seq.~~, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, upon the employee's request, the agency shall permit the employee to:

(a) ~~[The employee to]~~ Reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or

(b) ~~[The employee to]~~ Use accrued paid leave concurrently with FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

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(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 ~~through~~to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3)~~six (6)~~ months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to~~under~~ the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory

leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee~~The appointing authority may require a copy of the orders requiring the attendance of the employee~~ before granting military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373~~not to exceed six (6) years~~. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize three (3) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

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(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be deemed[considered to have] resigned [the employment].

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall[will] be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the provisions established in paragraphs

(a) and (b) of this subsection[following provisions] shall apply.;[and]

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.;[and]

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8[as amended].

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to[under] this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013[March 2014], is incorporated by reference.

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

TIM LONGMEYER, Cabinet Secretary

APPROVED BY AGENCY: May 14, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

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

### PERSONNEL CABINET

#### Office of the Secretary

(As Amended at ARRS, July 9, 2013)

**101 KAR 3:015. Leave requirements for[administrative regulations for the] unclassified service.**

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201 – 219[et seq.], 2601 – 2654[et seq.]

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 U.S.C. 201 – 219[et seq.], 2601 – 2654[et seq.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations to[which] govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regu-

lar hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, leave shall be calculated as established in the following table[as provided in this paragraph]:

Months of Service	Maximum Amount	37.5 hour week equivalent	40 hour week equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)1. If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which he is paid shall not

exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- Not be paid to the employee or converted to sick leave; and
- Be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

- He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
- The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave shall be credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits pursuant to a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave [with pay].

(a) An appointing authority shall grant or may require the use of [accrued] sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform his duties for the days or hours sick leave is requested. If requested by the appointing authority, the employee shall provide [The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested. The appointing authority may

**also require an employee to produce**] a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. **If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional**~~[The appointing authority may require the employee to provide a doctor's statement]~~ certifying the employee's need to care for a family member; or

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance **pursuant to**~~under~~ the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than **holiday or** education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits **pursuant to**~~under~~ the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than **holiday or** educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff, or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, **without a change in the employee's personnel status**~~[to an employee]~~ for the duration of an employee's impairment by injury or illness, if:

1. The ~~[total continuous]~~ leave does not exceed **thirty (30) continuous** calendar days~~[one (1) year]~~; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) **An appointing authority shall**~~may~~ grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, **or for the duration of the employee's impairment by illness or injury**, for a period not to exceed thirty (30) working days.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) calendar days, including holidays, the appointing authority shall **place the employee on sick leave without pay by personnel action**.

(b) The appointing authority shall notify the employee in writing **that the employee is being placed on sick leave by personnel action**.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) **If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional**~~For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status. (c)]~~**[The appointing authority may require periodic doctor's statements during the year]** attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.~~(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for~~

a period not to exceed thirty (30) working days.]

(e) If an employee has given notice of his ability to resume his duties following sick leave **by personnel action**~~[without pay]~~, the appointing authority shall return the employee to the original position or to a position for which he is qualified and **that**~~[which]~~ resembles his former position as closely as circumstances permit. **The appointing authority shall notify the employee in writing of the following:**

1. The effective date of the employee's return;

2. The position to which the employee is being returned; and

3. The employee's salary upon return to work.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be **deemed**~~[considered to have]~~ resigned if he:

1. Has been on one (1) year continuous sick leave **by personnel action**~~[without pay]~~;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of ~~[sick]~~ leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted **pursuant to**~~under~~ this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who **is deemed**~~[has been]~~ resigned **pursuant to**~~under~~ paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during ~~[his]~~ service in the classified service.

**(5)**~~[(4)]~~ Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2601 – **2654**~~[et seq.]~~, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through [to] 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3)~~six (6)~~ months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to [under] the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be five (5)~~six (6)~~

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the

agency.

(b) An appointing authority may require an employee who is not in a policy-making position and has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide [The appointing authority may require] a copy of the orders requiring the attendance of the employee before [granting] military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373~~[not to exceed six (6) years]~~. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize three (3) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional



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sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and shall/will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be deemed/considered to have resigned [his employment].

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard, or ice storm, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall/will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would

result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available. (b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, an employee who is required to [the following provisions shall apply]:

(a) [An employee who is required to] Evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety; and

(b) [An employee who is required to] Work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8 [as amended].

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to/under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013 [March 2014], is incorporated by reference.

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

TIM LONGMEYER, Cabinet Secretary

APPROVED BY AGENCY: May 14, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

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

### PERSONNEL CABINET Office of the Secretary (As Amended at ARRS, July 9, 2013)

#### 101 KAR 3:050. Unclassified service; promotion, transfer, and disciplinary actions.

RELATES TO: KRS 12.040, 12.050, 18A.115, 18A.155  
STATUTORY AUTHORITY: KRS 18A.155(1) [18A.155(i)]  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155(1) requires the Secretary of Personnel to promulgate administrative regulations for persons in positions as established/enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t), and (u). KRS 18A.155(2) authorizes administrative regulations [provides that administrative regulations promulgated] pursuant to KRS 18A.155(1), which may be used on behalf of employees as established/enumerated in KRS 18A.115(1)(a),

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(b), (d), (e), (p), (u), and (w) and on behalf of members of state boards and commissions ~~that~~**[who]** work on a full-time, salaried basis. This administrative regulation establishes requirements for the employment, promotion, transfer, or discipline of employees in unclassified service.

Section 1. Appointment. (1) An employee appointed to a position in the unclassified service, subject to this administrative regulation, shall meet the minimum requirements established for the class of position to which the appointment is made.

(2) ~~If an interim employee serves in an interim capacity, the interim shall be~~**[An interim employee may serve in an interim capacity]** for less than nine (9) full months in a single department during a twelve (12) month period.

(3) An employee appointed to a position subject to this administrative regulation shall serve at the will of the appointing authority and shall be subject to termination without prior notice or cause.

Section 2. Promotion. (1) A vacant position subject to this administrative regulation, other than an interim position, may be filled by promotion from the classified or unclassified service.

(2) If the promotion is to a position requiring approval pursuant to**[under]** KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the promotion.

Section 3. Transfer. (1) A vacant position subject to this administrative regulation, other than an interim position, may be filled by transfer ~~within the~~**[from the classified or]** unclassified service, if in the best interest of the agency.

(2) If the transfer is to a position requiring approval pursuant to**[under]** KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the transfer.

Section 4. Demotion. (1) An employee subject to this administrative regulation, other than an interim employee, may be demoted to another position ~~[subject to this administrative regulation]~~ with or without cause on a voluntary or involuntary basis. An involuntary demotion shall be done on an intra-agency basis only.

(2) If the demotion is to a position requiring approval pursuant to**[under]** KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the action.

Section 5. Detail to Special Duty. (1) If the services of an employee subject to this administrative regulation, other than an interim employee, are needed in an unclassified position within an agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with approval of the Secretary of Personnel.

(2) If the detail is to a position requiring approval pursuant to**[under]** KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the detail.

Section 6. Temporary Overlap. (1) With the prior approval of the Secretary of Personnel, an agency may place an employee, other than an interim employee, in an unclassified position currently occupied by another employee. The placement shall not~~for a period not to~~ exceed ninety (90)~~sixty (60)]~~ calendar days for training purposes.

(2) If the overlap is in a position requiring approval pursuant to**[under]** KRS 12.040 or 12.050, approval shall be obtained prior to the effective date of the action.

Section 7. Separations. (1) Resignations and retirement.

(a) An employee who desires to terminate his service with the state shall submit a written resignation or notice of retirement to the appointing authority.

(b) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation or notice of retirement shall be attached to the personnel action effecting the separation and shall be filed in the employee's service record in the agency and the Personnel Cabinet.

(c) Failure of an employee to give fourteen (14) calendar days notice of resignation or notice of retirement may result in forfeiture

of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;

2. Appropriate for the situation; and

3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(2) Termination. An employee subject to this administrative regulation may be terminated with or without cause.

(a) If the appointing authority elects to terminate the employee for cause, the employee shall be provided with notice in writing of the reasons for termination and of the employee's right to appeal to the Personnel Board pursuant to**[under]** KRS 18A.095.

(b) If the appointing authority elects to terminate the employee without cause, this decision shall be stated in the written notice to the employee.

Section 8. Applicability for Classified Employees. Except as provided in this administrative regulation, the provisions of 101 KAR 2:095, ~~[101-KAR]2:105~~, ~~[101-KAR]2:140~~, ~~[101-KAR]2:150~~ and ~~[101-KAR]2:160~~ shall apply to an employee in the unclassified service.

TIM LONGMEYER, Cabinet Secretary

APPROVED BY AGENCY: May 14, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

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

### GENERAL GOVERNMENT

#### Kentucky State Board of Licensure for Professional Engineers and Land Surveyors (As Amended at ARRS, July 9, 2013)

#### 201 KAR 18:142. Code of professional practice and conduct.

RELATES TO: KRS 322.180(3), 322.290(11)

STATUTORY AUTHORITY: KRS 322.290(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(11) requires the board to promulgate a code of professional practice and conduct, which shall be binding upon persons licensed under KRS Chapter 322. This administrative regulation establishes a code of professional practice and conduct.

Section 1. Definitions. (1) "Conflict of interest" means any circumstance in which a licensee's personal or financial interest is contrary to the interests of the public, his or her employer, or current or past client.

(2) "Direct supervisory control" in the practice of engineering means that an engineer licensee directly supervises and takes responsibility for consultation, investigation, evaluation, planning, design and certification of an engineering project and includes only that work performed by an employee as defined in subsection (4) of this section. (3) "Direct supervisory control" in the practice of land surveying means that a surveyor licensee who certifies a work product directly supervises and takes responsibility for the survey and includes only that work performed by an employee as defined in subsection (4) of this section.

(4) "Employee" means a person who works for a licensee or his or her employer for wages or a salary and includes professional and technical support personnel contracted on a temporary or occasional basis, if the compensation is paid directly by the licensee or his or her employer. It does not include a person who provides services to the licensee as an outside consultant or specialist.

(5) "Licensee" means any natural person licensed by the board to practice professional engineering or professional land surveying, or any business entity permitted under KRS 322.060.

(6) "Work product" means any engineering or land surveying plan, plat, document or other deliverable requiring certification that is intended to represent activities conducted in the practice of en-

gineering or land surveying.

Section 2. The engineer or land surveyor shall conduct his or her practice in order to protect the public health, safety, and welfare.

(1) The practice of professional engineering and land surveying is a privilege, and not a right.

(2) If a licensee's judgment is overruled and a licensee has reason to believe the public health, safety or welfare may be endangered, the licensee shall inform his or her employer or client of the possible consequences and, if not resolved, notify appropriate authorities.

Section 3. A licensee shall issue all professional communications and work products in an objective and truthful manner.

(1) A licensee shall be objective and truthful in all professional reports, statements or testimony and shall include all material facts.

(2) If serving as an expert or technical witness before any tribunal, a licensee shall express an opinion only if it is founded on adequate knowledge of the facts in issue, on the basis of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of that testimony, and shall act with objectivity and impartiality. A licensee shall not ignore or suppress a material fact.

(3) A licensee shall not issue a statement or opinion on professional matters connected with public policy unless the licensee has identified himself or herself, has disclosed the identity of the party on whose behalf the licensee is speaking, and has disclosed any pecuniary interest the licensee may have in the matter.

(4) A licensee shall not maliciously injure the professional reputation, prospect, practice or employment of another licensee.

(5) A licensee shall not accept a contingency fee for serving as an expert witness before any tribunal.

(6) A licensee shall maintain for a period of not less than five (5) years, calculations and documents necessary to support work products.

(7) A professional land surveyor shall maintain records for boundary surveys under 201 KAR 18:150, Section 10(2) and (3).

(8) The requirements of subsections (6) and (7) of this section shall be satisfied for the individual licensee employed by a business entity permitted by the board in conformance with KRS 322.060 by that permitted entity's compliance with subsections (6) and (7) of this section.

Section 4. A licensee shall avoid conflicts of interest. (1) If a reasonable possibility of a conflict of interest exists, a licensee shall promptly notify his or her employer, client or past client.

(2) A licensee shall not accept a valuable consideration from more than one (1) party for services pertaining to the same identical project, unless the circumstances are fully disclosed to all other principal parties directly involved in the project.

(3) A licensee shall not solicit or accept a valuable consideration either for specifying materials or equipment, or from contractors, their agents or other parties dealing with a client or employer in connection with work for which the licensee is responsible.

(4) A licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement regarding the cost, quality or extent of services to be performed.

(5) A licensee shall not misrepresent his or her professional qualifications or experience, or those of the licensee's associates.

(6) A licensee serving as a member, advisor, or employee of a governmental body shall not participate in decisions with respect to professional services offered or provided by him or her or by a business entity in which the licensee is a principal, officer or employee, to that governmental body.

Section 5. A licensee shall solicit or accept engineering or land surveying work only on the basis of his or her, or the licensee's firm's or associates' qualifications for the work offered.

(1) A licensee shall not offer or accept any valuable consideration in order to secure specific work, exclusive of commissions paid by individual licensees for securing salaried positions through employment agencies. A licensee may participate in design-build projects.

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(2) A licensee may advertise professional services if the advertisement is not false or misleading.

Section 6. A licensee shall not knowingly associate with any person engaging in fraudulent, illegal or dishonest activities. (1) A licensee shall not permit the use of his or her, or the licensee's business entity's name by any person or business entity that he or she knows or has reason to believe is engaging in fraudulent, dishonest or illegal activities.

(2) A licensee shall not aid or abet the illegal practice of engineering or land surveying.

Section 7. A licensee shall perform his or her services only in the areas of his or her competence.

(1) A licensee shall undertake to perform professional assignments only if qualified by education or experience in the specific technical field involved.

(2) A licensee may accept an assignment requiring education or experience outside his or her own field of competence, but only to the extent that his or her services are restricted to those parts of the project in which the licensee is competent. All other parts of the project shall be certified by licensed associates, consultants or employees.

(3) If a question of the competence of a licensee to perform a professional assignment in a specific technical field is an issue and cannot be otherwise resolved to the satisfaction of the board, the board, upon a majority vote or upon request by the licensee, may require the licensee to satisfactorily complete an examination the board deems appropriate and relevant.

Section 8. Except as provided by this section, a licensee shall not certify any work product dealing with subject matter in which he or she lacks competence by virtue of education or experience, or any work product not prepared by him or her under his or her direct supervisory control.

(1) A professional engineer may review and certify the work product of another professional engineer if:

(a) The review and certification are made at the request of the other professional engineer;

(b) He or she does not remove or obliterate the identity of the other professional engineer;

(c) He or she performs and retains in his or her possession for not less than five (5) years all calculations and documents necessary to perform an adequate review; and

(d) He or she confirms that the other professional engineer was licensed when the work was created.

(2) If a professional engineer undertakes to review only a portion of the work product of another professional engineer, his or her certification shall clearly identify the portion reviewed.

(3) A professional engineer may modify the work product of another professional engineer, whether or not the project has been built, if he or she retains in his or her possession for not less than five (5) years a record of his or her modifications.

(4) If a professional engineer modifies the work product of another professional engineer, his or her certification shall clearly identify, by words or graphics, that portion that was modified.

(5) A professional engineer may incorporate in his or her work product the designs of manufactured or standard components developed by manufacturers, suppliers or professional or technical societies and associations.

(6) If, in the professional land surveyor's reasonable judgment, his or her personal participation is not required in performing a particular aspect of a project, he or she may delegate those tasks to an employee, if all work is actually reviewed by the licensee.

(7) The need for a professional land surveyor to make a site visit shall be dictated by the nature, size and complexity of a project. However, the failure to make a site visit in a substantial percentage of surveys may be construed as a failure to exercise direct supervisory control.

(8) While an employee may investigate the circumstances of a potential project, only a licensee may establish the scope of work to be performed.

Section 9. The professional engineer or professional land sur-

veyor shall avoid conduct likely to discredit or reflect unfavorably upon the dignity or honor of his or her profession.

Section 10. If a licensee has knowledge or reason to believe that any person or other licensee is in violation of KRS Chapter 322 or any administrative regulation adopted by this board, the licensee shall present that information to the board in writing and shall cooperate with the board in furnishing information within his or her knowledge.

Section 11. (1) A licensee shall not, directly or indirectly, contact a board member concerning any ongoing disciplinary action, or any existing investigation being conducted by the board staff.

(2) Any communication by a licensee concerning an ongoing disciplinary action or an existing investigation shall be directed to a board staff member. Any and all communications by any licensee concerning such disciplinary action or investigation shall be made only to board staff.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: May 3, 2013

FILED WITH LRC: May 6, 2013 at 3 p.m.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

### GENERAL GOVERNMENT CABINET Board of Nursing (As Amended at ARRS, July 9, 2013)

#### 201 KAR 20:400. Delegation of nursing tasks.

RELATES TO: KRS 311A.170, 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 314.011(1).

(2) "Client" means a patient, resident or consumer of nursing care.

(3) "Competence" means performing an act in a safe, effective manner.

(4) "Delegatee" means a person to whom a **nursing** task is delegated.

(5) "Delegator" means the nurse delegating a **nursing** task to another person.

(6) "Nurse" is defined in KRS 314.011(3).

(7) "Nursing task" means an act included in the definition of registered nursing practice, advanced practice registered nursing, or licensed practical nursing practice pursuant to KRS 314.011(6), (8), or (10).

(8) "Paramedic" is defined in KRS 311A.010.

(9) "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.

(10) "Unlicensed person" means an individual, other than a nurse, the client, or the client's family, legal guardian, or delegatee, who functions in an assistant or subordinate role to the nurse.

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~~

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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 311A.170 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 delegatee 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][personnel];~~

(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 provide 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 information 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[delegatee]; and

(c) The delegatee 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:

(a) 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)(a) 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 delegator 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.

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KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM  
Kentucky Board of Emergency Medical Services  
(As Amended at ARRS, July 9, 2013)

202 KAR 7:330. Requirements for examination, certification, and recertification of the advanced emergency medical technician.

RELATES TO: KRS 38.030, Chapter 39, 39A.050, 311A.010, 311A.020, 311A.025[311A.027], 311A.050,[311A.055, 311A.060, 311A.065, 311A.075], 311A.090, 311A.095, 311A.100, 311A.110, 311A.127, 311A.140, 311A.145, 311A.150, 311A.195, 10 U.S.C. 121, 672(b)

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT)[technicians]. This administrative regulation establishes requirements for examination, certification, and recertification of the AEMT[advanced emergency medical technicians].

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 shall include 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 (ECG);

(e) Transmission of a non-interpretive twelve (12) lead electrocardiogram (ECG); 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 qualifies 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 Technicians as an AEMT; 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 paragraph (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) A medical director, service director, or training officer of the AEMT's ambulance service, first response agency, fire department, rescue squad, or other medical employer.

(5) 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.

(6) 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).

(7) 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 or 311A.060; or

(c) Is delinquent on fines or fees owed to the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030.

(8) A certified AEMT who is not undergoing disciplinary action with the board 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.

(9) The extension granted pursuant to subsection (8) 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 1(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 1(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)(a) 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 recertify 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.

**(7)(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.

**(8)(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:

(a) "National Emergency Medical Services Education Standards-Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077A, January 2009;

(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;

(d) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(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 a noninvasive 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 intraosseous 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

(j) "Kentucky Advanced EMT Skills Verification Report", KBEMS E-28, March 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at 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-TF; and

(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/85, Registered EMT Intermediate/99, or Registered Advanced Emergency Medical 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 from one (1) to two (2) 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 testing and become Kentucky-certified within two (2) years after the completion date of the applicant's AEMT course.

Section 4. Expiration of Certification. (1) Initial certification periods shall be for a minimum of twelve (12) but shall not exceed twenty-four (24) months.

(2) Subsequent recertification shall be for twenty-four (24) months and shall expire on December 31 of subsequent recertification cycles.

(3) Upon expiration of certification, an AEMT shall not practice as an AEMT or perform a procedure authorized for a certified 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 meeting the requirements as outlined in Section 2 of this administrative regulation;
- (c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110; and
- (d) The fee established in 202 KAR 7:030.

(2) The applicant shall maintain evidence of either:

(a) Current registration by the National Registry of Emergency Medical Technicians as an AEMT, EMT-Intermediate/85 or EMT-Intermediate/99; or

(b) 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.

(3) 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's ambulance service, first response agency, fire department, rescue squad or other medical employer.

(4) 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.

(5) A certified AEMT, in good standing, who is 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 673b 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. The AEMT shall submit a written request for this extension within sixty (60) days of release of active duty.

(6) The KBEMS office may audit an AEMT's continuing education and continuing education records.

(7) The AEMT shall maintain documentation of all continuing education for four (4) years from the date of completion.

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) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient from an out-of-state location through the state of Kentucky to an out-of-Kentucky location.

Section 8. Reinstatement of Certification. (1) An AEMT whose certification has lapsed for a period not exceeding five (5) years, may reinstate his or her certificate by submitting:

(a) A completed and signed "Advanced Emergency Medical Technician Certification Reinstatement Application";

(b) Written evidence of completion of current training in CPR meeting the requirements as outlined in Section 2 of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification as an AEMT in Kentucky;

(f) Evidence of successful completion within twelve (12) 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

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the "Advanced EMT Recertification Report".

(2) 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 314A;

(b) The applicant is 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 subjected to discipline that would prevent reinstatement at the time of application.

Section 9. Public Notice of Negative Action. The KBEMS office shall cause to be published, in the KBEMS 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) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT as an AEMT, EMT-Intermediate/85, or EMT-Intermediate/99;

(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;

(g) Pays the fee required by 202 KAR 7:030;

(h) Provides the board with a copy of a statewide criminal background check from the individual's state of residence;

(i) Is not 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; and

(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.

Section 11. Except for individuals that have completed a board-approved Advanced EMT pilot program and who meet the requirements of Section 2 of this administrative regulation, the requirements of this administrative regulation shall apply on January 31, 2009.

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

(a) United States Department of Transportation, National Highway Traffic Administration, "1985 or 1999 National Standard Curriculum for Emergency Medical Technician-Intermediate", 1985 or 1999 Edition;

(b) United States Department of Transportation, National Highway Traffic Administration, "Scope of Practice Model-based curriculum for Advanced Emergency Medical Technician", February 2007;

(c) "Application for Advanced Emergency Medical Technician Initial Certification", July 2008;

(d) "Universal Application for Renewal", July 2008;

(e) "Advanced EMT Recertification Report", October 2008;

(f) "Advanced Emergency Medical Technician Certification Reinstatement Application", July 2008; and

(g) "Application for Temporary Certificate", July 2008.

(2) This material may be inspected, copied, or subject to applicable copyright law, at 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.]

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.

### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (As Amended at ARRS, July 9, 2013)

#### 202 KAR 7:520. Allocation of block grant funding assistance for emergency medical services.

RELATES TO: KRS 311A.010, 311A.030(2), 311A.035, 311A.050, 311A.055, 311A.060, 311A.155[(3)], 311A.190, 2 C.F.R. 215-225

STATUTORY AUTHORITY: KRS 311A.155(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.115(3) authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning the receiving and disposing of grant funds. KRS 311A.155 authorizes the Kentucky Board of Emergency Medical Services to maintain a block grant fund program for the purpose of assisting units of local government in the provision of emergency medical services. This administrative regulation establishes standards and criteria governing the allocation of emergency medical services funding assistance to eligible applicants.

Section 1. Eligibility to Receive EMS Grant Funding. (1) A county in the Commonwealth of Kentucky shall be eligible to apply for and may receive emergency medical services (EMS) grant funding if the applicant county meets the requirements in this administrative regulation.

(2) A merged government shall not lose eligibility pursuant to this administrative regulation and may apply for and receive EMS grant funding if the applicant meets all requirements of this administrative regulation.

(3) [Nothing in] This administrative regulation shall not be construed to grant an agency licensed pursuant to 202 KAR 7:501 the authority to apply for or receive EMS grant funding independent of the county.

(4) A county or merged government that applies for EMS grant funding shall maintain, within its boundaries and for the benefit of its inhabitants, one (1) or more agencies that provide primary EMS 911 response and transport service.

(5) A county or merged government shall be considered to maintain EMS 911 level of service by:

(a) Holding the license for and operating a county-owned Class I ground ambulance service;

(b) Holding the license for a Class I ground ambulance service but contracting with a licensed service to operate within the county;

(c) Allowing an agency or multiple agencies to operate within the county to provide EMS 911 level of service for the benefit of the inhabitants of that area; or

(d) Not holding the license for, but bearing the responsibility of, operating or allowing the operation of, an agency or multiple agencies within the county to provide EMS 911 level of service for the benefit of the inhabitants of that area.

(6) A county or merged government shall be eligible to receive EMS grant funding only for agencies licensed as Class I. Other classes of service shall not be eligible.

(7) A county or merged government shall not disperse funds to a licensed agency that cannot provide evidence of compliance with

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KBEMS' data collection requirements pursuant to KRS 311A.190 and 202 KAR 7:540.

(8) An agency that is not compliant with data collection requirements in KRS 311A.190 and 202 KAR 7:540 may submit a plan of correction for approval by the executive director. A plan shall include at least:

(a) A detailed outline of measures that shall be taken to achieve compliance;

(b) Proof of equipment necessary to achieve compliance;

(c) Deadlines that shall be met in achieving compliance that shall not extend beyond two (2) years from the approval of the plan of correction; and

(d) A stipulation that an agreed percentage of awarded grant funds shall be used in taking measures that shall achieve compliance with data collection requirements in KRS 311A.190 and 202 KAR 7:540.

(9) An agency that is following an approved plan of correction for data collection compliance pursuant to KRS 311A.190 and 202 KAR 7:540 may be eligible to obtain block grant funds from an applicant county or merged government.

(10) An agency undergoing disciplinary action pursuant to KRS 311A.060 shall be eligible to receive funds if in compliance with board-recommended disciplinary action.

Section 2. Eligibility for Authorized Expenditures. (1) A county or merged government eligible to receive EMS grant funding shall be authorized to spend funds based upon a tiered level of compliance with 202 KAR Chapter 7.

(2) An eligible county or merged government shall meet the requirements for one (1) of the following tiers:

(a) A Tier I applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that is substantially compliant with 202 KAR 7:501 but has documented violations requiring on-going plans of correction that are addressed and may be eliminated by the award of EMS grant funds;

(b) A Tier II applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that has operated free of documented violations requiring on-going plans of correction for one (1) inspection cycle;

(c) A Tier III applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that has operated free of violations for two (2) or more inspection cycles; and

(d) A Tier IV applicant shall consist of a group of Tier III applicants eligible to combine EMS grant funds for the common good of their primary EMS 911 ground ambulance services.

(3) A county or merged government may request reconsideration of the tier into which the county or merged government has been placed. ~~It, and~~ Each request shall be acted upon within forty-five (45) days of the office's receipt of the request for reconsideration of the time limits established in this administrative regulation.

(4)(a) If the office of the board denies **the request to change the[changing-an]** applicant's tier, the applicant may appeal the decision to the board.

(b) The board's decision after appeal shall be final.

Section 3. Application Requirements. (1) An applicant for EMS grant funds shall fully complete all portions of the County Application, Kentucky Ambulance Grant, KBEMS G-1, and the Agency Application, Kentucky Ambulance Grant, KBEMS-G2.

(2) Each application shall be received by January 31 of each year. An applicant shall not receive EMS grant funds if the application is not filed on or before January 31.

(3) Each application shall include an itemized list of items intended to be purchased with EMS grant funds and a narrative justification for the purchase of those items. An application that does not include the itemized list or the narrative justification shall be returned by the board office and shall not be timely filed if the applicant does not resubmit the revised application by the filing deadline established in subsection (2) of this section.

(4) Each applicant shall identify on the application which agency or agencies will receive the EMS grant funds sought in the application process.

(5) If the applicant intends for more than one (1) agency to receive funds, the applicant shall specifically identify every agency

to which funds shall be dispersed.

(6) The service director or ambulance board chair of an agency receiving funds from an applicant shall certify that the agency:

(a) Is a licensed Class I ground ambulance service in the state of Kentucky;

(b) Acknowledges, understands, and agrees to comply with the requirements and duties of KRS 311A.155 and this administrative regulation;

(c) Has not made a false statement or misrepresentation on the application and that falsely certifying shall subject the agency to reimbursement of funds to KBEMS and sanctions pursuant to KRS 311A.060; and

(d) Shall not misuse funds and that doing so shall require the agency to reimburse those funds to KBEMS and shall subject the agency to sanctions pursuant to KRS 311A.060.

(7) An applicant county or merged government shall submit the County Application, Kentucky Ambulance Grant, KBEMS G-1, with the county judge executive's signature or an agent duly authorized by the applicant. A duly authorized agent may include, for example, a chief administrative officer for the applicant, but shall not include a person unable to legally bind the applicant.

(8) An applicant shall certify on the County Application, Kentucky Ambulance Grant, KBEMS G-1 that the county or merged government:

(a) Acknowledges, understands, and agrees to comply with the requirements and duties of KRS 311A.155 and this administrative regulation;

(b) Has not made a false statement or misrepresentation on the County Application, Kentucky Ambulance Grant, KBEMS G-1, and that falsely certifying shall subject the applicant to reimbursement of funds to KBEMS and sanctions pursuant to KRS 311A.060;

(c) Shall not misuse funds and that doing so shall subject the applicant to reimbursement of those funds to KBEMS and sanctions pursuant to KRS 311A.155(5) and 311A.050; and

(d) Shall be jointly responsible for ensuring that all purchases and expenditures of block grant funds are authorized and allowable pursuant to KRS 311A.155 and this administrative regulation.

**(9) The board shall vote to approve or disapprove the County Application, Kentucky Ambulance Grant, KBEMS G-1, for block grant funds if the application designates for receipt of funds an agency that is currently undergoing or is the subject of proposed sanctions pursuant to KRS Chapter 311A[County Application, Kentucky Ambulance Grant, KBEMS G-1, for block grant funds that designates for receipt of funds an agency that is currently undergoing or is the subject of proposed sanctions pursuant to KRS 311A shall be voted on by the board for approval or disapproval].**

Section 4. Application for Change of Items. (1) An applicant wishing to spend awarded funds on items not approved in the agency application shall submit the **Ambulance Grant** Substitute Item Form, KBEMS-G3, to remove the approved items and substitute different items for purchase.

(2) A substituted item purchased without notification to and approval from KBEMS shall be misuse of grant funds and shall subject the applicant to sanctions pursuant to KRS 311A.060.

(3) Authorization for substitute items shall not be approved retroactively. An approval for a substitution shall be sought prior to purchase.

(4) The County Application, Kentucky Ambulance Grant, KBEMS G-1, for approval shall contain signatures of the agency to which the funds were dispersed as well as the applicant's authorized agent.

Section 5. Funds Management. (1) Upon award of block grant funds, the applicant, the receiving agencies, and KBEMS shall execute a grant agreement that outlines the relevant statutory and regulatory requirements, duties, and obligations of all parties.

(2) Every grant agreement shall bear the signatures of the applicant's authorized agent, the service director or ambulance board chair of each agency receiving the funds from the applicant, and the executive director of KBEMS.

(3) Funds shall not be dispersed until the grant agreement is

signed and dated by the parties required in this section of this administrative regulation.

(4) The grant agreement shall require that the applicant and the receiving agency authorize KBEMS to conduct an audit of records relevant to use of the awarded funds.

Section 6. Allowable Expenditures. (1) Awarded funds shall only be spent on authorized purchases.

(2) Authorized purchases shall be determined by the tier for which the receiving agencies are eligible.

(3) Authorized purchases for the tiers are as follows:

(a) Tier I services shall be authorized to spend awarded funds on items, equipment, and training for personnel only if those purchases are necessary for the agencies to meet the minimum requirements of 202 KAR 7:501;

(b) Tier II services shall be authorized to spend awarded funds on any items, equipment, or training for personnel that fall under Tier I. In addition, Tier II eligible services shall be authorized to spend awarded funds on pre-approved educational tools and items;

(c) Tier III services shall be authorized to spend awarded funds on an item from Tier I or II, plus outside EMS related class registrations, items appearing on the Federal Emergency Management Agency Approved Equipment List, [www.fema.gov](http://www.fema.gov), and additional items if applied for and approved by the board based on current applicability to EMS standards of medical practice and promotion of public health and safety; or

(d) Tier IV services may organize as a cooperative of agencies consisting of services that qualify for Tier III. Cooperative agencies shall be allowed to pool awarded funds for the purchase of items beneficial to multiple counties within the cooperative.

(4) If seeking reimbursement for the conduct of authorized educational courses, only expenses directly related to courses or training shall be authorized. Block grant funds shall not be used for reimbursement of participants' travel, food, gas, lodging, or incidental expenses related to EMS classes.

Section 7. Cooperative of Agencies. (1) A cooperative of agencies shall consist of a minimum of two (2) agencies.

(2) Each agency within a cooperative shall have on file current mutual aid agreements that existed prior to and extend past the current grant award period. An agency that does not have a current and ongoing relationship shall not be allowed to enter into a cooperative agreement.

(3) Items or equipment purchased with the grant funds awarded to an agency within a cooperative shall benefit each member agency of that cooperative.

(4) Each applicant shall agree that the agencies to which they disperse money may enter into the cooperative of agencies for the benefit of the inhabitants within the county or area of the merged government.

(5) Each agency included in a cooperative of agencies shall enter into and submit to KBEMS a cooperative agreement approved by the board that includes, at a minimum:

(a) Where ownership of the equipment shall reside;

(b) Who shall maintain and repair the equipment;

(c) Certification that all parties to the cooperative of agencies shall have access to the equipment;

(d) An agreed and approved protocol for the possession, access, use, and replenishment of items or equipment obtained with grant funds;

(e) A narrative justification for the purchase of the equipment;

(f) A process for discarding the equipment if it becomes obsolete;

(g) An agreed statement of liability distribution; and

(h) The signatures and certifications of truthfulness of each party to the cooperative of agencies, the applicant counties or merged governments, and the chair of KBEMS.

(6) In addition to the agency application, representatives of the cooperative of agencies and the applicant counties or merged governments shall appear at a regular meeting of the board to present an explanation of and justification for the use of combined funds.

(7) Tier IV cooperatives shall not be authorized without affirma-

tive vote of the board.

Section 8. Accountability. (1) Each applicant that receives funds and each agency to which the applicants disperse funds shall be jointly accountable for use of the money.

(2) Each applicant and agency shall submit a Grant Accountability of Funds, KBEMS-G4, that includes at a minimum:

(a) Itemization of all purchases;

(b) Attached receipts for all purchases; and

(c) Included packing slips or invoices.

(3) If an applicant or agency maintains carry-over funds in accordance with KRS 311A.155(5), the applicant or agency shall submit proof of the continued availability of those funds. Proof may include, for example, a bank statement, a letter from the designated county or government official, a budgetary line-item, or other evidence sufficient to account for the unused, carry-over funds.

(4) Failure to submit documents accounting for grant funds by the deadline established in Section 9 of this administrative regulation shall subject the applicant or agency to being ineligible for further award of block grant funds.

(5) The board may request documentation of purchases and expenditures during the grant cycle. Failure to comply with this request shall make an applicant or agency ineligible for further award of grant funds.

(6) An agency that fails to comply with subsections (4) or (5) of this section shall also be subject to discipline pursuant to KRS 311A.060.

Section 9. Time limits and Deadlines for Block Grant Funds Awards. (1) Agency application for block grant funds shall be postmarked or received by January 31 of each year.

(2) Accounting required pursuant to Section 8 of this administrative regulation shall be postmarked or received by March 15 of each calendar year.

(3) The office of the board shall supply notification to the applicants and agencies of their grant award no later than April 30 of each calendar year.

(4) The office of the board shall make payment of grant funds to applicants no later than August 31 of each calendar year.

Section 10. Review of Grant Applications. (1) A grant application shall be subject to review by the office of the board and other entities relevant to the award process.

(2) Review of applications shall include:

(a) Level One Review, which shall determine completeness of the application. An incomplete application shall be rejected, and if still within the deadline for application, the incomplete areas may be cured and resubmitted. If outside the application deadline, re-submission shall not be accepted; and

(b) Level Two Review, which shall determine regulatory compliance and appropriateness of expenditures.

(3) Approval authority for grant applications and purchase authorization shall be the:

(a) Executive director for Tier I and II applicants;

(b) Executive director for Tier III applicants who request purchases or expenditures at the Tier I or II level;

(c) Board for Tier III applicants with request for purchases or expenditures at the Tier III level; and

(d) Board for Tier III applicants that fall within the Tier IV Cooperative of Agencies level.

(4) All Tier I or II purchases shall be consistent with Section 6(3)(c) of this administrative regulation and approved prior to purchase. Exemption from or waiver of pre-approval shall not be permitted.

(5) Tier III and IV applications and purchase authorizations may be recommended for:

(a) Full approval;

(b) Approval with modifications; or

(c) Denial.

(6) Tier III and IV applicants may request reconsideration of approval with modifications by submitting new evidence of justification for their request at the next regular board meeting or at a meeting specially called by the chair of the board.

(7) Tier III and IV applicants may request reconsideration of

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denial by submitting new evidence of justification for their request at the next regular board meeting or at a specially called meeting.

(8) New proposals, if applicable, shall be considered during a request for reconsideration.

(9) A second denial of a Tier III or IV application or authorization for purchases shall be final and shall result in a default to Tier I or II purchases or expenditures that shall meet all requirements of this administrative regulation.

Section 11. Grant Program Management. (1) Implementation and management of the grant program may include employment of an individual with primary responsibility of managing the block grant fund program.

(2) Other responsibilities shall include:

(a) Research of and application for additional EMS grant sources and funding streams that benefit KBEMS' regulatory obligations to licensed and certified agencies; and

(b) Assistance to licensed EMS agencies in their efforts to locate and obtain other EMS grants.

(3) Employment of the grant management employee shall be dependent upon the availability of budgetary funds.

Section 12. Statewide Initiatives. (1) The board shall reserve a portion of the block grant funds appropriated to it by the legislature if a unanimous vote of the board determines:

(a) That a statewide initiative is necessary to further one (1) or more of the statutory functions of the board in KRS 311A.035; or

(b) A portion of the funds shall be distributed to assist agencies in meeting a federal or state mandate relevant to EMS.

(2) KBEMS shall not reserve funds for statewide initiatives in consecutive years.

(3) Notification of reservation of funds shall be sent to all eligible applicants and agencies by September 1 of the calendar year prior to the grant cycle.

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

(a) "County Application, Kentucky Ambulance Grant", KBEMS-G1, 1/2013;

(b) "Agency Application, Kentucky Ambulance Grant", KBEMS-G2, 1/2013;

~~(c)(b)~~ "Ambulance Grant Substitute Item Form", KBEMS-G3, 1/2013; and

~~(d)(c)~~ "Grant Accountability of Funds", KBEMS-G4, 1/2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 300 North Main Street, Versailles, Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m. Application for Funding Assistance. (1) An applicant may apply to the board for funding assistance for the purchase of a vehicle or equipment in accordance with KRS 311A.155.

(2) An application shall be made on a Block Grant Funding Application, incorporated by reference.

(3) An entity is eligible to apply for funding if the entity is:

(a) Licensed as a Class I ground ambulance service; and

(b) Not subject to pending or proposed disciplinary action by the board in the current fiscal year.

(4) An applicant who has been awarded a grant shall execute a memorandum of agreement with the board.

Section 2. Allocation of Funds. (1) Funds may be expended for the purchase or lease of one or more of the following:

(a) A new or used vehicle that meets the requirements of 202 KAR 7:580, 202 KAR 7:582, and 202 KAR 7:584, if the provider demonstrates the need for a replacement vehicle because an existing vehicle:

1. Is totally inoperable; or

2. Is at least five (5) years old and:

a. Has been driven in excess of 70,000 miles, if it has a gasoline engine and is in poor condition; or

b. Has been driven in excess of 100,000 miles, if it has a diesel engine and is in poor condition;

(b) A monitor/defibrillator or automatic external defibrillator;

(c) An ambulance cot or stretcher costing more than \$250 per

unit;

(d) An item of nondisposable equipment required by administrative regulation for a ground ambulance service, that exceeds \$250 per unit; or

(e) A training mannequin or dysrhythmia generator that exceeds \$250 per unit.

(2) A vehicle purchased with grant funds shall not:

(a) Be more than three (3) model years older than the most current model year vehicle; and

(b) Have an odometer reading in excess of 40,000 miles.

(3) Grant funds may be used for personnel training, education, and related expenses.

Section 3. Verification of Expenditures. (1) The applicant shall provide documentation on an annual basis, or more frequently, as requested by a representative of the board, to verify that grant funds have been expended:

(a) As stipulated by the memorandum of agreement allocating the block grant funds; and

(b) Within the designated time frame.

(2) The board shall not approve or provide additional funding until the applicant provides documentation required in satisfaction of subsection (1) of this section.

Section 4. Title, Use, and Disposition of Vehicles and Equipment. (1) Legal title to a vehicle or equipment purchased pursuant to this administrative regulation shall vest in the applicant and not in any organization contracting with the applicant.

(2) The applicant shall maintain a record for each vehicle and item of equipment purchased with EMS block grant funds.

(3) An applicant shall not dispose of a vehicle or item of equipment purchased with EMS block grant funds within three (3) years of the date of purchase, unless the applicant seeks, and the board provides, prior written approval to dispose of the item.

Section 5. Fund Management and Scheduling – Block Grant Funds. (1) An application for consideration shall be postmarked by December 31. Failure to meet the postmark deadline shall render the applicant ineligible for that funding cycle.

(2) If funds are available from the Commonwealth, the board shall notify the grantees by March 1.

Section 6. Emergency Funding of Vehicles and Equipment. (1) A request for emergency funding of a vehicle, equipment, or both, may be made to the board at any time using the Application for Emergency Funding, incorporated by reference.

(2) The board shall award emergency grant funds based upon:

(a) Review of the application; and

(b) Availability of funds.

Section 7. Discretion of the Board. (1) The board may reduce, but not increase, the amount of funding requested by an applicant.

(2) Except as provided by Section 6 of this administrative regulation, the awarding, reduction, or denial of a grant application under KRS 311.155 and this administrative regulation is within the sole discretion of the board.

Section 8. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) Block Grant Funding Application (2002); and

(b) Application for Emergency Funding (2002).

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

MIKE POYNTER, Executive Director

APPROVED BY AGENCY: March 15, 2013

FILED WITH LRC: March 15, 2013 at 10 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.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM  
Kentucky Board of Emergency Medical Services  
(As Amended at ARRS, July 9, 2013)**

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

RELATES TO: KRS 311A.020, 311A.035, 311A.045, 311A.060, 311A.155, 311A.190, 23 U.S.C. 403(b)(1)(A)(iv), 405(c)(3)(C), 42 U.S.C. 300d-4(b)(1)

STATUTORY AUTHORITY: KRS 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.190 authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the Kentucky Board of Emergency Medical Services to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

Section 1. Data Collection and Statewide Compliance Plan. (1) The board shall require each licensed ambulance service to collect and submit run report data that aids in identifying patient care needs in the Commonwealth of Kentucky. (2) The board shall collect, maintain, and use data provided by licensed ground and air ambulance services to assist the board and other state and federal agencies relevant to emergency management or public health.

(3) The information and data collected shall be used at a minimum to determine demographic trends and other emerging situations involving the provision of EMS to and the medical transport of individuals within the state.

(4) The board shall collect and use the submitted data to develop and adopt a statewide plan for EMS Information and Analysis.

Section 2. Data Management Committee. (1) A Data Management Committee shall be established by this section.

(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 data collection;

(d) Assistance to licensed services with questions or other needs associated with this administrative regulation, KRS Chapter 311A, and other issues associated with the board's statutory authority to require data collection and submission; and

(e) Matters identified by board members, the chair, or the executive director that involve data collection, data submission, or information use.

(5) The Data Management Committee shall be conducted in accordance with 202 KAR 7:020 and the board bylaws.

(6) The Data Management Committee shall schedule on an annual basis at least six (6) regular meetings.

Section 3. Data Collection and Submission. (1) Each licensed ground and air ambulance service shall collect data relevant to patient care in Kentucky.

(2) Each service shall collect data at a rate that allows the service to submit the required data elements to the board on a schedule established by Section 5 of this administrative regulation.

Section 4. (1) The most recent version of the National EMS Information System (NEMSIS) data dictionary, US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset found at [www.nemsis.org](http://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](http://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 upon the full implementation of KEMSIS.

(2) Data shall be provided electronically to KBEMS 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 accuracy, completeness, or both falls below ninety (90) percent for three (3) consecutive months.

(7) The eligibility of a service to receive block grant funds pursuant to 202 KAR 7:520 shall be dependent on compliance with the data collection requirements in this administrative regulation.

(8) Failure to comply with a plan of correction shall subject a service to disciplinary action 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;
- (b) Date of birth;
- (c) Chief complaint;
- (d) History of present illness;
- (e) Assessment;
- (d) Medications;
- (e) Past medical history;
- (f) Allergies;
- (g) Vital signs;
- (h) Treatment;
- (i) Response to treatment; and
- (j) 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.

Section 9. Incorporation by Reference. (1) "US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset", 2005, [www.nemsis.org/theProject/historyofNemsis.html](http://www.nemsis.org/theProject/historyofNemsis.html), is incorporated by reference.

(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.

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Water**  
**(As Amended at ARRS, July 9, 2013)**

**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 those 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 volatiles;
- (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
- (g) Flow].

(5) "Field-only wastewater laboratory" means a wastewater laboratory that performs a measurement for only the parameters identified as field analysis, regardless of whether the measurement takes[. 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) analysis category other than field analysis, regardless of whether the general wastewater laboratory also performs[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 established 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)[(4)]** By a certified wastewater laboratory; and

**(b)[(2)]** In compliance with:

**1.[(a)]** An analytical method in 40 C.F.R. **Part** 136 or as established in the applicable permit;

**2.[(b)]** This administrative regulation; and

**3.[(c)]** The provisions of the Commonwealth of Kentucky Wastewater Laboratory Certification Manual.

**(2) The requirements established 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, 4<sup>th</sup> Floor  
Frankfort, Kentucky 40601; or

(b) If in electronic form, via the cabinet's Web site:  
www.water.ky.gov.

(2) 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[first]** 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 general wastewater laboratory, or after 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](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

Fee Category	Annual Fee
Administrative Fee	\$1,000
Analysis Category Fee	
Inorganic general chemistry	\$500
Inorganic metals	\$500
Organic chemistry volatiles	\$500
Organic chemistry semi-volatiles	\$500
Organic chemistry pesticides, herbicides, PCBs	\$500
Organic chemistry dioxins	\$750
Microbiology	\$500
Whole effluent toxicity	\$1,000
Field analysis only	\$250
Follow-up Audit Fee	\$500

(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 concurrent with the renewal certification application, 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 this 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](3)** 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, KWLC 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 results 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 purposes.

**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.

(4)(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 review of submitted 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 upon 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, KWLC 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[44.] 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)1. 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:

(a) "Commonwealth of Kentucky Wastewater Laboratory Certification Manual", **June[March]** 2013;

(b) "Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification", KWLCP Form App, March 2013;

(c) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", Fourth Edition, U.S.EPA-821-R-02-013, October 2002; and

(d) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms", Fifth Edition U.S. EPA-821-R-02-012, October 2002.

(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](mailto:Jon.Trout@ky.gov).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, July 9, 2013)**

**702 KAR 4:160. Capital construction process.**

RELATES TO: KRS Chapter 45A, 156.074, 156.076, 156.496, 156.670[156.160(1)(f) and (m)], 157.420(4), 157.450, 157.455, **157.620**, 160.160, 160.476[162.060, 162.065], 162.070, 322.010, **322.360**, 323.010, **323.033**, 323A.010, 371.405(7), 371.410, 424.260[160.160, 322.360(1)]

STATUTORY AUTHORITY: KRS 156.070, 156.160,[157.420,] 162.060, 162.065, 322.360, 323.033

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 **requires the Kentucky Board of Education to have management and control of the common schools and their programs.** **KRS 156.160 requires[establishes the general powers and duties of the Kentucky Board of Education, KRS 156.160 authorizes]**[requires] the Kentucky Board of Education [(KBE)] 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[approval of all school building plans and specifications by the chief state school officer]. KRS 162.065 requires the Kentucky Board of Education[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 require[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.

(3) "Change event" means a contiguous 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 con-

tract, consisting[and consists] of bidding requirements, contract forms, contract conditions, contract modifications, addenda, specifications, and drawings[, and record documents].

(5)[(4)] "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 [years] 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 which 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.

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

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

(8)] "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, such as; and

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

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

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

(12) "Major renovation" means a project at a permanent center including three (3) or more building systems and an estimated cost of twenty (20) percent of the current replacement cost of the building, or portion thereof, and the building or building systems shall be a minimum of thirty (30) years old or thirty (30)[twenty (20) years old or twenty (20)] years shall have passed since its last major renovation with the exception of:

(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; or

4. Roofing systems, flashings, and accessories.

(13) "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 renovation not defined as major renovation.

(14)[(9)] "KERA" means Kentucky Education Reform Act.

(10) "Moveable equipment" means any furnishings or equipment not considered fixed equipment.

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

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

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

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

Section 2. Construction Project Application. (1) The board shall submit an application on the [Form BG-4;] 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 [any] 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 by KRS 160.476; [or]

(b) Proposing construction of a new building, addition, or alteration of an existing building that requires design by a design professional [an 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 [a] 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 BG-1 Form 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

(b) The department shall process the emergency BG-1 Form request within seven (7) calendar days of receipt [on its facility plan without regard to priority number.

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

(6) 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 (5)(b) 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 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 702 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:

(a) Conduct the bid process in accordance with the district's officially adopted procurement method under KRS 424.260 or Chapter 45A;

(b) Prior to advertising, receive written approval from the department of the **construction[bidding]** documents;

(c) Hold possession of the **construction[bidding]** documents;

(d) Approve and submit each successful bidder's documents to the department for review and approval of each proposed contract and the financial plan;

(e) Submit a revised board-approved BG-1 Form for funding changes after bidding; and

(f) Have in its possession prior to signing the construction contract:

1. Unsigned contractor's performance and payment bond;

2. Certificates of required insurance;

3. Property insurance policy including insurance written on a builder's risk "all-risk" or equivalent policy in the amount of the initial total construction cost, plus the 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;

4. The department's written approval to sign each owner contractor agreement; and

5. Bids accepted for the bond sale.

(11) The board shall provide oversight of construction administration and construction contract closeout and submit a revised board-approved BG-1 Form if construction contingency is exceeded.

(12) If a lien is filed with a court and the board is given notice of the lien, the board shall:

(a) Notify the board attorney;

(b) Notify the department; and

(c) Proceed in accordance with the contract[documents].

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

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letter of interest. Advertisement and evaluation of three (3) firms shall not be required if:

(a) The total construction cost of the project is estimated at less than \$1,000,000; or

(b) The project is the continuation of phased construction at the same site.

(2) The board and design professional shall negotiate a contract for services required, using either:

(a) AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version; or

(b) AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version.

(3) 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.

(4) The design professional shall:

(a) Provide professional liability insurance;

(b) Complete a KDE Non-Collusion Affidavit;

(c) Provide construction documents and cost estimates, as required by the contract;

(d) If requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request; and

(e) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.

(5) The department shall review and approve the board-approved design professional's contract based on the following criteria:

(a) Compliance of the fee to KDE Architect/Engineer Fee Guidelines for Basic Services;

(b) Required certificates of liability insurance as stated in the AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version or the AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version;

(c) Compliance with applicable laws for modifications to the contract; and

(d) Consistency with the scope of work and anticipated cost approved on the BG-1 Form.

(6) The design professional shall prepare and provide 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 5. Construction Management Services.** (1) A CM shall not be employed on a project estimated at less than \$2,000,000 for construction cost. The department may approve exceptions if the:

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

(b) Project's complexity or fiscal soundness requires it.

(2) The board shall advertise for CM services utilizing the KDE Request for Proposals for Construction Management Services or shall evaluate and select a minimum of three (3) CM firms who have submitted a letter of interest.

(3) The board and CM shall negotiate a contract for services required using AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser - KDE Version.

(4) The CM shall:

(a) Prior to the board signing the construction contracts, provide a 100 percent performance and payment bond, AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version, in the amount of the CM fee and in compliance with KRS 45A.435;

(b) Provide professional liability insurance;

(c) Provide construction cost estimates in conjunction with the design professional's design at the end of each phase for schematic design documents, design development documents, and construction documents;

(d) Complete a KDE Non-Collusion Affidavit;

(e) Request approval by the owner's representative for reimbursement or an additional service fee prior to the service being rendered or expenditure being made;

(f) If requesting reimbursement or an additional service fee, provide a detailed listing of each charge on the payment request; and

(g) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.

(5) The department shall review and approve the board-approved CM contract based on the following criteria:

(a) Compliance of the fee to KDE Construction Manager Fee Guidelines for Basic Services;

(b) Required certificates of liability insurance as stated in the AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version;

(c) Required performance and payment bond as stated in the AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version;

(d) Compliance with applicable laws for modifications to the contract; and

(e) Consistency with the scope of work and anticipated cost approved on the BG-1 Form.

(6) 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.

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(2) After receiving the department's written approval of the schematic design documents, the design professional shall prepare the design development documents.

(a) The board shall submit to the department for review and approval:

1. Board-approved design development documents;
2. BG-2 Outline Specifications Energy Design Criteria (BG-2 Form); and
3. BG-3 Statement of Probable Cost (BG-3 Form).

(b) The board shall submit to the department a copy of the signed letter of transmittal sent to the Kentucky Transportation Cabinet or other agency having jurisdiction regarding proposed entrance and right-of-way improvements.

(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).

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

(a) 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:

- a. AIA Document A701-1997, Instruction to Bidders - KDE Version;
- 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;
- f. AIA Document A201-2007, General Conditions of the Contract for Construction - KDE Version;
- g. AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition - KDE Version;
- h. AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition - KDE Version;
- i. AIA Document A312-2010, Performance Bond and Payment Bond - KDE Version;

j. AIA Document G702-1992, Application and Certification for Payment;

k. AIA Document G732-2009, Application and Certification for Payment, Construction Manager-Adviser Edition;

l. AIA Document G701-2001, Change Order;

m. AIA Document G701/CMA-1992, Change Order, Construction Manager-Adviser Edition;

n. KDE Change Order Supplemental Information Form;

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

p. AIA Document G704/CMA-1992, Certificate of Substantial Completion, Construction Manager-Adviser Edition;

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, Buildings and Construction;

(i) Division of Building Codes Enforcement; and

(ii) Division of Plumbing.

b. Division of Water;

c. 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 Non-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:

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(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 GESB 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 financing 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.

Section 9. Contract Change Orders. (1) Board-approved ~~contract modifications~~changes in the contract scope of work shall be submitted using forms AIA Document G701-2001, Change Order or AIA Document G701/CMA-1992, Change Order, Construction Manager-Adviser Edition, including the KDE Change Order Supplemental Information Form, to ensure the cumulative cost of the contract and all change orders are within the approved budget.

(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 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, ~~2013/2012~~ (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) If 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, ~~2013/2012~~ (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 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 **affirm, modify, or reverse the chief state school officer's recommendation**~~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 14. Incorporation By Reference. (1) The following material is incorporated by reference:

(a) "AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect - KDE Version", **June 2013**;

(b) "AIA Document A201-2007, General Conditions of the Contract for Construction - KDE Version", **June 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", **June 2013**;

(d) "AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition - KDE Version", **June 2013**;

(e) "AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser - KDE Version", **June 2013**;

(f) "AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition - KDE Version", **June 2013**;

(g) "AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition - KDE Version", **June 2013**;

(h) "AIA Document A141-2004, Standard Form of Agreement Between Owner and Design-Builder - KDE Version", **June 2013**;

(i) "AIA Document A141-2004, Exhibit A, Terms and Conditions - KDE Version", **June 2013**;

(j) "AIA Document A141-2004, Exhibit C, Insurance and Bonds - KDE Version", **June 2013**;

(k) "AIA Document A701-1997, Instruction to Bidders - 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**;

(o) "AIA Document G701/CMA-1992, Change Order, Construction Manager-Adviser edition", **1992**;

(p) "AIA Document G702-1992, Application and Certification for Payment", **1992**;

(q) "AIA Document G732-2009, Application and Certification for Payment, Construction Manager-Adviser Edition", **2009**;

(r) "AIA Document G704-2000, Certificate of Substantial Completion", **2000**;

(s) "AIA Document G704/CMA-1992, Certificate of Substantial Completion, Construction Manager-Adviser Edition", **1992**;

(t) "AIA Document G706-1994, Contractor's Affidavit of Payment of Debts and Claims", **1994**;

(u) "AIA Document G706A-1994, Contractor's Affidavit of Release of Liens", **1994**;

(v) "AIA Document G707-1994, Consent of Surety to Final Payment", **1994**;

(w) "AIA Document G707A-1994, Consent of Surety to Reduction in or Partial Release of Retainage", **1994**;

(x) "BG-1 Project Application Form", **2013[2012]**;

(y) "BG-2 Outline Specifications Energy Design Criteria", **2013[2012]**;

(z) "BG-3 Statement of Probable Cost", **2013[2012]**;

(aa) "BG-4 Contract Closeout Form", **2013[2012]**;

(bb) "BG-5 Project Closeout Form", **2013[2012]**;

(cc) "KDE Architect/Engineer Fee Guidelines for Basic Services", **2013[2012]**;

(dd) "KDE Change Order Supplemental Information Form", **2013[2012]**;

(ee) "KDE Construction Manager Fee Guidelines for Basic Services", **2013[2012]**;

(ff) "KDE Form of Proposal", **2013[2012]**;

(gg) "KDE Non-Collusion Affidavit", **2013[2012]**;

(hh) "KDE Purchase Order", **2013[2012]**;

(ii) "KDE Purchase Order Summary Form", **2013[2012]**;

(jj) "KDE Request for Proposals for Architectural/Engineering Services", **2013[2012]**;

(kk) "KDE Request for Proposals for Construction Management Services", **2013[2012]**; and

(ll) "KDE Request for Proposals for Guaranteed Energy Savings Contracts", **2013[2012]**;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Construction files and records shall be maintained by the superintendent in the central office and organized and accessible for review. Construction files and records shall include:

(a) Board actions;

(b) Proposals (bids);

(c) Contracts, contract documents and record drawings;

(d) Correspondence; and

(e) Financial documents.

(2) During the design phases of a new school building project, the maximum gross area shall be limited using the Model Program Space established in 702 KAR 4:180, to:

(a) For an elementary school, 110 percent of the Total Gross Area of the Model Program Space; or

(b) For a middle or high school, 115 percent of the Total Gross Area of the Model Program Space.

(3) If the architect or the CM determines additional funding is justified or a reduction of physical scope of the project is needed, the local board may approve the action if it believes it is justified and forward it to the division.

(4) During the planning and bidding phase of the construction project, the board shall:

(a) Review bidding documents for compliance with statutes and administrative regulations, with particular attention to sales and use tax exemption when purchasing materials direct;

(b) Comply with all submission requirements resulting from the review of bidding documents by the division;

(c) Not advertise before receipt of written approval from the division;

(d) Advertise in the newspaper having the largest circulation in the school district the following number of days prior to the date established to receive bids:

1. \$1,000,000 or less project, a minimum of seven (7) days and a maximum of twenty-one (21) days; or

2. A project in excess of \$1,000,000, a minimum of twenty-one (21) days;

(e) Hold the bid opening:

1. In a location accessible to the public;

2. Between 10 a.m. and 3 p.m. (local time); and

3. Monday through Friday, excluding holidays;

(f) Accept the architect's and CM's evaluation of the bids and approve or reject their recommendations, giving consideration during the review process to businesses owned by minorities and women;

(g) Ensure the CM completes the KDE Non-Collusion Affidavit;

(h) Hold possession of original bidding documents;

(i) Approve and submit the successful bidders' documents to the division for review and approval of each proposed contract and the financial plan; and

(j) 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.

(5) 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 construction 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 notifying 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 retainage 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 A201-2007;

(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.

(6) 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.

(7) 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) Advertisement 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 fee to 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 architectural firm 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 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 law; 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/Cma 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) Complete a KDE Non-Collusion Affidavit relative to both the superintendent and local board members and the apparent low bidders;
  - (f) Request approval by the owner's representative for any reimbursement or additional service fee prior to the service being rendered or expenditure being made;
  - (g) If requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;
  - (h) Request additional payment for construction time or services extending beyond the scheduled completion date, by the additional costs were incurred through no fault of the construction management firm and are documented due to the delay of a contractor, material supplier, or vendor; and
  - (i) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion.
- (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 law;
    - 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 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 bus loading area from other vehicular traffic, parking, service, play and athletic areas, 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 4:180 and 702 KAR 4:170;
- 3. Functional aspects: review of the distribution of functions, or 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 115 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-2, 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. Budget: the Grand Total Cost on the Statement of Probable Cost, Form BG-3, is within the approved Form BG-1 Total Estimated Cost budget. If the Grand Total Cost exceeds the BG #1 Total Estimated Cost, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board;
- 7. Form BG-2, Outline Specifications form is properly completed and conforms to the educational program specifications; and
- 8. Design development plans incorporate all previous schematic design review comments.

(3) After written approval of design development plans is received from the division, the completed plans and specifications and project manual shall be prepared by the architect and, if applicable, CM, for bidding.

(a) The board shall submit to the division for review and approval:

- 1. Completed plans and specifications and project manual;
- 2. Board order approving plans and specifications;

3. Revised BG-3, Statement of Probably Cost; and  
4. Proof of submission of completed plans to other agencies having jurisdiction.

(b) The division shall review and approve the completed plans and specifications and project manual submittals based on:

1. Compliance with 702 KAR 4:170, with special concern to reduce change orders during construction;

2. Compliance with state law regarding the seal, signature, and date of the documents by architects and engineers;

3. Documents are 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 a general contractor to construct the project;

4. BG-3 Grand Total Cost does not exceed by ten (10) percent the approved Form BG-1 Total Estimated Cost budget;

5. Deed, certificate of title insurance to the property, deed of easements for all utilities, and proof of road and utility access for the project are filed with the division;

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

7. Construction documents include the following forms to the extent applicable with KDE amendments appropriate for general construction or construction management:

a. AIA Document A201-2007, General Conditions of the Contract for Construction;

b. KDE Amendment to AIA A201-2007;

c. AIA Document A201/CMA, General Conditions of the Contract for Construction, 1992 Construction Manager-Adviser Edition;

d. KDE Amendment to AIA A201/CMA-1992;

e. AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor;

f. KDE Amendment to AIA A101-2007;

g. AIA Document A101/CMA, Standard Form of Agreement Between Owner and Contractor, 1992 Construction Manager-Adviser edition;

h. KDE Amendment to AIA A101/CMA-1992;

i. AIA Document A701-1997, Instructions to Bidders;

j. KDE Amendment to AIA A701-1997;

k. KDE Form of Proposal;

l. AIA Document A310, Bid Bond;

m. AIA Document A312, Performance Bond and Payment Bond;

n. KDE Amendment to AIA A312-1984;

o. AIA G702-1992, Application and Certification for Payment;

p. AIA Document G702/CMA, Application and Certificate for Payment, 1992 Construction Manager-Adviser edition;

q. AIA Document G701-2000, Change Order;

r. KDE Change Order Supplemental Information Form;

s. AIA Document G701/CMA, Change Order, 1992 Construction Manager-Adviser edition;

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

u. AIA Document G704/CMA, Certificate of Substantial Completion, 1992 Construction Manager-Adviser edition;

v. AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims;

w. AIA Document G706A, Contractor's Affidavit of Release of Liens;

x. AIA Document G707, Consent of Surety to Final Payment; and

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

8. 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.treas.gov/c570/c570.htm>;

9. 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 pur-

chase 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  
10. 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;

d. Division of Water;

e. Division of Air Quality;

f. Local health department; and

g. Local building inspector.

(4) The board shall receive written approval of the construction bidding documents and authorization to bid from the division prior to advertisement for bids.

(5) 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.

(6) Leases, lease purchases, or leases with an option to purchase by a board for fixed equipment, capital construction, or alterations 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 financial approval of KDE when school revenue bonds are proposed for sale.

(4)(a) 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, Capital Plaza Tower; or

2. SFCC, 229 W. Main St., Suite 102, Frankfort, Kentucky 40601, if SFCC funds are involved.

(b) A KDE or SFCC staff member shall be present to receive the bids.

(c) Bids shall be delivered by mail, in person, by telephone, electronically or by facsimile (fax) machine. If the apparent winning bid is telephoned, the bid shall be reaffirmed by fax within thirty (30) minutes after the bid opening.

(5) The division shall approve a proposed construction contract based on:

(a) Submission of tabulation of bids, form of proposal, bid security and proposed contract;

(b) The board order indicating that the low bid was accepted or written justification if other than the low bid is proposed;

(c) The proposed construction contract is within approved budget; and

(d) The form of proposal is completed in accordance with the instructions to bidders.

(6)(a) Any discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.

(b) The board's desire to waive irregularities and informalities as to a bid shall be reviewed and final judgment made by the division prior to approval of the contract and financing plan.

(c) Approval of the proposed contract by the division shall not indicate the contract is the best or the most reasonable.

(7) The Division of District Operations, KDE, shall issue the final approval for the financing plan, authorize the bond sale, and prepare the approval letter for the chief state school officer or his or her designee.

(8) A negotiation of the bid price shall not be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.

(9) Construction account expenditures that are subject to bidding shall be approved by the division, except for expenditures for moveable equipment.

(10) The board shall submit to the division:

(a) A copy of each executed contract and purchase order;

(b) Each insurance certificate and a copy of the property insurance policy; and

(c) A copy of each 100 percent performance and payment bond.

Section 8. Contract Change Orders. (1)(a) All change orders shall be submitted to the division, and shall be accompanied with the following:

1. Copy of local board action approving the change order;

2. Properly completed KDE Change Order Supplemental Information Form; and

3. Cost breakdown which separates labor, material, profit and overhead. If unit prices are utilized, this cost breakdown shall not be necessary.

(b) Changes in the contract which do not substantially alter the nature of the contract, 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.

(c) 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.

(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 together with written consent of surety and the recommendation of the architect, the board shall approve a reduction in retainage to five (5) percent of the current contract sum.

(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.

(c) After substantial completion of the work, if reasons for reduction of the retainage are certified in writing by the architect, a reduction to a lump sum amount less than the five (5) percent re-

tainage shall be approved by the board. The minimum lump sum retainage shall be twice the estimated cost to correct the deficient or incomplete work.

(2) The investment earnings resulting from any agreement entered into by a board involving the construction account, including the construction contract retainage for an approved project, shall be invested in such a manner that any additional income from the investment shall accrue only to the board.

Section 10. Construction Dispute Resolution. (1) 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) AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect;

(f) KDE Amendment to AIA B101-2007, December 2008;

(g) AIA Document 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) AIA Document B801/CMA, Standard Form of Agreement Between Owner and Construction Manager, 1992 edition;

(k) KDE Amendment to AIA B801/CMA-1992, May 1993;

(l) AIA Document A201-2007, General Conditions of the Contract for Construction;

(m) KDE Amendment to AIA A201-2007, December 2008;

(n) AIA Document A201/CMA, General Conditions of the Contract for Construction, 1992 Construction Manager-Adviser Edition;

(o) KDE Amendment to AIA A201/CMA-1992, May 1993;

(p) AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor;

(q) KDE Amendment to AIA A101-2007, December 2008;

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(r) AIA Document A101/CMA, Standard Form of Agreement Between Owner and Contractor, 1992 Construction Manager-Adviser edition;

(s) KDE Amendment to AIA A101/CMA-1992, May 1993;

(t) AIA Document A701-1997, Instructions to Bidders;

(u) KDE Amendment to AIA A701-1997, April 2000;

(v) KDE Form of Proposal, April 2000;

(w) AIA Document A310, Bid Bond, 1970;

(x) AIA Document A312, Performance Bond and Payment Bond, 1984;

(y) KDE Amendment to AIA A312-1984, May 1993;

(z) KDE Purchase Order, May 1993;

(aa) KDE Material Supplier Authorization, May 1993;

(bb) AIA Document G702/CMA, Application and Certificate for Payment, 1992 Construction Manager-Adviser edition;

(cc) KDE Change Order Supplemental Information Form, April 2000;

(dd) AIA Document G701-2000, Change Order;

(ee) AIA Document G701/CMA, Change Order, 1992 Construction Manager-Adviser edition;

(ff) AIA Document G704-2000, Certificate of Substantial Completion;

(gg) AIA Document G704/CMA, Certificate of Substantial Completion, 1992 Construction Manager-Adviser edition;

(hh) AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims, 1994;

(ii) AIA Document G706A, Contractor's Affidavit of Release of Liens, 1994;

(jj) AIA Document G707, Consent of Surety to Final Payment, 1994;

(kk) AIA Document G707A, Consent of Surety to Reduction in or Partial Release of Retainage, 1994.

(ll) KDE CM Fee Guideline, May 1993;

(mm) BG #2, 2008, Outline Specifications;

(nn) BG #3, 2008, Statement of Probable Construction Cost;

(oo) AIA 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 AGENCY: June 14, 2013

FILED WITH LRC: June 14, 2013 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Office of Guiding 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.

**PUBLIC PROTECTION CABINET**  
**Department of Alcoholic Beverage Control**  
**(As Amended at ARRS, July 9, 2013)**

**804 KAR 9:050. Quota retail drink licenses[Retail][drink][liquor drink license quota].**

RELATES TO: KRS 241.060, 241.065, 241.075, **242.152**, 243.030

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit the number of licenses of each kind or class to issue in this state or any political subdivision,

and restrict the locations of licensed premises. This administrative regulation establishes **quota retail drink licenses in cities that have become wet pursuant to KRS 242.125 separately from their respective counties that[retail liquor drink license quotas in cities which have become wet pursuant to KRS 242.125 separately from their respective counties which]** remain dry.

Section 1. Danville, which repealed prohibition on March 2, 2010, shall have ~~[a quota of]~~six (6) **quota retail [liquor]drink licenses.**

Section 2. Radcliff, which repealed prohibition on October 4, 2011, shall have ~~[a quota of]~~eight (8) **quota retail [liquor]drink licenses.**

Section 3. Somerset, which repealed prohibition on June 26, 2012, shall have ~~[a quota of]~~five (5) **quota retail [liquor]drink licenses.**

Section 4. Murray, which repealed prohibition on July 17, 2012, shall have ~~[a quota of]~~seven (7) **quota retail [liquor]drink licenses**[The express provisions of KRS 241.060(2) enable the Alcoholic Beverage Control Board to limit the number of licenses to be issued in any political subdivision of the state and permit the board to make reasonable division and subdivisions of the state or any political subdivision into districts for this purpose. 804 KAR 9:010 establishes a general retail liquor license quota based upon county population for any area within that county in which prohibition has been repealed. Instances may arise, however, in which the quota based on county population permits the issuance of retail liquor licenses in a number totally disproportionate to the population of the area in said county in which prohibition has been repealed. It is, therefore, necessary for the board to establish individual quotas when such a situation as above described arises.

Section 1. The Alcoholic Beverage Control Board may, for good reason shown, adopt by administrative regulation retail liquor license quotas for political subdivisions less than a county where the county quota established by 804 KAR 9:010 would be excessively disproportionate to that based upon the population of the smaller political subdivision. In such instances, the quota set in 804 KAR 9:010, Section 1(1) and (2), shall be inapplicable. The quota exceptions contained in 804 KAR 9:010, Section 2(1), (2), (3), and (4), shall remain in effect and be incorporated herein.

Section 2. Pursuant to the authority herein, the City of Pikeville, having been elevated to third class status by the 1984 session of the Kentucky General Assembly, the actual resident population of the City of Pikeville being at least 8,000 by virtue of its reclassification to a city of the third class and the resident population of Pike County being 86,307 according to the population projections of the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Kentucky, it is determined that the retail drink liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail drink liquor licenses excessively disproportionate to the population of the City of Pikeville, the retail drink liquor license quota for the City of Pikeville, Kentucky, is therefore set at eleven (11).

TONY DEHNER, Acting Commissioner  
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 12, 2013

FILED WITH LRC: February 12, 2013 at 3 p.m.

CONTACT PERSONS: Stephen B. Humphress, General Counsel, Sam Crain, Paralegal, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings, and Construction**  
**Division of Plumbing**  
**(As Amended at ARRS, July 9, 2013)**

**815 KAR 20:034. Requirements for approval of continuing education courses and providers.**

RELATES TO: KRS 318.054, 318.130

STATUTORY AUTHORITY: KRS 318.130, 318.054

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.054 authorizes the department, after review by the State Plumbing Code Committee, to adopt continuing education requirements for plumbers. This administrative regulation establishes the process by which providers of continuing education courses are approved and registered with the department and continuing education courses approved.

**Section 1. Requirements for Continuing Education Providers.**

(1) Continuing education providers shall either be a:

- (a) Trade association with affiliation to the plumbing trade;
- (b) Trade school;
- (c) College;
- (d) Technical school;
- (e) Business dedicated solely to providing continuing education

and that provides at least one (1) course quarterly within each congressional district;

(f) Plumbing contracting company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or

(g) Plumbing manufacturer or distributor that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only.

(2) Provider Registration. The department shall maintain a list of approved continuing education course providers. An approved provider shall meet the criteria established in Section 2 of this administrative regulation.

(3)(a) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval.

(b) Registration shall be valid for two (2) years from the date of issuance.

(4) Course providers shall register on Form PLB-3 provided by the department and shall include the following:

- (a) The company name, mailing address, email address, telephone, and fax numbers of the provider;
- (b) Contact person; and
- (c) The fee, if any, to be charged to participants.

(5) Each course provider shall report to the department any change to the information submitted in the initial application within thirty (30) days after the change takes effect.

(6) For each course approved the provider shall distribute to each applicant in attendance a questionnaire for the purpose of rating the course.

(a) Questionnaires shall include:

- 1. Name of the course;
- 2. Date the course was taken;
- 3. Questions ranking the quality of the course;
- 4. Questions ranking the quality of the course materials provided; and
- 5. Questions ranking the quality of the instructor.

(b) Completed questionnaires shall be submitted with license renewal applications.

**Section 2. Continuing Education Course Approval.** (1) A separate application for approval shall be submitted to the department on Form PLB-4 provided by the department for each course offered by a course provider.

(2) An application for approval of a continuing education course shall be submitted only by approved providers registered with the department. Applications shall be submitted at least thirty (30) days prior to the course offering.

(3) A continuing education course shall provide instruction in at least one (1) of the subject areas specified in Section 3 of this ad-

ministrative regulation.

(4) The course application shall include the following:

- (a) A course syllabus;
- (b) Name of the course;
- (c) Name and registration number of the provider;
- (d) Name of the instructor or presenter along with his or her qualifications;
- (e) The amount of actual time needed to present the course;
- (f) The objectives of the course; and
- (g) A statement of the practicality of the course to the plumbing trade.

(5) Content changes made to the course shall require subsequent submission to the department for review and approval.

(6) Course approval shall be valid for two (2) years from the date approved by the department.

(7) The office shall issue a course number for each approved course. The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) Providers shall submit to the department a quarterly schedule including date and locations of courses by January 1, April 1, July 1, and October 1 annually and the department shall be notified at least thirty (30) days prior to a course's offering of changes made to scheduled courses.

(9) Providers may submit additional courses to their quarterly schedule if done at least thirty (30) days prior to the course offerings.

(10) The department shall receive written notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Director of Plumbing.

(11) Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to a scheduled class unless the Governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation;

(b) If the scheduled class is canceled, providers shall, at the option of the registrant, issue a full refund or allow the registrant to attend a rescheduled course;

(c) A registrant who notifies a provider of cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course; and

(d) Providers shall not cancel a course with ten (10) or more registrants, unless cancellation is the result of an emergency.

**Section 3. Continuing Education Course Content.** (1) All courses shall contain information beneficial in the day-to-day operation of a plumbing business.

(2) Courses relating to business shall include one (1) or more of the following:

- (a) Business law;
- (b) Accounting practices; or
- (c) Insurance.

(3) Courses relating to job safety shall directly relate to the construction trade.

(4) Courses related to the Kentucky state plumbing code shall include one (1) or more of the following:

- (a) KRS Chapter 318;
- (b) Basic plumbing principles;
- (c) 815 KAR 20:001 through 815 KAR 20:195;
- (d) Kentucky Building Code; or
- (e) Kentucky Residential Code.

(5) Providers requesting approval of courses for topics not listed in this section shall demonstrate the relevancy of the topic to the plumbing trade.

**Section 4. Continuing Education Course Records.** (1) Each registered course provider shall establish and maintain for three (3) years the following records for each approved course:

(a) Certificates of completion as provided in subsection (2) of this section;

- (b) An attendance sign-in and sign-out sheet; and
- (c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an

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approved continuing education course.

(b) Certificates of completion shall contain the following information about the individual participant:

1. Name;
2. Address;
3. License number or numbers;
4. Date of attendance; and
5. Course or courses completed.

(c) One (1) copy of each certificate of completion shall be:

1. Sent to the department electronically;
2. Retained on file by the provider in compliance with subsection (1) of this section; and
3. Given to the participant upon completion of the course.

Section 5. Online continuing education shall:

(1) Be provided by a continuing education provider approved in accordance with Section 1 of this administrative regulation;

(2) Include a minimum of six (6) personal security questions, per course, consisting of:

(a) One (1) random security question at each log-in; and

(b) Remaining security questions at intervals not to exceed twenty (20) minutes;

(3) Allow course participants access to the course for a minimum of thirty (30) days following receipt of payment for the course;

(4) Make available online the course certificate of completion for twelve (12) months to any licensee who completes an online course;

(5) Retain a record of all course applications and completions for a minimum of three (3) years; and

(6) Be capable of storing course content questions as follows:

(a) Stored content questions shall equal 150 percent of the content questions required; and

(b) Duplicate questions shall not be permitted.

(7) A minimum of four (4) content questions, chosen randomly from stored content questions, shall be answered during each twenty (20) minutes of continuing education programming.

(8) Notification of correct and incorrect answers, prior to completion of the online course and issuance of a certificate of completion, shall not be permitted.

Section 6. Online Courses. Online courses shall meet all requirements of this administrative regulation and 815 KAR 20:032.

Section 7. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date.

(2) Representatives of the department may, at any time, attend an approved continuing education course to ensure that the course meets the stated objectives and that applicable requirements are being met.

Section 8[6]. Disciplinary Action. The department may deny, suspend, or revoke approval of any course provider or may issue a fine to any course provider who:

(1) Obtains or attempts to obtain registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in any notification of changes to the information;

(3) Advertises a course as being approved by the department before the approval is received; or

(4) Fails to comply with the requirements of this administrative regulation.

Section 9[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PLB-3, "Application for Approval as a Plumbing Continuing Education Course Provider", November 2010; and

(b) Form PLB-4, "Application for a Plumbing Continuing Education Course Approval", November 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, 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: April 11, 2013

FILED WITH LRC: April 12, 2013 at 4 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 502-573-0365, ext. 144, fax 502-573-1057.

### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Provider Operations

(As Amended at ARRS, July 9, 2013)

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

RELATES TO: KRS 205.560, 216B.010, 216B.105, 216B.130, 216B.990, 42 C.F.R. 413, 438.60, 491, Subpart A, 440.130, 440.230, 447.3251, 45 C.F.R. 74.27, 48 C.F.R. Part 31, 42 U.S.C. 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1), 216B.042, 42 U.S.C. 1396a[~~EO-2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry.~~ 42 U.S.C. 1396a(aa) establishes requirements for federally-qualified health centers and rural health clinics]. This administrative regulation establishes the Department for Medicaid Services' reimbursement policies[~~provisions for reimbursement~~] 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)[(2)] "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)[clinic's or center's] Financial transactions, accounts, and reports; and

(b) [as well as its] 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(d) ["Clinic" means a rural health clinic].

(6) "Department" means the Department for Medicaid Services or its designated agent.

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

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

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**(9)** "Federally-qualified health center" or "FQHC" is defined in 42 C.F.R. 405.2401.

**(10)(9)** "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, **and the Centers for Medicare and Medicaid Services** to be a federally-qualified health center look-alike.

**(11)(140)(8)** "Health care provider" **means, for:**

**(a) A primary care center[means]:**

1. **(a)** A licensed physician;

2. **(b)** A licensed osteopathic physician;

3. **(c)** A licensed podiatrist;

4. **(d)** A licensed optometrist;

5. **(e)** A licensed **or[and]** certified advanced **practice** registered nurse[practitioner];

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

7. **(g)** A [certified]-physician assistant[or]

8. **(h)** For an FQHC:

1. A licensed clinical social worker; **or**

9. **(i)** A[or]

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; or**

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)(i) For** An FQHC or FQHC look-alike:

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 or FQHC look-alike in which the time spent by the resident in performing patient care is included in determining any intermediary payment to a hospital in accordance with 42 C.F.R. 413.75 through 413.83;

**b.** The resident furnishing the service without the presence of a teaching physician has completed more than six (6) months of an approved residency program;

**c.** The teaching physician:

**(i)** Does not direct the care of more than four (4) residents at any given time; and

**(ii)** Directs care from a proximity that constitutes immediate availability; and

**d.** The teaching physician:

**(i)** Has no other responsibilities at the time;

**(ii)** Has management responsibility for any recipient seen by the resident;

**(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 therapies; and

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

**(12)(44)(9)** "Interim rate" means a reimbursement amount[fee] 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)(42)** "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)(13)** "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

**(17)(14)** "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)(15)(40)** "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

**(19)(16)(44)** "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

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

**(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)(18)(42)** "PCC" or "primary care center" means an entity that is currently licensed as a PCC in accordance with[that has met the licensure requirements established in] 902 KAR 20:058.

**(22)(19)(43)** "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

**(23)(20)** "Physician assistant" is defined by KRS 311.840(3).

**(24)(21)(44)** "PPS" means prospective payment system.

**(25)(22)(45)** "Rate year" means, for the purposes of the MEI, the twelve (12) month period beginning July 1 of each year for which a rate is established for an FQHC, FQHC look-alike, RHC, or a PCC[a center or clinic] under the prospective payment system.

**(26)(23)(46)** "Reasonable cost" means a cost as determined by the:

**(a)** Applicable Medicare cost reimbursement principles established[set forth] 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)(24)** "Recipient" is defined by KRS 205.8451(9).

**(28)(25)(47)** "RHC" or "rural health clinic" is defined in 42 C.F.R. 405.2401(b).

**(29)(26)** "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)(27)** "Telehealth" means two (2)-way, 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)(28)(48)** "Visit" means a face-to-face encounter **or encounter** which occurs via telehealth between a **recipient or enrollee[patient]** and a health care provider during which **an[a]** FQHC, FQHC look-alike, **or RHC[, or PCC]** service 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. **(a)** Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

2. **(b)** 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 paragraphs[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:

(a) List each satellite 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 with the parent facility.

(4)[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:

(a) Enrolled with the department in accordance with 907 KAR 1:672; and

(b) 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[pursuant to 42 C.F.R. 405.2436] 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; or

(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[A PCC,] 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 or[, FQHC look-alike[, or PCC] 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).

(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)(2) 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, or PCC][center or clinic] in accordance with Section 4[5] of this administrative regulation.

(4)(3) 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[, or PCC][primary care] services on July 1 of each year[, beginning July 1, 2002]; and

(b)(e) In accordance with Section 8[7][6] of this administrative regulation:

1. Upon request and documentation by an FQHC, FQHC look-alike, or RHC[, or PCC][a 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)(4) 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 of increase as measured by the HCFA hospital market basket index; and

(c) Calculate the average cost by dividing the total cost associated with FQHC, PCC, and RHC services by 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, 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 cal-

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culated in accordance with this section using unaudited cost report data.

(9) A center shall not be eligible for an incentive payment for services provided on and after July 1, 2004.

(10)(a) A center or clinic shall have thirty (30) days from the date of notice by the department of its PPS rate to request an adjustment based on a change in scope of services; and

(b) The department shall have thirty (30) days to review the request prior to establishing a final PPS rate that shall be subject to appeal in accordance with Section 9 of this administrative regulation.

**Section 5.] Establishment of a PPS Rate for a New FQHC, FQHC look-alike, or RHC[, or PCC]** [Base Rate for a New Provider].

(1)(a) The department shall establish a PPS [base] rate to reimburse a new[PCC,] FQHC, FQHC look-alike, or[, and] RHC 100 percent of its reasonable cost of providing Medicaid covered services during the FQHC's/[FQHC], FQHC look-alike's/[look-alike], or RHC's [a center's or clinic's] base year.

(b) Except for a time frame in which the department reimburses an FQHC, FQHC look-alike, or RHC[, or PCC] an interim rate, the initial and subsequent final PPS rate established for an FQHC, FQHC look-alike, or RHC[, or PCC] shall:

1. Be prospective; and
2. Not settled to cost.

(2)(a) The department shall determine the reasonable costs of an FQHC, FQHC look-alike, or RHC[, or PCC] based on the cost report[reported] which contains twelve (12) full months of operating data most recently submitted to the department by the FQHC, FQHC look-alike, or RHC[, or PCC].

(b) The base rate referenced in subsection (1)(a) of this section shall be based on the reasonable cost determination made by the department pursuant to paragraph (a) of this subsection. [(2) Reasonable costs shall be determined by the department based on a center's or clinic's cost report used by the department to establish the PPS rate].

(3)(a) Until an FQHC, FQHC look-alike, or RHC [a center or clinic] submits a Medicaid cost report containing twelve (12) full months of operating data for the facility's base[a fiscal] year, the department shall reimburse the FQHC, FQHC look-alike, or RHC[make payments to the center or clinic based on] an interim rate equal to the all-inclusive per visit[diem] rate established for the FQHC, FQHC look-alike, or RHC by Medicare.

(b) An FQHC, FQHC look-alike, or RHC shall provide the department with a copy of the Medicare rate letter for the rates in effect during the FQHC's, FQHC look-alike's, or RHC's interim period.

(c)1. The department shall adjust an interim rate for an FQHC, FQHC look-alike, or RHC based on the establishment of the final rate.

2. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.

**[(d)1. Until a PCC submits a Medicaid cost report containing twelve (12) full months of operating data for the facility's base year, the department shall reimburse the PCC an interim rate equal to the average PPS rate paid to PCCs in the same region in which the PCC is located.**

**2. The department shall adjust an interim rate for a PCC based on the establishment of the final rate.**

**3. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.]**

(4)(a) An FQHC, FQHC look-alike, or RHC[, or PCC] shall submit a[an annual] cost report to the department by the end of the fifth month following the end of the FQHC's, FQHC look-alike's, or RHC's[, or PCC's] first full fiscal year.

(b) The department shall:

1. Review the[an annual] cost report referenced in paragraph (a) of this subsection submitted by an FQHC, FQHC look-alike, or RHC[, or PCC] within ninety (90) business days of receiving the cost report; and

2. Notify the FQHC, FQHC look-alike, or RHC[, or PCC] of the:

a. Necessity of the FQHC, FQHC look-alike, or RHC[, or PCC] to submit additional documentation if necessary;

b. Final rate established;

c. Appeal rights regarding the final rate; and

d. Estimated time for determining a final rate if a final rate is not established within ninety (90) days.

(c)1. If additional documentation is necessary to establish a final rate, the FQHC, FQHC look-alike, or RHC[, or PCC] shall:

a. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

b. Request an extension beyond thirty (30) days to provide the additional documentation.

2. The department shall grant no more than one (1) extension.

3. An extension shall not exceed thirty (30) days.

(d) If the department requests additional documentation from an FQHC, FQHC look-alike, or RHC[, or a PCC] but does not receive additional documentation or an extension request within thirty (30) days, the department shall reimburse the FQHC, FQHC look-alike, or RHC[, or PCC] based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010 until:

1. The additional documentation has been received by the department; and

2. The department has established a final rate.

**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 an MCO.** (1) For a service or drug provided to[visit by] an enrollee by[te] a PCC that is not an FQHC, FQHC look-alike, or RHC and that is covered by an MCO, the PCC's reimbursement shall be the 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 a Recipient 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 department shall reimburse the rate or reimbursement established for the service or drug on the Medicare Fee Schedule established for Kentucky.

(2) The reimbursement referenced in subsection (1) of this section shall not exceed the federal[clinic] upper payment limit determined in accordance with 42 C.F.R. 447.321.

(3)(a) The coverage provisions and requirements established in 907 KAR 1:054 shall apply to a service or drug provided by a PCC.

(b) If a Medicare coverage provision or requirement exists regarding a given service or drug that contradicts a provision or requirement established in 907 KAR 1:054, the provision or requirement established in 907 KAR 1:054 shall supersede the Medicare provision or requirement.

**Section 7. Supplemental Reimbursement for FQHC Visits[Services], FQHC Look-Alike Visits[Services], and RHC Visits[Services].** If a managed care organization's reimbursement to an FQHC, FQHC look-alike, or RHC for a visit by an enrollee to the FQHC, FQHC look-alike, or RHC is less than what the FQHC, FQHC look-alike, or RHC would receive 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:

(1) Equals the difference between what the managed care organization reimbursed and what the reimbursement would have been if it had been made in accordance with Sections 3 and 4 of this administrative regulation;

(2) Is in accordance with 42 U.S.C. 1396a(bb)(5)(A); and

(3) Ensures that total reimbursement does not exceed the federal upper payment limit in accordance with:

(a) 42 C.F.R. 447.304; and

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(b) 42 C.F.R. 447.321[-.

(4) A new center or clinic shall submit a budget that sets forth:

(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[6. Adjustments to a PPS Rate].

(1)(a) If an FQHC, FQHC look-alike, ~~or RHC[-or PCC]~~[a center or clinic] changes its scope of services after the base year, the department shall adjust the FQHC's, FQHC look-alike's, ~~or RHC's~~[a center's 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 base year shall be retroactively effective to the date that the FQHC, FQHC look-alike, or RHC applied for the change in scope[- by dividing a center's or clinic's total Medicaid costs by total Medicaid visits. A provider shall submit 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 or visits of an FQHC, FQHC look-alike, ~~or RHC[-or PCC]~~.

(3) The following items 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 specialist.

(4)(a) 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.

(b) The deletion of a covered service shall be restricted to the deletion of a licensed professional staff member who can perform a Medicaid covered service that was being performed within the FQHC, FQHC look-alike, or RHC by the licensed professional staff member.

(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 at an FQHC, FQHC look-alike, or RHC if:

(a) A government entity imposes a mandatory minimum wage increase and the increase was:

1. 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 an FQHC's, FQHC look-alike's, or RHC'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, completed according to the Instructions for Completing the MAP 100501 Form.

(10) The department shall:

(a) Review the documentation listed in subsection (9) of this section; and

(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 from the date the department received the request.

(11)(a) 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)1. 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 a new PCC's interim rate:

(1) Region one (1) shall be the region containing Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, and McCracken 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, Owsley, 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

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(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 cost reports multiplied by 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.]** [7.] 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 or[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 FQHC'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~~].[40.] 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, 2004 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Child Care  
(Amended After Comments)

922 KAR 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, 17.165, 17.500–17.580, Chapter 157, 199.011(1), (4), 199.892, 199.894(1), (3), 199.895, 199.896, 199.898, 600.020(1), 620.030(4), 45 C.F.R. 98.2, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6) NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Child-care center" is defined by KRS 199.894(3).

(5) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of Inspector General.

(6) "Licensee" means the owner and operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
  - 1. Board of education,
  - 2. Private school;
  - 3. Faith-based organization;
  - 4. Government agency; or
  - 5. Institution.

(7) [(6)] "Nontraditional hours" means the hours of:

- (a) 7 p.m. through 5 a.m. Monday through Friday; or
- (b) 7 p.m. on Friday until 5 a.m. on Monday.

(8) [(7)] "Parent" is defined by 45 C.F.R. 98.2.

(9) [(8)] "Premises" means the building and contiguous property in which child care is licensed [provided].

(10) [(9)] "Secretary" is defined by KRS 199.011(1).

(11) [(10)] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

- (a) Four (4) or more children in a nonresidential setting; or
- (b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be primary residence of the licensee in which child care is regularly

provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120:

(1) Summer camps certified by the cabinet as youth camps which serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization which a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted; and

(9) A program providing instructional and educational programs:

(a) That operates for a maximum of twenty (20) hours per week; and

(b) Which a child attends for no more than ten (10) hours per week.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Child-Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of this section and Sections 5[4] through 7 of this administrative regulation.

(4) [(3)] If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) [(4)] If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) [(5)] If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or other investigation by:

1. The cabinet's Office of Inspector General; or

2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or

2. License for a new facility.

(8) An applicant or an applicant's lead representative shall submit to background checks in accordance with Section 6(5)[6(4)] of this administrative regulation to confirm compliance with Section

11(7)(i) of this administrative regulation even if the applicant for licensure is not described in Section 6(4) of this administrative regulation~~will not be serving as the child-care center's director, employee, volunteer, or another person with supervisory or disciplinary control over, or having unsupervised contact with a child~~.

(9)~~(6)~~ A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895.

(2) The cabinet shall post an online template of an evacuation plan that:

- (a) Fulfills requirements of KRS 199.895;
- (b) Is optional for a child-care center's use; and
- (c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 11 of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by KRS 199.896(19) has been completed on behalf of an applicant for licensure.

(4) Background checks shall apply to:

(a) A director;

(b) An employee or volunteer who is present during the time a child is receiving care;

(c) Any person with supervisory or disciplinary control over a child in care; or

(d) Any person having unsupervised contact with a child in care.

(5) An individual described in subsection (4) of this section ~~(2) [A director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with, a child]~~ shall:

(a) Submit to background checks described in paragraph (b) of this subsection;

(b) May be employed or work with a child on a probationary basis for up to ninety (90) calendar days, pending completion of a:

1. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;

2. Criminal records check required by KRS 199.896(19);

3. Criminal records check for any previous state of residence if the person resided outside the state of Kentucky in the last five (5) years; and

4. An address check of the Sex Offender Registry; and

(c) Not be left alone in the presence of a child until copies of the background checks in accordance with paragraph (b) of this subsection have been received by the licensee.

(6) Upon completion of background checks described in subsection (4)(b) of this section, a licensee shall discharge immediately:

(a) An individual whose name is listed on the central registry established by 922 KAR 1:470;

(b) An individual who has been convicted of, or has entered an Alford plea or a plea of guilty to, a crime in accordance with KRS 17.165;

(c) An individual who is confirmed by an address check of the Sex Offender Registry and supporting documentation as a registered sex offender;

(d) An individual who has been convicted of, or entered an Alford plea or plea of guilty to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

(e) A director who has been convicted of, or entered an

Alford plea or a plea of guilty to, a felony offense involving fraud, embezzlement, theft, or forgery; and

(f) An individual who has been convicted of, or has entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this subsection~~(5)(3) [Upon completion of background checks described in subsection (4)(b)]~~~~(2)(b) [of this section, a licensee shall discharge immediately a:~~

~~(a) [A] [Director, employee, volunteer, or any person:~~

~~1.] [(a)] [Whose name is listed on the central registry established by 922 KAR 1:470;~~

~~2.] [(b)] [Who has been convicted of, or has entered an Alford plea or a plea of guilty to, a crime in accordance with KRS 17.165;~~

~~3.] [(c)] [Who is confirmed by an address check of the Sex Offender Registry and supporting document as a registered sex offender; or~~

~~4.] [(d)] [Who has been convicted of, or has entered an Alford plea or a plea of guilty to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;~~

~~(b) Director who has been convicted of, or entered an Alford plea or a plea of guilty to, a felony offense involving fraud, embezzlement, theft, or forgery; and~~

~~(c) Director, employee, volunteer, or any person who has been convicted of, or has entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this subsection]~~

(7) An individual~~(6) A director, employee, volunteer, or any person]~~ ~~[(4) An applicant]~~ who has been convicted of, or entered an Alford plea or a plea of guilty to, a nonviolent felony or misdemeanor not specified in this section shall be handled on a case-by-case basis by the licensee with consideration given to the:

- (a) Nature of the offense;
- (b) Length of time that has elapsed since the event; and
- (c) Individual's ~~[Applicant's]~~ life experiences after conviction, Alford plea, or guilty plea.

(8)~~(7)~~~~(5)~~ If an applicant for licensure has had a previous ownership interest in a child-care provider which has had a prior certification, license, registration, or permit to operate denied, suspended, ~~[or]~~ revoked, or voluntarily relinquished as a result of an investigation or pending adverse action, the cabinet shall grant the applicant a license if:

(a) A seven (7)~~three (3)]~~ year period has expired from the:

- 1. Date of the prior denial, suspension, or revocation;
- 2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or pending adverse action;
- 3. Last day of legal remedies being exhausted; or
- 4~~[3]~~. Administrative hearing decision; and

(b) The applicant has:

- 1. Demonstrated compliance with the provisions of this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896;
- 2. Completed, since the time of the prior denial, suspension, ~~[or]~~ revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and
- 3. Not had an application, certification, license, registration, or permit denied, revoked, ~~[or]~~ suspended, or voluntarily relinquished as a result of an investigation or pending adverse action:

a. For one (1) of the reasons set forth in:

- (i) KRS 199.896(19);
- (ii) Subsection ~~(6)~~~~(5)]~~ of this section; ~~or~~
- (iii) Section 11(2) or 11(7)(i) of this administrative regulation; or

b. Due to a disqualification from:

- (i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or
- (ii) Another governmental assistance program for fraud or abuse of that program.

(9)~~(8)~~~~(6)~~ If a license is granted after the seven (7) ~~three (3)]~~

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year period specified in subsection ~~(8)(7)(a)~~(5)(a) of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected on at least a quarterly basis.

~~(10)(9)~~(7) A preliminary or regular license shall specify:

(a) A particular premises;  
(b) A designated licensee;  
(c) Age category of the children in care;  
(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;
  2. Adequacy of program;
  3. Equipment; and
  4. Staff;
- (e) If provided, nontraditional hours;  
(f) If provided, transportation; and  
(g) A list of services to be provided by the child-care center.

~~(11)(10)~~(8) To qualify for a preliminary license, or~~and~~ maintain a regular license, a child-care center shall:

(a) Provide written documentation from the local authority showing compliance with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county, and state laws;

(d) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;

(e) Comply with provisions of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120;

(f) Cooperate with the cabinet, the cabinet's designee, or another~~state~~ agency with regulatory authority during:

1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(4); and
2. Unannounced ~~cabinet~~ inspections; and

(g) Have a director who meets the requirements listed in 922 KAR 2:110.

~~(12)(11)~~(9) A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.

~~(13)(12)~~ Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section 10, 11, or 12 of this administrative regulation.

~~(14)(13)~~(10) A regular license shall be issued and reappraised if the center has met the requirements contained in this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896(3), (13), (15), (16), (18), and (19).

~~(15)(14)~~(11) A preliminary or regular license shall not be sold or transferred.

~~(16)(15)~~(12) Changes to a child-care center as listed in 922 KAR 2:110, Section 6(4), ~~(5), and (6)~~ shall be:

- (a) In writing to the cabinet or its designee; and
- (b) Signed by each owner listed on the preliminary or regular license.

~~(17)(16)~~(13) The cabinet or its designee shall not charge a fee for acting upon reported changes.

~~(18)(17)~~(14) The preliminary or regular license shall be posted in a conspicuous place in the child-care center.

~~(19)(18)~~(15) A child-care center shall not begin operation without a preliminary license to operate from the cabinet.

~~(20)(19)~~(16) A child-care center operating without a preliminary or regular license shall be subject to legal action.

~~(21)(20)~~ The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet's pursuit of adverse action.

Section 7. Fees. (1) A nonrefundable licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) Licensing fees shall be:

- (a) Payable to the Kentucky State Treasurer;
- (b) Attached to the licensure application; and
- (c) Paid by:
  1. Cashier's check;
  2. Certified check; or
  3. Money order.

Section 8. Annual Reapproval. (1) A licensee seeking reapproval of a regular license shall:

(a) Submit, one (1) month prior to license expiration, an OIG-DRCC-01; and

(b) Meet the requirements specified in Sections 4 through 7 of this administrative regulation.

(2) An application for renewal shall be denied in accordance with Section 11 of this administrative regulation.

Section 9. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days of receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

- (a) Specific action undertaken to correct a violation;
- (b) The date action was or shall be completed; and
- (c) Action utilized to assure ongoing compliance.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

- (a) Accept the plan;
- (b) Not accept the plan; or
- (c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 11 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

- (a) Within ten (10) calendar days of notification, submit an amended plan; or
- (b) Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(4).

(7) Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may deny or revoke an application for licensure or license.

(8) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency~~(of notification)~~ in accordance with KRS 199.896(5)(c).

Section 10. Intermediate Sanctions. (1) If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:110, or 922 KAR 2:120, the cabinet may, based on the severity of the violation:

- (a) Require the provider to participate in additional training;
- (b) Increase the frequency of monitoring by cabinet staff;
- (c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or
- (d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall result in a suspension or revocation of the license if a child-care center:

- (a) Fails to meet a condition of the intermediate sanction; or
- (b) Violates a requirement of an intermediate sanction.

Section 11. Basis for Denial, Suspension or Revocation. (1) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896(4) and (19) if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to



meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120.

(2) For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.

(3) An individual described in Section 6(4) of this administrative regulation~~[A director, employee, volunteer, any person with supervisory or disciplinary control over, or having unsupervised contact with, a child]~~ shall report to the licensee if:

(a) Convicted of, or entered an Alford or guilty plea to:

1. A violent crime or sex crime in accordance with KRS 17.165;

or

2. A crime specified in Section 6(6)~~[6(5)]~~ of this administrative regulation;

(b) The subject of a cabinet child abuse or neglect investigation;

(c) Found by the cabinet or a court to have abused or neglected a child;

(d) Convicted of, or entered an Alford or guilty plea to, a drug-related felony, and five (5) years have not elapsed since the person was fully discharged from imprisonment, probation, or parole;

(e) Placed on the Sex Offender Registry; or

(f) Determined by a physician to have a health condition that renders the person unable to care for children.

(4) Each licensee shall report to the cabinet or its designee if the:

(a) Licensee or an individual described in Section 6(4) of this administrative regulation~~[, director, employee, volunteer, or another person who submitted to a background check]~~ meets a criterion of subsection (3) of this section; or

(b) Licensee meets a criterion of subsection (7)(i) of this section.

(5) Emergency Action. (a) The cabinet shall take emergency action~~[be taken]~~ in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within five (5) calendar days of receipt of the order to determine the propriety of the licensure's suspension.

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(g) 1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B.

(6) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(7) Unless an applicant for a license meets requirements of Section 6(8)~~[6(7)]~~[6(5)] of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider which had its certification, license, or registra-

tion, or permit to operate~~[been previously]~~ denied, suspended, or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial, suspension, or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:110, 922 KAR 2:120, or this administrative regulation;

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud or abuse of that program;

(f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, suspended,~~[or]~~ revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;~~[or]~~

(g)~~[(f)]~~ The applicant listed as an officer, director, incorporator, or organizer of a cooperation or limited liability company whose child-care center license was denied, suspended,~~[or]~~ revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7)~~[three (3)]~~ years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(11)(f) or 6(12)~~[6(10)(f) or 6(11)]~~ of this administrative regulation;

(j) The applicant's background check reveals that the applicant:

1. Is listed on the:

a. Central registry in accordance with 922 KAR 1:470; or

b. Sex Offender Registry; or

2. Has been convicted of, or entered an Alford or guilty plea to, a crime specified in Section 6(6)~~[6(5)]~~ of this administrative regulation, including a felony offense involving fraud, embezzlement, theft, or forgery; or

(k) The licensee is the subject of more than two (2) intermediate sanctions during a three (3) year period.

(8) A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(11)(f) or 6(12)~~[6(10)(f) or 6(11)]~~ of this administrative regulation;~~[or]~~

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child; or

2. The child-care center;

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or

2. A governmental assistance program as a result of fraud or abuse of that program;

(d) The licensee fails to meet a condition of, or violates a requirement of an intermediate sanction pursuant to Section 10(2) of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet; or

(f) The licensee is the subject of more than two (2) intermediate sanctions during a three (3) year period.

(9) The cabinet or its designee shall suspend the license if:

(a) Regulatory violations are found that pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The child care-center fails to comply with the approved corrective active plan.

Section 12. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 13. Right of Appeal. (1) If an application has been



denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution. The request shall:

(a) Be submitted to the Secretary of the cabinet or designee within twenty (20) calendar days of receipt of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 14. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and

(d) Include documentation that disputes the deficiency.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule a first-level informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The first-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The first-level informal dispute resolution meeting shall be conducted by:

(a) The regional program manager or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar days of completion of the first-level informal dispute resolution meeting or request, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) An applicant or a licensee may appeal a decision issued by the regional program manager or designee by:

(a) Proceeding with a hearing according to KRS 13B.050; or

(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated Child Care or designee within ten (10) calendar days of receipt of the first level decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff.

(7) Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated Child Care or designee shall:

(a) Review the decision issued from the first-level informal dispute resolution;

(b) Review the documentation described in subsection (1)(d) of this section; and

(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.

(8) The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(9) Within ten (10) calendar days of completion of the second-level informal dispute resolution meeting or request, the Director of the Division of Regulated Child Care or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(10) If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated Child Care or designee shall comply with the provisions of subsection (9)(a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.

(11) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.

(12) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.

(13) A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(14) Emergency action taken in accordance with Section 11(5) of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

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

(a) "OIG-DRCC-01, Child-Care Center License Application", edition 4/2013[8/3/12]; and

(b) "OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution", edition 8/3/12.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 11, 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 Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child-care center, and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child-care center and related due process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center li-

cense and related due process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation: (1) clarifies background check requirements for applicants who may not serve in the role of the child-care center's director, employee, volunteer, or other person having contact with children in care; (2) prohibits a license applicant and a licensed child-care center's director from having been convicted of, or entered an Alford or guilty plea to, a felony offense involving theft, fraud, embezzlement, or forgery; (3) extends the disqualification period from license from three to seven years; (4) specifies the cabinet can continue to pursue adverse action even if the child-care center's license is voluntarily relinquished; (5) adds conditions that can result in revocation or denial of a license to include refusal of access by a parent, the cabinet, or another agency with regulatory authority; having more than two intermediate sanctions in a three year period; submitting false information to the cabinet; and being discontinued or disqualified from the Child Care Assistance Program (CCAP) or another governmental assistance program due to fraud or abuse; (6) clarifies due process for emergency actions; (7) prohibits a licensee subject to a finding of fraud from changing ownership of the license or requesting a license for a new facility pending the outcome of the fraud investigation; and (8) creates a process for preliminary licensure of a new child-care center prior to regular license issuance. The amendment also makes technical corrections in accordance with KRS Chapter 13A, including corresponding updates to material incorporated.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; respond appropriately and timely to waste, fraud, abuse, and repeat deficient practice by licensed providers; and foster provider integrity and quality assurance thereby protecting the state and federal funding available to child care in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of child-care center licensure standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of child-care center licensure standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of December 31, 2012, there were 2,297 Kentucky licensed child-care centers, both Type I and Type II.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require new licensees to seek preliminary licensure prior to regular licensure, thereby allowing the cabinet to monitor the licensee after initial inspection of the facility, once children are being served. An individual with a felony conviction, Alford plea, or guilty plea involving fraud, theft, embezzlement, or forgery will be prohibited from being a new applicant or a director of licensed child-care centers. The amendment clarifies that applicants are required to submit to background checks, and that licensees are to provide access to the cabinet, a parent of a child in care, and another agency with regulatory authority during hours of operation. Other provisions incorporated within this administrative regulation should not impact the vast majority of providers, but rather those providers who have engaged in repeatedly deficient, wasteful, abusive, and/or fraudulent practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): The amendment to this administrative regulation should entail no new costs to existing licensed child-care centers. New applicants who are not already subject to background check requirements will be required to undergo initial background checks to ensure no threat, harm, or danger to children in care and to better assure integrity in providers' billing, operations, and programmatic oversight.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicant and licensed child-care centers and the children in their care will benefit from measures to prevent and adequately respond to waste, fraud, and abuse; and greater program integrity and quality assurance in the child care community.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 199.896(2), (6)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 98.2, 42 U.S.C. 601-619, KRS 194A.050(1), 199.896(2), (6)

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

(a) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will generate no revenue in the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(Amended After Comments)**

**922 KAR 2:100. Certification of family child-care homes.**

RELATES TO: KRS Chapter 13B, 17.165, 17.500 – 17.580, 186.020, 189.125, 194A.050(1), 199.011(2), (4), 199.894(5), 199.895, 199.896(18), 199.897, 199.898, 199.8982, 214.010, 214.036, 314.01(5), 527.070(1), 600.020, 620.020(8), 620.030, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Assistant" means a person:

(a) Who meets the requirements listed in Section 2(6) and Section 10 (7), (8), and (9) of this administrative regulation; and

(b) Whose work is either paid or unpaid.

(3) "Cabinet" is defined by the KRS 199.011(2).

(4) "Child" is defined by KRS 199.011(4).

(5) "Corporal physical discipline" is defined by KRS 199.896(18).

(6) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(7) "Family child-care home" is defined by KRS 199.894(5).

(8) "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse or practitioner; or

(d) Registered nurse as defined by KRS 314.011(5) under the

supervision of a physician.

(9) "Home" means the private primary residence of the certified family child-care home provider and contiguous property.

(10) "Infant" means a child who is less than twelve (12) months of age.

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

(12) "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities.

(13) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(14) "Premises" means the building and contiguous property in which child care is[provided and] certified.

(15) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(16) "Provider" means an owner, operator, or person who:

(a) Cares for a child in the provider's own home;

(b) Is not required to be licensed under 922 KAR 2:090; and

(c) Meets the requirements of Section 2 of this administrative regulation.

(17) "Related" means having one (1) of the following relationships with the provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child; or

(g) Child in legal custody of the provider.

(18) "School-age child" means a child attending kindergarten, elementary, or secondary education.

(19) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(20) "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The cabinet or its designee shall be responsible for certifying a family child-care home.

(2) An applicant for certification shall:

(a) Show proof by photo identification or birth certificate that the individual is at least eighteen (18) years of age;

(b) Obtain commercial liability insurance of at least \$50,000 per occurrence; and

(c) Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-DRCC-03, Certification Application for Family Child-Care Home;

2. A nonrefundable certification fee pursuant to KRS 199.8982(1)(b);

3. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;

4. Documentation of the requirements of KRS 199.8982(1)(a)1 through 3 and 5;

5. A DCC-157[OIG-DRCC-04], Certified Family Child-Care Home Central Registry Check, to complete:

a. A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and

b. An address check of the Sex Offender Registry;

6. A completed criminal records check required by KRS 17.165(5); and

7. A criminal records check for any previous state of residence completed once if:

a. The applicant resided outside the state of Kentucky in the last five (5) years; and

b. No criminal records check has been completed for the applicant's previous state of residence.

(3) An initial applicant for certification shall have a:

(a) High school diploma, general equivalency diploma (GED),

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or documentation from a comparable educational entity; or

(b) Commonwealth Child Care Credential in accordance with 922 KAR 2:250.

(4) An applicant shall be currently certified by an agency approved in accordance with 922 KAR 2:240 in infant and child:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(5) An adult living in the home of the applicant, present during the hours of operation, or having unsupervised contact with a child in care, and the applicant's assistant shall submit to the cabinet:

(a) A criminal records check pursuant to KRS 17.165(5) by the Kentucky State Police or the Administrative Office of the Courts within one (1) year prior to application;

(b) A DCC-157[OIG-DRCC-04] to complete:

1. A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and

2. An address check of Sex Offender Registry;

(c) A criminal records check completed once for any previous state of residence if:

1. The adult resided outside the state of Kentucky in the last five (5) years; and

2. No criminal records check has been completed for the adult's previous state of residence; and

(d) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of active tuberculosis.

(6) An applicant or assistant who has been convicted of, or entered an Alford or guilty plea to, a non-violent felony or misdemeanor may be approved on a case by case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences after the conviction, Alford plea, or guilty plea.

(7) Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:

(a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 18(7) of this administrative regulation.

(8) If the requirements of subsections (1) through (7) of this section, Section 3, and Sections 10 through 19 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.

(9) Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03, an applicant shall:

(a) Demonstrate completion of six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and

(b) Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 10(1) of this administrative regulation.

(10) A family child-care home certificate shall:

(a) Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

(b) Contain the:

1. Name and address of the child care provider;

2. Maximum number of unrelated children who may be served;

3. Identification number; and

4. Effective and expiration dates[date]; and

(c) Be valid for only the:

1. Name of the individual authorized on the certificate to operate a family child-care home; and

2. Residential address printed on the certificate.

(11) A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-DRCC-03;

(c) An inspection of the new home; and

(d) Continued compliance with this administrative regulation.

Section 3. Renewal of Certification. (1) A family child-care certification shall be renewed every two (2) years.

(2) A family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:

(a) A completed OIG-DRCC-03;

(b) A nonrefundable renewal fee pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 19 of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the application;

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home within fifteen (15) calendar days of receipt of the application if the requirements in Sections 2, 3, and 10 through 19 of this administrative regulation are met.

(4) To the extent funds are available, the cabinet may conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b) annually as a condition of certification renewal.

Section 4. Statement of Deficiency and Corrective Action Plans. (1) If the cabinet finds a provider noncompliant with Sections 2, 3, or 10 through 19 of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or will be completed; and

(c) Action utilized to assure ongoing compliance.

(4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the family child-care home's certification in accordance with Section 6, 7, or 8 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unaccepted plan shall:

(a) Submit an amended plan within ten (10) calendar days of notification; or

(b) Have its certification revoked or denied for failure to submit an acceptable amended plan.

(7) Following two (2) unacceptable plans of correction in a forty-five (45) calendar day period, the cabinet shall deny an application for certification or revoke a provider's certification.

(8) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

(9) The voluntary relinquishment of a family child-care home's certification shall not preclude the cabinet's pursuit of adverse action.

Section 5. Denial of Application for Certification. (1) An application for initial certification or renewal of certification as a family child-care home shall be denied if the applicant, an assistant, or an adult residing in the household:

(a) Has abused or neglected a child according to a check of the central registry in accordance with 922 KAR 1:470;

(b) Has a history of behavior that may impact the safety or security of a child in care including:

1. A criminal conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;

2. A conviction for, or an Alford plea or a plea of guilty to, a drug-related felony, and (5) five years has not elapsed since the

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person was fully discharged from imprisonment, probation, or parole; or

3. Other behavior or condition indicating inability to provide reliable care to a child; or

(c) Is placed on the Sex Offender Registry.

(2) An application for certification as a family child-care home provider shall be denied if the applicant:

(a) Fails to comply with the minimum certification standards specified in Sections 10 through 19 of this administrative regulation and KRS 199.8982; or

(b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(c) Refuses, during the hours of operation, access by:

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

a. A child in care; or

b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is placed on intermediate sanction more than two (2) times in a three (3) year period; or

(e) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud or abuse of that program.

(3) Effect of previous denial or revocation.

(a) If an applicant has had a previous child care registration, certification, [or] license, or permit to operate subject to denial, suspension, [or] revocation, or voluntary relinquishment pending an investigation or adverse action, the cabinet shall grant the applicant a certificate to operate a family child-care home if:

1. A seven (7)[two (2)] year period has expired from the:

a. Date of the prior denial, suspension, or revocation;

b. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action;

c. Last day of legal remedies being exhausted; or

d.[e.] Date of the Final Order from an administrative hearing; and

2. The applicant has:

a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;

b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

c. Not had an application, registration, certificate, [or] license, or permit to operate as a child care provider denied or revoked for:

(i) Conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;

(ii) Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;

(iii) Placement on the Sex Offender Registry; [or]

(iv) Conviction of, or an Alford or guilty plea to, a drug-related felony, and five (5) years have not elapsed since the person was fully discharged from imprisonment, probation, or parole; or

(v) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud or abuse of that program.

(b) If a certificate is granted after the seven (7)[two (2)] year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6. Intermediate Sanctions. (1) If the cabinet determines that a certified family child-care home provider is in violation of this administrative regulation, the cabinet may, based on the severity of the violation:

(a) Require the provider to participate in additional training;

(b) Increase the frequency of monitoring by cabinet staff;

(c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or

(d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall result in a suspension or revocation of certification if a certified family child-care home provider:

(a) Fails to meet a condition of the intermediate sanction; or

(b) Violates a requirement of an intermediate sanction.

Section 7. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125, by issuing an emergency order that results in suspension of the operation of a certified family child-care home. (1) An emergency order shall:

(a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and

(b) Specify the regulatory violation that caused the emergency condition to exist.

(2) Upon receipt of an emergency order, a provider shall surrender the certificate of operation to the cabinet.

(3) The cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care of the suspended provider; and

(b) Refer a parent for assistance in locating alternate child care arrangements.

(4) A certified family child-care home required to comply with an emergency order issued in accordance with this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the order to determine the propriety of the certification's suspension.

(5) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(6)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend certification.

(b) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(7) A provider's certification shall be revoked if the:

(a) Provider does not request a hearing within the timeframes established in subsection (6) of this section;

(b) The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B; or

(c)[A provider's certification for operation of a family child-care home shall be revoked if:

(a) The provider does not request a hearing; or

(b) The condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

Section 8. Revocation. (1) A family child-care home provider's certification shall be revoked if a provider:

(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(b) Interferes with a cabinet representative's ability to perform an official duty;

(c) Refuses, during the hours of operation, access by:

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

a. A child in care; or

b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records[a parent or cabinet representative to:

1. A child; or

2. Space in the home used for child care];

(d) Is convicted of, or enters an Alford or guilty plea to, a criminal charge that threatens the health, safety, or welfare of a child in

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care;

(e) Is unable to operate a family child-care home due to a medical condition;[or]

(f) Is unable to continue to meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10 through 19 of this administrative regulation;

(g) Is placed on intermediate sanction more than two (2) times in a three (3) year period; or

(h) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud or abuse of that program.

(2) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of revocation delivered by personal service or through certified mail at least thirty (30) calendar days prior to the effective date of the revocation.

(3) The notice of revocation shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;

(c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal, prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.

(4) If a provider's certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care; and

(b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9. Appeal of Denials, Intermediate Sanctions, Suspension, and Revocation. (1) If the cabinet denies certification, imposes an intermediate sanction, suspends certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action.

(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.

(3) If a final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10. Standards for the Provider. (1)(a) A provider shall complete annually at least nine (9) hours of cabinet-approved early care and education training beginning with the second year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.8982(2):

1. Within the second year of employment or operation in child care; and

2. Every subsequent five (5) years of employment or operation in child care.

(b) A provider or assistant's compliance with the training in accordance with paragraph (a) of this subsection or subsection (9) of this section may be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.

(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.

(3) If a provider cares for more than four (4) infants, including the provider's own or related infants, the provider shall have an assistant present.

(4) A provider shall not care for more than six (6) children under the age of six (6) years old, including the provider's own or related children.

(5) The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at

any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

(6) If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours; and

(b) Employ an assistant during the period of respite.

(7) Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:

(a) CPR; and

(b) First aid.

(8) An assistant shall be:

(a) Eighteen (18) years of age or older;

(b) Under direct supervision of a provider;

(c) Used for providing care in a certified family child-care home; and

(d) Used in the absence of the certified provider.

(9) An assistant used in the absence of the family child-care home provider in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) hours of cabinet-approved training, including pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance with subsection (1) of this section.

(10) If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the family-in-need-of-services assessment or investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(11) During hours of operation, a provider and another person in the home shall:

(a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking in the presence of children in care.

(12) During a provider's absence, an assistant shall be physically present at the home during hours of operation.

(13) A provider shall:

(a) Not be employed outside of the home during regular hours of operation; and

(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.

Section 11. The General Requirements of the Family Child-Care Home Environment. (1) A provider's home and each play area used for child care shall:

(a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and

(b) Have adequate:

1. Heating and cooling;

2. Light; and

3. Ventilation.

(2) Each floor level used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector;

(c) Fire extinguisher; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or

2. Has an attached garage.

(3) A new applicant or a provider who changes location shall have at least two (2) unblocked exits to the outside on each floor level used for child care.

(4) The areas of the home that are accessible to children in care shall be free from items harmful to children including the following items:

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- (a) Cleaning supplies, poisons, paints, and insecticides;
- (b) Knives, scissors, and sharp objects;
- (c) Power tools, lawn mowers, hand tools, nails, and other equipment;
- (d) Matches, cigarettes, lighters, combustibles, and flammable liquids;
- (e) Alcoholic beverages;
- (f) Plastic bags; and
- (g) Litter and rubbish.
- (5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:
  - (a) Key; or
  - (b) Combination.
- (6) Electrical outlets not in use shall be covered.
- (7) An electric fan, floor furnace, or freestanding heater or fireplace shall:
  - (a) Be out of the reach of a child; or
  - (b) Have a safety guard to protect a child from injury.
- (8) A certified family child-care home shall have:
  - (a) At least one (1) working land-line telephone on each level used for child care unless the cabinet has been notified that the telephone is temporarily out of service; and
  - (b) A list of emergency numbers posted by each telephone, including numbers for the:
    - 1. Police;
    - 2. Fire station;
    - 3. Emergency medical care and rescue squad; and
    - 4. Poison control center.
- (9) Equipment and toys shall be:
  - (a) Designated by the manufacturer as developmentally appropriate to the age of children in care;
  - (b) In sufficient quantity for the number of children in care; and
  - (c) Safe, sound, clean, and in good repair.
- (10) Stairs and steps used for children in care shall be:
  - (a) Solid;
  - (b) Safe; and
  - (c) Railed.
- (11) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.
- (12) Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:
  - (a) Play; and
  - (b) Activities that meet the developmental needs of the children in care.
- (13) An outdoor play area shall be free of unavoidable danger or risk.
- (14) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.
- (15) Outdoor stationary play equipment shall be:
  - (a) Securely anchored;
  - (b) Developmentally appropriate; and
  - (c) Safe.
- (16) A trampoline shall not be accessible to a child in the care of a provider.
- (17) A swimming pool on the premises shall:
  - (a) Be maintained;
  - (b) Have a water filtering system;
  - (c) Be supervised when in use; and
  - (d) Be inaccessible to children when not in use.
- (18) An above-ground pool shall have:
  - (a) A stationary wall no less than four (4) feet tall; and
  - (b) Hand holds or foot holds that are inaccessible when the pool is not in use.
- (19) A fire drill shall be:
  - (a) Conducted during hours of operation at least monthly; and
  - (b) Documented.
- (20) An earthquake drill and a tornado drill shall be:
  - (a) Conducted during hours of operation at least quarterly; and
  - (b) Documented.
- (21) A family child-care home shall:
  - (a) Be clean;
  - (b) Be uncluttered;

- (c) Be free of insects and rodents;
- (d) Have a water supply that is:
  - 1. Potable;
  - 2. Adequate; and
  - 3. From an approved public water supply; and
- (e) Have bathrooms, including toilets, sinks, and potty chairs that are:
  - 1. Sanitary; and
  - 2. In good working condition.
- (22) Windows, doors, and outer openings shall be screened to prevent the entrance of vermin.
- (23) Indoor and outdoor garbage shall be stored in a water-proof container with a tight-fitting cover.
- (24) Playpens and play yards shall:
  - (a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
  - (b) Be manufactured for commercial use; and
  - (c) Not be used for sleeping or napping.

Section 12. Care Requirements for a Provider. (1) A provider shall ensure the health, safety, and comfort of each child.

(2)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(3) Television or video viewing by a child shall be limited to:

- (a) Two (2) hours daily;
- (b) The planned program activities; and
- (c) Developmentally appropriate child-related content, as designated by standardized content guidelines.

(4) A child shall wash hands with liquid soap and warm running water:

- (a) Before and after eating or handling food;
- (b) After toileting or diaper change;
- (c) After handling animals;
- (d) After wiping or blowing nose;
- (e) After touching items soiled with body fluids or waste; and
- (f) After outdoor and indoor play time.

(5) A provider and an assistant shall:

(a) Wash hands with liquid soap and warm running water:

- 1. Before and after diapering a child;
  - 2. Before and after feeding a child;
  - 3. After toileting or assisting a child with toileting;
  - 4. After handling animals;
  - 5. Before dispensing medication;
  - 6. After caring for a sick child; and
  - 7. After wiping or blowing a child's or own nose; and
- (b) Assure that a child does not share:

- 1. Cups;
- 2. Eating utensils;
- 3. Wash cloths;
- 4. Towels; and
- 5. Toiletry items.

(6) An infant shall sleep and nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(7) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(8) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

- 1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
- 2. A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet;

3. ~~No positioning device or monitor unless the device or monitor is required by the infant's health professional;~~

4. ~~No loose bedding; and~~

4. ~~5.] No toys or other items except for the infant's pacifier; or~~

(b) For a toddler or preschool-age child:

- 1. An individual bed, a two (2) inch thick waterproof mat, or cot

in good repair; and

2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(9) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.

(10) A child who does not sleep shall be permitted to play quietly and be visually supervised.

(11) If overnight care is provided, a provider or an assistant shall:

- (a) Remain awake until every child in care is asleep; and
- (b) Sleep on the same floor level of the home as an infant or toddler.

(12) A certified family child care home shall provide a daily planned program:

- (a) Posted in writing in a conspicuous location;
- (b) Of activities that are individualized and developmentally appropriate for each child served;
- (c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) That offers a variety of creative activities including:

1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building;
7. Tactile activity;
8. Culture;
9. Indoor or outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity; and

11. An opportunity for a child to:

- a. Have some free choice of activities;
- b. If desired, play apart from the group at times; and
- c. Practice developmentally appropriate self-help procedures in respect to:

- (i) Clothing;
- (ii) Toileting;
- (iii) Hand-washing; and
- (iv) Eating.

(13) Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises of a family child-care home without a caregiver.

(14) Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).

(15) A child shall be released from a family child-care home to:

- (a) The child's custodial parent;
- (b) The person designated in writing by the parent to receive the child; or
- (c) In an emergency, a person designated over the telephone by the parent.

Section 13. Toilet and Diapering Requirements. (1) A toilet room shall:

- (a) Have an adequate supply of toilet paper; and
- (b) Be cleaned and sanitized daily.
- (2) A sink shall be:
  - (a) Located in or immediately adjacent to toilets;
  - (b) Equipped with hot and cold running water that allows for hand washing;
  - (c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
  - (d) Equipped with liquid soap and single use, disposable hand drying material;
  - (e) Equipped with an easily cleanable, covered waste receptacle; and
  - (f) Immediately adjacent to a changing area used for infants and toddlers.

(3) Each toilet shall:

- (a) Be kept in clean condition;
- (b) Be kept in good repair;
- (c) Be in a lighted room; and
- (d) Have ventilation.

(4) Toilet training shall be coordinated with the child's parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(6) If a toilet training chair is used, the chair shall be:

- (a) Emptied promptly; and
- (b) Sanitized after each use.

(7) Diapers or clothing shall be:

- (a) Changed when soiled or wet;
- (b) Stored in a covered leak proof container temporarily; and
- (c) Washed or disposed of at least once a day.

(8) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(9) If a child is being diapered, the child shall:

- (a) Not be left unattended; and
- (b) Be placed on a surface that is:
  1. Clean;
  2. Padded;
  3. Free of holes, rips, tears, or other damage;
  4. Nonabsorbent;
  5. Easily cleaned; and
  6. Free of items not used for diaper changing.

(10) Unless prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(11) A provider or an assistant shall disinfect the diapering surface after each child is diapered.

(12) If a provider or an assistant wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

Section 14. Food Requirements. (1) A provider and an assistant shall:

- (a) Use sanitary procedures when preparing and serving food;
- (b) Refrigerate perishable food and beverages; and
- (c) Serve:

1. Breast milk or iron-fortified formula to a child age birth to twelve (12) months;

2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or

3. Pasteurized skim or low fat one (1) percent milk to a child age twenty-four (24) months to school-age.

(2) Water shall be:

- (a) Available to a child in care; and
- (b) Served in addition to meal requirements if a child requests throughout the day.

(3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.

(4) Second servings shall be available to a child.

(5) Food shall not be:

- (a) Used for:
  1. Reward; or
  2. Punishment; or
- (b) Withheld until all other food items are consumed.
- (6) Meals shall:
  - (a) Be served in an amount appropriate to the age of the child;
  - (b) Include appropriate types of food according to the age of the child; and

(c) Not be served during television or video viewing.

(7) Breakfast shall include:

- (a) Milk;
- (b) Whole grain or enriched grain bread; and
- (c) Fruit, vegetable, or 100 percent juice.
- (8) A snack shall include two (2) of the following:
  - (a) Milk;
  - (b) Protein source;
  - (c) Fruit, vegetable, or 100 percent juice; or
  - (d) Whole grain or enriched grain bread.



(9) Lunch and dinner shall include:

- (a) Milk;
- (b) Protein source;
- (c) 1. Two (2) vegetables;
- 2. Two (2) fruits; or
- 3. One (1) fruit and one (1) vegetable; and
- (d) Whole grain or enriched grain bread.

(10) A weekly menu shall be:

- (a) Prepared;
- (b) Dated;
- (c) Posted in a conspicuous place; and
- (d) Kept on file for thirty (30) calendar days.

(11) Substitutions to a posted weekly menu shall be noted on the day the meal is served.

(12) Unless provided as part of the fee for child care or the provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent.

(13) Each child's bottle shall be:

- (a) Labeled;
- (b) Covered; and
- (c) Refrigerated.

(14) The refrigerator shall:

- (a) Be in working order; and
- (b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.

(15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(16) While bottle-feeding an infant, the:

- (a) Child shall be held; and
- (b) Bottle shall not be:
  - 1. Propped;
  - 2. Left in the mouth of a sleeping infant; or
  - 3. Heated in a microwave.

Section 15. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock.

(2) Prescription and nonprescription medication shall be administered to a child in care with a daily written request of the child's parent.

(3) Prescription and nonprescription medications shall be:

- (a) Labeled; and
- (b) Administered according to directions or instructions on the label.

(4) A provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and

(b) Wash superficial wounds with soap and water before bandaging.

(5) First aid supplies shall include a fully-equipped first aid kit containing the following non-expired~~nonexpired~~ items:

- (a) Liquid soap;
- (b) Adhesive bandages;
- (c) Sterile gauze;
- (d) Medical tape;
- (e) Scissors;
- (f) Thermometer;
- (g) Flashlight;
- (h) Cold pack;
- (i) First-aid book;
- (j) Disposable gloves; and
- (k) CPR mouthpiece.

(6) A provider shall provide immediate notification of a medical emergency to a child's:

- (a) Parent; or
- (b) Family physician, if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:

- (a) Be able to recognize symptoms of childhood illnesses;
- (b) Be able to provide basic first aid; and

(c) Maintain a child care program that assures affirmative steps

are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 16. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

- 1. The animal is under the supervision and control of an adult;
- 2. Written parental consent has been obtained; and
- 3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:

(a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

Section 17. Transportation. (1) If transportation is provided or arranged by the certified family child-care home provider, the provider shall:

(a) Have written permission from a parent to transport his or her child;

(b) Have a car or van equipped with seat belts;

(c) Require that a child:

1. Be restrained in an appropriate safety seat meeting state and federal motor vehicle safety standards in accordance with KRS 189.125 and 49 C.F.R. 571.213;

2. Remain seated while the vehicle is in motion; and

3. If under thirteen (13) years of age, be transported in the back seat;

(d) Have a valid driver's license issued by the Division of Motor Vehicles;

(e) Have emergency and identification information about each child in the vehicle if children are being transported; and

(f) Conform to state laws pertaining to vehicles, driver's license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended;

(a) At the site of aftercare delivery; or

(b) In a vehicle.

(3) A child shall not be left in a vehicle while it is being repaired.

(4) [(3)] The back of a pickup truck shall not be used to transport a child.

(5) [(4)] Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(6) A vehicle shall not transport children and hazardous materials at the same time.

(7) A vehicle transporting a child shall have the headlamps on.

(8) If the driver is not in the driver's seat, the:

(a) Engine shall be turned off;

(b) Keys shall be removed; and

(c) Emergency brake shall be set.

(9) A driver of a vehicle transporting a child for a certified provider shall:

(a) Be at least twenty-one (21) years old;

(b) Complete:

1. The background checks described in Section 2(2)(c)5 or 2(5) of this administrative regulation; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident which resulted in the death of a person.

(10) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall pursue an adverse action in accordance with Section 5, 6, 7, or 8 of this administrative regulation:

(a) For a violation of this section; or

(b) If the provider:

1. Fails to report an accident in accordance with Section 19(10)(a) of this administrative regulation; or
2. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

Section 18. Records. (1) A provider shall maintain:

- (a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;
- (b) A written record for each child:
  1. Completed and signed by the child's parent;
  2. Retained on file on the first day the child attends the family child-care home; and
  3. To contain:
    - a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
    - b. Contact information to enable the provider to contact the child's:
      - (i) Parent at the parent's home or place of employment;
      - (ii) Family physician; and
      - (iii) Preferred hospital;
    - c. The name of each person who is designated in writing to pick-up the child;
    - d. The child's general health status and medical history including, if applicable:
      - (i) Allergies;
      - (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and
      - (iii) Permission from the parent for third-party professional services in the family child-care home;
    - e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;
    - f. Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and
    - g. A permission form for each trip away from the family child-care home signed by the child's parent in accordance with Section 17(1) of this administrative regulation; and
  - (c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.
  - (2) A certified family child-care home provider shall maintain the confidentiality of a child's records.
  - (3) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).
  - (4) A certified family child-care home provider shall:
    - (a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030(1); and
    - (b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4).
  - (5) A certified family child-care home provider shall maintain a written record of:
    - (a) Quarterly practiced earthquake drills and tornado drills detailing the date, time, and participants in accordance with Section 11(20) of this administrative regulation;
    - (b) Monthly practiced fire drills detailing the date, time, and participants in accordance with Section 11(19) of this administrative regulation; and
    - (c) Reports to the cabinet that are required in accordance with Section 19(10) of this administrative regulation.
  - (6) A certified family child-care home provider shall keep all records for five (5) years.
  - (7)(a) A certified family child-care home provider shall have a written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care in accordance with KRS 199.895.
    - (b) The cabinet shall post an online template of an evacuation plan that:
      1. Fulfills requirements of KRS 199.895;
      2. Is optional for an applicant or a family child-care home's use; and

3. Is available to an applicant or a family child-care home without charge.

Section 19. Certified Family Child-Care Home Program. The certified family child-care home provider shall:

- (1) Develop written information that specifies the:
  - (a) Rate for child care;
  - (b) Expected frequency of payment for the program;
  - (c) Hours of operation; and
  - (d) Policy regarding:
    1. Late fees;
    2. Holidays;
    3. Vacation;
    4. Illness; and
    5. Emergency pick up;
- (2) Make available a copy of the certification standards to each parent;
- (3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care home provider is not meeting the standards;
- (4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;
- (5) Allow a parent, and the cabinet, the cabinet's [or its] designee, or another agency with regulatory authority access to the family child-care home at any time a child is in care;
- (6) Communicate with each child's parent about the child's:
  - (a) Development;
  - (b) Activities;
  - (c) Likes; and
  - (d) Dislikes;
- (7) Post in a prominent area in the home:
  - (a) The staff to child ratios described in Section 10 of this administrative regulation;
  - (b) The planned program of activities;
  - (c) Each statement of deficiency issued by the cabinet during the current certification period;
  - (d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and
  - (e) Daily schedule including any trips outside the family child-care home;
- (8) Coordinate at least one (1) annual activity involving parental or family participation;
- (9) Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child; and
- (10) Report:
  - (a) The following to the cabinet within twenty-four (24) hours from the time of discovery:
    1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;
    2. An accident or injury to a child that requires medical care;
    3. An incident that results in legal action by or against the family child-care home that:
      - a. Affects:
        - (i) [a.] A child in care;
        - (ii) [b.] The provider;
        - (iii) [c.] An assistant; or
        - (iv) [d.] A member of the provider's household; or
      - b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud or abuse of that program;
  4. An incident involving fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or
  5. A report of child abuse or neglect that:
    - a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and
    - b. Names the alleged perpetrator as the:
      - (i) Provider;
      - (ii) Provider's assistant; or
      - (ii) Member of the provider's household;
- (b) The death of a child to the cabinet within one (1) hour; or

(c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-157, Certified Family Child-Care Home Central Registry Check", edition 4/13;

(b) "OIG-DRCC-03, Certification Application for Family Child-Care Home", edition 7/13[4/2013][8/3/12];

[(b) "OIG-DRCC-04, Certified Family Child-Care Home Central Registry Check", edition 8/6/12;] and

(c) "OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal", edition 8/3/12.

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

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

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#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for a certified family child-care home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for certified family child-care homes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of standards for certification as a family child-care home.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a certified family child-care home.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies the cabinet can continue to pursue adverse action even if a certified family child-care home voluntarily relinquishes its certification. The amendment adds conditions that can result in revocation or denial of a family child-care home's certification to include refusal of access by a parent, the cabinet, or another agency with regulatory authority; having more than two intermediate sanctions in a three year period; and being discontinued or disqualified from the Child Care Assistance Program (CCAP) or another governmental assistance program due to fraud or abuse. The amendment further specifies reporting and transportation requirements for a certified family child-care home, and appeals of an emergency suspension. The amendment also makes technical corrections in accordance with KRS Chapter 13A, including correspondence updates and technical corrections to incorporated material.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to deter fraud, abuse, or repeat deficient operations by certified providers; and to effectively enforce transportation safety standards for the provider, provider's assistants, and children served by the provider.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by clarifying and enhancing minimum requirements to foster provider integrity and to

protect the health, safety, and welfare of children cared for by certified family child-care home providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of certified family child-care home standards in a manner congruent with recognized practice and other provider types' standards, and supportive of integrity in the child care community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for a certified family child-care home or an existing provider will be impacted by this administrative regulation. As of December 31, 2012, there were 573 Kentucky certified family child-care homes.

(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: Certified providers that transport children in their care will be required to submit drivers to annual checks of the drivers' license history records. Other provisions within this administrative regulation should not impact the vast majority of providers, because they either are clarifying in nature or specify powers of the cabinet to take adverse action against a provider that has repeatedly violated a standard over time, refuses access, or has committed fraud or abuse.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For those certified providers that transport children in their care, drivers will be required to submit to annual checks of the drivers' license history record, which costs \$5, a service charge established by KRS 186.018 and the Kentucky Transportation Cabinet. Other provisions within this administrative regulation should not impact the vast majority of providers, because they either are clarifying in nature or specify powers of the cabinet to take adverse action against a provider that has repeatedly violated a standard over time, refuses access, or has committed fraud or abuse.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified family child-care homes will benefit from greater provider integrity and the records checks of their drivers' license history. Such checks will reinforce transportation standards and conditions of certification, precautionary measures to prevent accident or liabilities, and the safety and security of children in their care during transport.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

This administrative regulation does not establish any fees, or directly or indirectly increase any fees.

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

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### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184
2. State compliance standards. KRS 194A.050(1), 199.8982(1)(f)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services is impacted by this administrative regulation.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184, KRS 194A.050(1), 199.8982(1)(f)
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will generate no revenue in the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will generate no revenue in the subsequent years.
  - (c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program in the first year.
  - (d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program in subsequent years.

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

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

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amended After Comments)

#### 922 KAR 2:110. Child-care center provider requirements.

RELATES TO: KRS 17.165, 17.500–17.580, 199.011(2), 199.894(3), 199.895, 199.896, 199.897, 199.898, 214.010, 214.036, 314.011(5), 620.020(8), 620.030, 45 C.F.R. 98.2  
STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and

Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes standards for child-care centers.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.011(2).

(3) "Child care" means care of a child in a center or home which regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(4) "Child-care center" is defined by KRS 199.894(3).

(5) "Director" means an individual who meets the education and training requirements as specified in Section 4 of this administrative regulation.

(6) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician's assistant;
- (c) Advanced registered nurse practitioner; or
- (d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(7) "Infant" means a child who is less than twelve (12) months of age.

(8) "Licensee" means the owner and operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
  1. Board of education;
  2. Private school;
  3. Faith based organization;
  4. Government agency; or
  5. Institution.

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

(10) "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities such as:

- (a) Distribution of a newsletter;
- (b) Distribution of a program calendar;
- (c) A conference between the provider and a parent; or
- (d) Other activity designed to engage a parent in the program's activities.

(11) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(12) "Premises" means the building and contiguous property in which child care is licensed~~provided~~.

(13) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(14) "Qualified substitute" means a person who meets the requirements of a staff person as described in Section 5 of this administrative regulation.

(15) "School-age" means a child attending kindergarten, elementary, or secondary education.

(16) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(17) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

- (a) Four (4) or more children in a nonresidential setting; or
- (b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19) "Type II child-care center" means the primary residence of

the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. General. (1) A licensee shall be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(2) Child-care center staff shall be:

(a) Instructed by the child-care center's director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(3) Information concerning a child or the child's parent shall be kept in strict confidence by child-care center staff, except as otherwise required by law.

(4) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(5) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;

2. Job descriptions;

3. An organization chart;

4. Chain of command; and

5. Other procedures necessary to ensure implementation of:

a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;

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

c. 922 KAR 2:120, Child-care center health and safety standards; and

d. This administrative regulation.

(6) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(7) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

(a) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;

(b) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;

(c) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;

(d) A description of services provided by the child-care center, including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care;

(e) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(f) Daily schedule.

(8) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the family-in-need-of-services assessment or investigation; and

(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 3. Records. (1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the child-care center; and

3. To contain:

a. Identifying information about the child, which includes, at a

minimum, the child's name, address, and date of birth;

b. Contact information to enable a person in charge to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the child-care center;

e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip off the premises signed by the child's parent in accordance with 922 KAR 2:120, Section 12;

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;

(d) A written schedule of staff working hours;

(e) A current personnel file for each child-care center staff person to include:

1. Name, address, date of birth, and date of employment;

2. Proof of educational qualifications;

3. Record of annual performance evaluation;

4. Written record of training participation to include:

a. The training source;

b. Location;

c. Date; and

d. Number of clock hours completed;

5. Every two (2) years, a:

a. Statement from a health professional that the individual is free of active tuberculosis; or

b. Copy of negative tuberculin results; and

6. For **an individual specified in 922 KAR 2:090, Section 6(4)[a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with, a child in care]**, the results of a:

a. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;

b. Criminal records check required by KRS 199.896(19);

c. Criminal records check from any previous state of residence completed once if:

(i) The individual resided outside the state of Kentucky in the last five (5) years; and

(ii) No criminal records check has been completed for the individual's previous state of residence; and

d. An address check of the Sex Offender Registry;

(f) A written annual plan for child-care staff professional development;

(g) A written evacuation plan in accordance with 922 KAR 2:090, Section 5, and KRS 199.895;

(h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;

(k) A written record of reports to the cabinet required in Section 6 of this administrative regulation; and

(l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.

(2) A child-care center shall:

(a) Maintain the confidentiality of a child's record;

- (b) Maintain all records for five (5) years; and
- (c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4).

Section 4. Director Requirements and Responsibilities. (1) Effective with the adoption of this administrative regulation, a director shall:

- (a) Be twenty-one (21) years of age;
  - (b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;
  - (c) Not be employed in a position other than an on-site child care director, or director of multiple facilities, during the hours the child-care center is in operation; and
  - (d) Ensure:
    1. Compliance with 922 KAR 2:090, 922 KAR 2:120, and this administrative regulation; and
    2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours;
  - (e) Manage the staff in their individual job descriptions;
  - (f) Develop child-care center plans, policies, and procedures;
  - (g) Supervise staff conduct to ensure implementation of program policies and procedures;
  - (h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;
  - (i) Conduct, manage, and document in writing staff meetings;
  - (j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;
  - (k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;
  - (l) Provide for the health, safety, and comfort of each child;
  - (m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;
  - (n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as described in Section 3(1)(e)6 of this administrative regulation;
  - (o) Assure each mandatory record specified in Section 3 of this administrative regulation has not been altered or falsified; and
  - (p) Coordinate at least one (1) annual activity involving parental or family participation.
- (2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:
- (a) Master's degree in Early Childhood Education and Development;
  - (b) Bachelor's degree in Early Childhood Education and Development;
  - (c) Master's degree or a bachelor's degree in a field other than Early Childhood Education and Development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;
  - (d) Associate degree in Early Childhood Education and Development;
  - (e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children in;
  - (f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:
    1. A school-based program following Department of Education guidelines;
    2. An early childhood development program, such as Head Start; or
    3. A licensed or certified child care program;
  - (g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:
    1. A school-based program following Department of Education guidelines;
    2. An early childhood development program (head start); or

- 3. A licensed or certified child-care program; or
- (h) Three (3) years of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;
  2. An early childhood development program, such as Head Start; or
  3. A licensed or certified child-care program.
- (3) The director of a Type II child-care center shall:
- (a) Meet the requirements in subsection (2) of this section; or
  - (b) Meet two (2) of the following:
    1. Have twelve (12) hours of orientation and child development training;
    2. Have one (1) year of verifiable full-time paid experience working directly with children in:
      - a. A school-based program following Department of Education guidelines;
      - b. An early childhood development program, such as Head Start; or
      - c. A licensed or certified child-care program; or
    3. Obtain six (6) additional hours of training in child day care program administration.

Section 5. Staff Requirements. (1) Child-care center staff:

- (a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:
  1. High school diploma;
  2. GED or qualifying documentation from a comparable educational entity; or
  3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and
- (b) Shall provide, prior to employment and every two (2) years thereafter:
  1. A statement from a health professional that the individual is free of active tuberculosis; or
  2. A copy of negative tuberculin results.
- (2) A child-care center shall not employ a person:
  - (a) ~~Convicted of, or who entered an Alford or guilty plea to, a crime pursuant to 922 KAR 2:090, Section 6(6)(6.5))~~ [KRS 47.165];
  - (b) Found by the cabinet to have abused or neglected a child, pursuant to 922 KAR 1:470;
  - (c) ~~Convicted of a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;~~
  - (d) ~~Placed on the Sex Offender Registry; or~~
  - (d) [(e)] Determined by a physician to have a health condition that renders the person unable to care for children.
- (3) For a child-care center licensed for infant, toddler, or pre-school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
  - (a) Infant and child cardiopulmonary resuscitation; and
  - (b) Infant and child first aid.
- (4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
  - (a) Adult cardiopulmonary resuscitation; and
  - (b) First aid.
- (5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (14) of this section.
- (6) Child-care centers shall have available in case of need:
  - (a) One (1) qualified substitute staff person for a Type II child-care center; or
  - (b) Two (2) qualified substitute staff persons for a Type I child-care center.
- (7) Each qualified substitute staff person shall:
  - (a) Meet the staff requirements of this administrative regulation; and
  - (b) Provide the required documentation to verify compliance with this administrative regulation.
- (8) A qualified substitute who works in more than one (1) li-

censed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.

(9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:090, or 922 KAR 2:120, the Type II child-care center shall close temporarily until the operator is able to resume compliance.

(10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;

(b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance or alcohol use shall not be permitted on the premises during hours of operation.

(12) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(13)(a) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center **a:**

1. Criminal records check indicating that the adult has not been convicted of, or entered an Alford or guilty plea to, a:

a. Crime pursuant to KRS 17.165; or

b. Drug-related felony, and five (5) years have not lapsed since the person was fully discharged from imprisonment, probation, or parole;

2. Child abuse and neglect check using the central registry in accordance with 922 KAR 1:470, indicating that the adult has not been found by the cabinet to have abused or neglected a child;

3.**[A]** Criminal records check for any previous state of residence completed once if:

a. The adult resided outside the state of Kentucky in the last five (5) years; and

b. No criminal records check has been completed for the adult's previous state of residence. **The check shall indicate that the adult has not been convicted of, or has not entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in subparagraph 1 of this paragraph;** and

4.**[A]** Copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results or health professional's statement documenting that the adult is free of tuberculosis.

(b) An address check of the Sex Offender Registry conducted on behalf of the applicant for a Type II child-care center and supporting documentation shall indicate that no individual residing in the household is a registered sex offender.

(14) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment, including one and one-half (1 1/2) hours of pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training during each subsequent year of employment, including one and one-half (1 1/2) hours of pediatric abusive head trauma training completed once every five (5) years.

(15) A staff person's compliance with the requirement for pediatric abusive head trauma training specified in subsection (14) or other training requirements of this section may be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 6. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section

within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care;

(c) An incident that results in legal action by or against the child-care center that;

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud or abuse;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services; or

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with a child in care as the alleged perpetrator.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirement of Section (4) of this administrative regulation.

(4) Written notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership;

(b) Change of location;

(c) Increase in capacity;

(d) Change in hours of operation;

(e) Change of services in the following categories:

1. Infant;

2. Toddler;

3. Preschool-age;

4. School-age;

5. Nontraditional hours; or

6. Transportation; or

(f) Addition to the square footage a child-care center's premises.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 11, 2013 at 1 p.m.

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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for caregivers in licensed child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for a caregiver in a licensed child-care center.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing standards for caregivers in a licensed child-care center.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for a caregiver in a licensed child-care center.

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

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(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation further specifies reporting requirements for licensed child-care providers to include accidents when the provider is transporting children in care and the provider's disqualification from a governmental assistance program due to fraud and abuse of the program. The amendment also makes technical corrections for congruency with other concurrent amendments, reinforcement of provider qualifications, and in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for alignment of caregiver standards for licensed child-care providers with other governing administrative regulations for the same and other provider types. In addition, the amendment will promote the health, safety, and welfare of children in care and foster program integrity and quality assurance in the child care community.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the content of the authorizing statutes through its update and clarification of caregiver requirements for licensed child-care centers.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of licensed child-care centers' caregiver standards in conformity with state law and expert recommendations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of December 31, 2012, there were 2,297 Kentucky licensed child-care centers, both Type I and Type II.

(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 licensed child-care provider will be required to report an accident when the provider is transporting a child care in care and disqualification from a governmental assistance program due to fraud and abuse of that program. These reporting requirements have been largely specified. Other provisions of this amendment are technical and conforming in nature.

(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 entail no new costs for caregivers in licensed child-care centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensed child-care centers and the children in their care will benefit from clarified compliance expectations, greater consistency in standards across child-care provider types, and improved program integrity and quality assurance in the child care community.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

This administrative regulation does not establish any fees, or directly or indirectly increased any fees.

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2

2. State compliance standards. KRS 194A.050(1), 199.896(2)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 98.2, KRS 194A.050(1), 199.896(2)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amended After Comments)

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

RELATES TO: KRS 81.010, 199.892, 199.894(1),(5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036, 314.011(5), 337.275, 600.020(49) [(48)], 605.120(5), 620.020(10)



[(9)], 7 C.F.R. 1463, 2012, 20 C.F.R. 652, 660-671, 45 C.F.R. 98, 205.10(a)(6), 400.66(d), 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1451, 1771, 1775, 2000d, 3001, 4950-5084, 8621, 9902(2), 10602(c), Pub.L. 110-246  
 STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 601-619, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

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

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status; or
- (l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring a severe problem or multiple problems that require ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home":

- (a) Is defined by KRS 199.894(5);
- (b) Is described in KRS 199.8982; and
- (c) Means a home certified in accordance with 922 KAR 2:100.

(13) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of Inspector General.

(14) "Full day" means child care that is provided for five (5) or more hours per day.

(14)(15)(14) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician's assistant;
- (c) Advanced registered nurse practitioner;
- (d) Qualified mental health professional as defined by KRS 600.020(49)(48); or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15)(16)(15) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian;
- (b) An individual related by blood, marriage, or adoption to the child; or
- (c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(16)(17)(16) "Infant" means a child who is less than one (1) year old.

(17)(18)(17) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(18)(19)(18) "Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).

(19)(20)(19) "Parent" is defined by 45 C.F.R. 98.2.

(20)(21)(20) "Part day" means child care that is provided for less than five (5) hours per day.

(21)(22)(21) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(22)(23)(22) "Preventive services" is defined by KRS 620.020(10)(9).

(23)(24)(23) "Provider" means the entity providing child care services.

(24)(25)(24) "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14)(15).

(25)(26)(25) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(26)(27)(26) "Related" means having one (1) of the following relationships [with the provider]:

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

(27)(28)(27) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

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

(28)(29)(28) "School-age child" means a child who has reached the sixth birthday.

(29)(30)(29) "Teenage parent" means a parent who is nineteen (19) years of age or younger.

(30)(31)(30) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

(31)(32)(31) "Urban" means a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.

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

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

1. A signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance, is received at the cabinet or its designee office; or
2. The agency is contacted, if the person:

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a. Has a physical or mental disability; and  
b. Needs special accommodation due to the impairment.  
(b) If the applicant is physically unable to come to the office to apply, the applicant may designate an authorized representative to make application.

(c) The applicant may be:

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

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

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

1. Deaf; or

2. Hard of hearing.

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

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

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

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

1. Furnish verification of:

a. Income; ~~and~~

b. Technical eligibility; and

c. ~~Employment; and~~

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

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

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation to provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section.

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

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

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

(a) Is a:

1. Resident of Kentucky; and

2. U.S. citizen or qualified alien;

(b) Is under age:

1. Thirteen (13); or

2. Nineteen (19) and is:

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

b. Under court supervision; or

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

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

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

2. The child is attending a:

a. Licensed child care center;

b. Certified child care home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of

thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

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

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or food stamp assistance case in which the child in need of child care assistance is included;

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

(e) A provider not:

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

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

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

(f) An alternative program such as Head Start, state preschool, or state kindergarten; or

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

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

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

Section 4. Requirements for Low Income Working Family Eligibility Determination.

(1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

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

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

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

(d) An applicant who:

1. Loses employment through no fault of their own up to four (4) weeks;

2. Is on maternity leave for up to six (6) weeks; or

3. Is on medical leave from employment due to a health condition verified by a health professional for up to six (6) weeks;

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

1. All requirements in this section; and

2. Income eligibility standards in Section 7(1); or

(f) A teen parent attending high school or pursuing a general equivalency degree (GED).

(2) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(7)(d) of this administrative regulation by minimum wage established in accordance with KRS 337.275.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate.

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

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services

staff pursuant to 922 KAR 1:330; and

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

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

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization shall not be eligible for more than six (6) months without further authorization.

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

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

(5) An applicant eligible in accordance with this section shall sign and return the DCC-91.

#### Section 6. Kentucky Works Child Care Eligibility Determination.

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

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

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

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency[self-sufficiency] plan.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 7. Income Eligibility. (1)(a) Prior to July 1, 2013, a child shall be eligible for the CCAP if the family's income is less than or equal to:

1. ~~150 percent of the federal poverty level at the initial application; or~~

2. ~~165 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.~~

(b) Effective July 1, 2013, a child shall be eligible for the CCAP if the family's income is less than or equal to:

1. 100 percent of the federal poverty level at the initial application; or

2. 100 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP for twelve (12) months from the date of the K-TAP discontinuance, if the family's income remains less than or equal to:

(a) 165 percent of the federal poverty level prior to July 1, 2013; or

(b) 100 percent of the federal poverty level effective July 1, 2013.

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

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

(5) Excluded income shall be:

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

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

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

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

(e) The value of United States Department of Agriculture pro-

gram benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program):

a. Defined by 7 U.S.C. 2012, as amended by P.L. 110-246; and

b. Governed by Title 921 KAR Chapter 3; [-]

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation

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program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-619;

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

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

(jj) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671.

(6) Deductions from gross income shall be:

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

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

(7) Best estimate.

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

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

1. Cents shall not be rounded at any step in the calculation;

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

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered; and

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by (4.334);

(ii) Biweekly amount by (2.167)~~[(2.667)]~~; or

(iii) Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

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

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

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c.[3e] of this paragraph.

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

1. Not rounding cents at any step in the calculation;

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

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

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

1. Cents shall not be rounded at any step in the calculation;

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

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

4. Profit shall be determined by:

a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:

(i) Twelve (12) if the enterprise has been in operation for at least a year; or

(ii) The number of months the business has been operating if the business has been in existence for less than a year; and

b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be redetermined at least every:

(a) Twelve (12) months; or

(b) Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.

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

(3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

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

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

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

1. Full day;

2. Part day;

3. Urban;

4. Nonurban;

5. Licensed;

6. Certified;

7. Registered;

8. Infant/Toddler;

9. Preschool child; and

10. School-age child.

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

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education of Young Children;

2. National Early Childhood Program Accreditation;

3. National Association for Family Child Care; ~~or~~

4. Council on Accreditation; or

5. Other accrediting body approved by the Early Childhood Advisory Council~~[Development Authority]~~ or the cabinet; or

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

1. 7 p.m. to 5 a.m. daily; or

2. Friday, 7 p.m. through Monday, 5 a.m.

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

(a) With a special need; or

(b) Who is age thirteen (13), but under age nineteen (19), and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

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

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

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and

2. Related to the provider.

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

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

Section 10. Family Copayment. (1) Unless a family copayment

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

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered pay-

ment shall be in lieu of the family copayment required by subsection (3) of this section.

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

Family Co-Payment Per Day								
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$2	\$2	\$3	\$2	\$2	\$2	\$2
1,000	1,099	\$3	\$3	\$3	\$2	\$3	\$2	\$3
1,100	1,199	\$4	\$4	\$4	\$3	\$3	\$2	\$3
1,200	1,299	\$4	\$4	\$5	\$4	\$4	\$3	\$3
1,300	1,399	\$5	\$5	\$5	\$5	\$5	\$3	\$4
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

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

(4)(a) If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.

(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:

1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and
2. Terminate CCAP for the family.

(c) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:

1. A disaster verified by utility provider, local, state, or federal government;
  2. The closure of a provider;
  3. Family circumstances, such as relocation, illness, or death;
- or
4. A risk to the health, welfare, or safety of the child or parent.

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

199.898(1) and (2).

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

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

(b) Receive a child care certificate, the DCC-94.

(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the DCC-91 and the DCC-94.

(4) An applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action.

(a) A DCC-105 shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

1. Changes in:
  - a. Copayment;
  - b. Certification period; or
  - c. Household size;
2. Approval of:
  - a. Application; or
  - b. Continued eligibility; or
3. Adverse action, including:
  - a. Denial of application;

b. Reduction of CCAP benefits; or

c. Termination of CCAP benefits.

(b) The DCC-105 providing notice of an adverse action shall include;

1. Reason for the adverse action;

2. Citation from an applicable state administrative regulation; and

3. Information regarding the; [;]

a. Informal dispute resolution process in accordance with Section ~~17~~~~18~~[47] of this administrative regulation; and

b. Opportunity to request an administrative hearing in accordance with Section ~~18~~~~19~~[48] of this administrative regulation.

(c) The language on the DCC-105 shall differ according to the purpose of the notice described in paragraphs (a) and (b) of this subsection.

(6) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

(a) A disaster verified by utility provider, local, state, or federal government;

(b) Closure of a provider;

(c) Family circumstances, such as relocation, illness, or death; [or]

(d) A risk to the health, welfare, or safety of the child or the applicant; or

(e) Failure of the provider to comply with Section 13(1) of this administrative regulation.

(7) A family that changes the child care provider more than three (3) times as described in subsection (6) of this section shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.

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

(9) Failure to report a change in a circumstance may result in a;

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

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

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

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

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

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

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

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

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

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

(a) 922 KAR 2:090, Child care center licensure;

(b) 922 KAR 2:100, Certification of family child care homes;

(c) 922 KAR 2:110, Child care facility provider requirements;

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

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

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

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

(4) If CCAP benefits are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30)

calendar day notice to each family receiving child care assistance.

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

(6) The cabinet shall send a DCC-105 providing notice of adverse action in accordance with Section 11(5) of this administrative regulation, ten (10) calendar days in advance of this adverse action.

(7) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

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

(d) Teen parents attending high school or pursuing a general equivalency degree (GED);

(e) A K-TAP recipient attempting to transition off assistance through employment;

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

(g) A low income working parent; or

(h) A parent in education or training programs leading to self-sufficiency.

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

(a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;

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

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance Record, [a sign-in sheet] in which the daily arrival and departure times of each child have been;

a. Recorded legibly on a daily basis; [;] and

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

2. Submit the DCC-94E [sign-in sheet] upon request of the cabinet or its designee; and

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

1. 922 KAR 2:090, Child care center licensure;

2. 922 KAR 2:100, Certification of family child care homes;

3. 922 KAR 2:110, Child care facility provider requirements;

4. 922 KAR 2:120, Child care facility health and safety standards; [and]

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

6. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and

7. 922 KAR 2:190, Civil penalties.

(2) A licensed or certified child care provider shall complete the DCC-94B, Licensed or Certified Provider Information Form, prior to receiving payment from the CCAP.

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

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

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

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

Section 15. An improper payment, claim, or penalty in CCAP shall be in accordance with 922 KAR 2:020.

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

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

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

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

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

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

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

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

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

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

(i) Cease if a provider denies:

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

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

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

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

b. Review by another agency with regulatory authority;

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

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

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

Section 17. Withholding of CCAP Payments. (1) The cabinet shall withhold CCAP payment from a provider;

(a) If the provider is the subject of a finding of fraud; or

(b) Pending resolution of the provider's administrative appeals process or legal proceedings related to denial, suspension, or revocation of the provider's:

1. Registration pursuant to 922 KAR 2:180;

2. Certification pursuant to 922 KAR 2:100; or

3. Licensure pursuant to 922 KAR 2:090, 922 KAR 2:110, or 922 KAR 2:120.

(2) The cabinet shall withhold payments after notifying a provider of its intention to withhold CCAP payments.

(3)(a) The cabinet shall send written notice to a provider at the provider's last known mailing address by:

1. Certified mail, return receipt requested; or
2. Personal service delivery.

(b) The notice shall:

1. Include the substantiated findings of fraud by the cabinet's Office of Inspector General, if applicable; and

2. Advise the provider:

a. That payments are being withheld in accordance with subsection (1) of this section;

b. The date upon which the withholding will begin;

c. That withholding shall be for a temporary period; and

d. The circumstances under which withholding shall be discontinued.

(4) The withholding of CCAP payments under subsection

(1) of this section shall:

(a) Be temporary in nature; and

(b) Not continue after:

1. a. Legal proceedings related to the provider's finding of fraud or regulatory violation are;

(i) Final; and

(ii) Not subject to further appeal; and

b. Court-ordered, deferred prosecution, or plea-bargained restitution has been paid; or

2. The matter has been resolved between the cabinet and the provider through the administrative hearing process in accordance with Section 19 of this administrative regulation.

(5) The cabinet shall direct CCAP withheld in accordance with this section towards a child care provider's claim established pursuant to 922 KAR 2:020.

Section 18. Informal Dispute Resolution and Appeals. (1) An applicant for CCAP or a parent of a child receiving CCAP:

(a) May seek an informal dispute resolution if the applicant or parent is dissatisfied with an action by the cabinet or its designee concerning a denial, reduction, or termination of CCAP benefits;

(b) Shall request an informal dispute resolution with the cabinet or its designee within ten (10) days of the:

1. Notice of denial for CCAP in accordance with Section 2(5) of this administrative regulation; or

2. Date of the adverse action for which notice is provided in accordance with Section 12(6) of this administrative regulation; and

(c) Who is dissatisfied with the decision of the informal dispute resolution, may submit an administrative hearing request:

1. In accordance with Section 18[19][48] of this administrative regulation; and

2. Within thirty (30) calendar days of the date of the decision made by the cabinet or its designee in accordance with subsection (3) of this section.

(2)(a) If the child's parent provides notice within ten (10) calendar days from the date of adverse action in accordance with 45 C.F.R. 205.10(a)(6), a child receiving CCAP may continue to receive CCAP during the informal dispute resolution or administrative hearing process pending the outcome of the informal dispute resolution or the administrative hearing.

(b) If an informal dispute resolution or administrative hearing process upholds the denial, reduction, or termination of CCAP, the child's parent who continued to receive CCAP benefits during the informal dispute resolution or administrative hearing process shall repay the CCAP back to the effective date of the denial, reduction, or termination.

(3) Upon receipt of a request for the informal dispute resolution, the cabinet or its designee shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within ten (10) days, unless:

1. The commissioner or designee grants an extension to the timeframe specified in this paragraph due to extenuating circumstances that prolong the review of the request; and

2. Notice of the extension is provided to the applicant or parent who made the request for informal dispute resolution.

(4) An applicant for CCAP or a parent of a child receiving CCAP may request an administrative hearing in accordance with Section 18[19][48] of this administrative regulation at any time during the informal dispute resolution process established in this section.

Section 18.[19.][48.] Administrative Hearings. An administrative hearing may be requested in accordance with:

(1) 922 KAR 1:320; or

(2) 922 KAR 2:020.

Section 19.[20.] Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 20.[21.][49.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DCC-90, Application for Subsidized Child Care Assistance", edition 11/09;
- (b) "DCC-90.1, Intent to Apply for Child Care Assistance", edition 11/09.
- (c) "DCC-91, Client Rights and Responsibilities Sheet", edition 04/13 [4/13];
- (d) "DCC-94, Child Care Service Agreement and Certificate", edition 11/09;
- (e) "DCC-94B, Licensed or Certified Provider Information Form", edition 7/13[4/13][11/09];
- (f) "DCC-94E, Child Care Daily Attendance Records", edition 7/13[04/13];
- (g) "DCC-97, Provider Billing Form", edition 04/13[11/09];
- (h)[(g)] "DCC-105, Child Care Assistance Program Notice of Action", edition 11/09; and
- (i)[(h)] "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", edition 11/09.

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

TERESA C. JAMES, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 11, 2013  
FILED WITH LRC: July 11, 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 Person: Justin Dearing

(1) Provide a brief summary of:

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

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishes procedures for the implementation of the CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the definition of "child with a special need" consistent with federal funder instruction; clarifies verification, reporting, and cooperation requirements for providers and applicants/recipients of CCAP; makes a child in foster care ineligible to receive CCAP due to the foster child's per diem, which includes care and support for the child; specifies work calculations for an applicant or a responsible adult for a child who is self-employed; adjusts the income eligibility criteria congruent with the announcement made by the cabinet in late January 2013; adds to criteria for non-payment, including noncooperation or mismatched attendance and billing forms; includes applicable confidentiality provisions per state and federal laws; and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure CCAP continues and operates within existing

resources; prevent fraud, abuse, and deficient provider operations within the program; support benefit accuracy; and make technical corrections and clarifications. Without the amendment, children's health, safety, and welfare would be negatively impacted; and CCAP would be vulnerable to overpayment, fraud, and abuse and would be subject to a shutdown due to a lack of resources.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by administering child care funds as provided under federal law and regulation, existing federal and state appropriations, and state mandates; and in a manner that best considers the interest of clients to be served given contextual factors and programmatic budgetary constraints.

(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 ensuring CCAP programmatic costs are within the constraints of available state funding, benefit accuracy and program integrity are further supported in overarching policy and programmatic criteria, and CCAP clients' rights and responsibilities are further clarified.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During State Fiscal Year 2012, CCAP served, on average, 44,000 children in 25,000 families per month. For State Fiscal Year 2013, the numbers for providers participating in CCAP are as follows: 1,675 licensed (Type I and Type II), 367 certified, and 770 registered. As a result of cost containment measures, including a freeze on one priority group's intake and adjusting the income eligibility criteria for program participation, an average of 14,300 children per month in 8,700 families will be impacted. Revenue to approximately 2,400 providers will also be reduced.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require providers to use a specified form to record a child's sign-in (i.e., attendance), though the requirement for a sign-in sheet is not new and has been in existence for numerous years. The specified form will support consistency across providers and facilitate quality assurance. Providers and recipients participating in CCAP will also be required to cooperate with cabinet reviews and provide verification or record upon request. Recipients in CCAP will be required to adhere to minimum wage laws in reporting self-employment and to report providers whom they suspect are out of compliance with requirements for documenting a child's attendance as a means to identify potential fraud and abuse. Other new regulatory provisions are meant to deter fraud, abuse, and repeat and/or significant deficiencies on the part of recipients or providers within CCAP. The new provisions also assure the cabinet has appropriate means to respond in CCAP.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not create direct costs to CCAP applicants, recipients, or providers. However, through cost containment measures included within this administrative regulation, a portion of current recipient households will no longer be eligible for their children to be served through CCAP. Those household will have to find other child care resources. Providers will also experience a reduction in the number of children whose care is supported through CCAP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will allow CCAP to continue operating within existing resources and with greater program integrity. The amendment will assist efforts to avoid more dire impacts to the regulated entities, such as program shutdown.

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

(a) Initially: There will be no new costs to the agency to implement this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new



enrollment in CCAP.

(b) On a continuing basis: There will be no new costs to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation will be federal Child Care and Development Fund Block Grant, state matching, and maintenance of effort 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: An increase in fees or funding is not necessary to change this administrative regulation. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented statewide; however, tiering is applied to distinguish urban from non-urban counties. Child care providers in urban counties receive a higher rate of child care assistance due to the fact that those providers experience higher overhead costs. Those rate differentiations are further supported by the analysis of the market rate survey results specified in KRS 199.899.

#### FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994  
42 U.S.C. 601-619, 45 C.F.R. 98

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Child Care Assistance Program (CCAP) has been operational for a number of years. It does not produce any revenue for the state. This administrative regulation will not generate any new 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 not generate any new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation for the first year. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to the agency to implement this administrative regulation for subsequent years. Without the amendment, an increase in funding would be required to sustain current and new enrollment in CCAP.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## PROPOSED AMENDMENTS

COUNCIL ON POSTSECONDARY EDUCATION  
(Amendment)

## 13 KAR 1:020. Private college licensing.

RELATES TO: KRS 164.945, 164.946, 164.947, 164.992, 165A.320

STATUTORY AUTHORITY: KRS 164.947(1), (2), 164.020(37)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Net tuition and fees" means the total of tuition and mandatory fee revenue less institutional scholarships and fellowships.

(9) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

~~(10)(9)~~ "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

~~(11)(40)~~ "President" means the president of the Council on Postsecondary Education.

~~(12)(41)~~ "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

(13) "Unrestricted cash" means any cash or cash equivalents held by a college which are available to cover payments to students for any unearned tuition.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection or subsection (7) of this section, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2)(a) An out-of-state college shall be licensed separately for each instructional site in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(c) Licensure shall not be required for an out-of-state college if the college:

1. Is only operating and soliciting under Section 1(9)(b) of this administrative regulation solely due to a faculty member residing in Kentucky and providing online instruction to Kentucky students; and

2. Has less than one (1) percent of its faculty members residing in Kentucky.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice Doctorate, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and whenever the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11) of this administrative regulation.

(g)1. The institution shall disclose to each prospective student:

a. A statement of the purpose of the institution, its educational programs, and curricula;

b. A description of its physical facilities;

- c. Its status regarding licensure;
- d. Its fee schedule and policies regarding retaining student fees if a student withdraws;
- e. Its refund policy on tuition and other instructional charges; and
- f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures. (1) An application for a license shall be submitted on the form entitled:

- (a) Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or
- (b) Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college.

(2) An application shall be accompanied by a copy of the following:

- (a) College charter;
- (b) College catalog;
- (c) College constitution and bylaws;
- (d) Student enrollment application;
- (e) Student contract or agreement;
- (f) 1. Documentation of accreditation, licensure, or approval by appropriate agencies; and
- 2. Disclosure of any prior loss or denial of:
  - a. Accreditation with the dates and reason for the loss or denial; or
  - b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or denial; and
- (g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits.

(a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days after receipt of the invoice.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty

(60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;

(b) Deny the application for a license;

(c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or

(d) Issue a conditional license in accordance with subsection (3)(2) of this section if the college has:

1. Not met all of the standards for licensure at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall be required to submit a new application and fee.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at an instructional site ~~[the main campus]~~.

(e) A Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program.

(f) A college shall submit a Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020 at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, if the site,

office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020 within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;
2. A college losing accreditation or licensure; or
3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. (1) Within sixty (60)[thirty (30)] working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

(a)[(4)] Approve the supplementary application and amend the current license without changing the renewal date;

(b)[(2)] Deny the supplementary application without amendment to the college's license;

(c)[(3)] Suspend or revoke the college's license;[or]

(d)[(4)] Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended; or

(e) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall be required to submit a new application.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall amend the current license in accordance with subsection (1)(a) of this section.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this section in order to be licensed.

(1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;

2. An audit report prepared by an independent certified public accountant for each corporation of the college; and

3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents when acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) Except as provided in paragraph (d) of this subsection, an in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted cash reserve[endowment] equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond;

1. That is:

a. Equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; and

b. At least \$10,000;

2. Executed by a surety company qualified and authorized to do business in Kentucky; and

3. Made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) An in-state college licensed continuously by the council for:

1. Five (5) to ten (10) years shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for ten (10) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year; or

2. Ten (10) years or more shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for five (5) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year.

(e) A college shall provide a letter[statement] from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted cash reserve[endowment] or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted cash reserve[endowment] or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the appropriate application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members[~~shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels~~].

1. Each degree possessed by a faculty member shall be from an institution accredited by an accrediting agency recognized by

the U.S. Department of Education or the Council for Higher Education Accreditation.

2. To teach a certificate or diploma course, a faculty member shall have:

a. A bachelor's degree; or

b. A high school diploma or GED along with one (1) or more of the following:

(i) Completed a training or degree program in the applicable occupational area;

(ii) Demonstrated outstanding professional experience;

(iii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iv) Professional licensure or certification in the field.

3. To teach an associate degree course not designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A bachelor's degree in the discipline being taught; or

b. An associate's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

4. To teach a general education course, a faculty member shall hold:

a. A master's degree in the discipline being taught; or

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught.

5. To teach a baccalaureate course or an associate course designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A master's degree in the discipline being taught;

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or

c. A baccalaureate degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

6. To teach a graduate course, a faculty member shall hold:

a. An earned doctorate or terminal degree in the discipline being taught or in a related discipline; or

b. A master's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

(d) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(e) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the appropriate application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(7) Library resources. The library shall be appropriate to support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be

sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president at the time of license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;

2. 120 student credit hours for a baccalaureate degree; or

3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is:

a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

(i) Licensed by the Council on Postsecondary Education; or

(ii) A Kentucky state-supported postsecondary education institution.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and

2. Either:

a. Licensed by the Council on Postsecondary Education; or

b. A Kentucky state-supported postsecondary education institution.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that

the program content and distribution are appropriately related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include:

(a) Adequate supervision by the college; and

(b) Other instructional support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form, based on which statement is applicable to the college:

1. "(Name of College) is licensed by the Kentucky Council on Postsecondary Education."; or

2. "(Name of College) has a religious exemption from the Kentucky Council on Postsecondary Education to operate or solicit in Kentucky."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent.

(b) The college shall provide academic counseling by faculty or staff to each student at the time of admission and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records if the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2. a. Except as provided in clause b. of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2. of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License. (1) If a college which is subject to this administrative regulation fails to apply for a li-

cense, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 to the president by April 1 of each year.

(a) In an odd numbered year, the application shall contain the following information:

1. [(a)] Financial Information:

a. [1.] A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

b. [2.] A letter [statement] prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation; and

c. [3.] Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year;

2. [(b)] Institutional information:

a. [1.] Name and address of college;

b. [2.] Chief executive officer's name, title, address, phone number, fax number, and email address;

c. [3.] Institutional liaison's name, title, address, phone number, fax number, and email address;

d. [4.] A current list of the college's agents;

e. [5.] Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last two (2) years[year]; and

f. [6.] A copy of each articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last two (2) years[year];

3. [(e)] Accreditation status:

a. [1.] If the college is accredited by an accrediting agency, verification of the college's accreditation status; or

b. [2.] If the college is not accredited by an accrediting agency, a statement indicating if, when, and from whom the college will seek accreditation;

4. [(d)] Tuition for the current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

5. [(e)] A copy of the college's current catalog;

6. [(f)] For an in-state college, a list of all licensed instructional sites away from the main campus of the in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

7. [(g)] Program information:

a. [1.] Changes, if any, in program requirements for each program within the last two (2) years[year] including admission requirements, courses required, and the number of credit hours required for the program or major;

b. [2.] Results of the most recent program evaluation;

c. [3.] Methods used to assess student achievement;

d. [4.] Results of the most recent assessment of student achievement; and

e. [5.] A list of programs withdrawn within the last two (2) years[year] in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

8. [(h)] Faculty information: Vitae for each program faculty member employed within the last two (2) years[year];

9. [(i)] Facilities information: Verification of compliance with all applicable local, state, and federal safety and fire codes; and

10. [(j)] Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

(b) In an even numbered year, the application shall only contain the information required by paragraphs (a)1.b., and (a)2.a., b., and c., of this subsection. An institution shall provide any other information listed in paragraph (a) of this subsection upon request of the council.

(2) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative regulation.

(3) Within ninety (90) working days of the submission of a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

(a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;

(b) Deny maintenance or renewal of the college's license;

(c) Maintain the college's license without changing the college's license renewal date; [or]

(d) Renew the college's license to June 30 of the next year; or

(e) Issue a conditional license in accordance with subsection (4) of this section if the college has:

1. Not met all of the standards for licensure at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed one (1) year.

(4) A conditional license shall not exceed a period of one (1) year and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall renew the license in accordance with subsection (3)(d) of this section.

(5) [(4)] A college's failure to submit a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the Licensure Compliance Reporting Manual.

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

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(2) A college that ceases operating or soliciting shall comply with Section 8(13)(f) of this administrative regulation and KRS 164.020(23).

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed.

(1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing within thirty (30) working days of notice consistent with the provisions of KRS 13B.005-13B.170, in order to determine the facts if the president has determined that there is sufficient cause for a suspension, ~~a[n]~~ revocation of a license, or placement of a college's license in a probationary status or if a college which is subject to this administrative regulation fails to apply for a license.

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held or if the college fails to appear for the hearing, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If it is determined that the public interest requires that sanctions be imposed, the president shall:

(a) Impose one (1) of the following sanctions:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year; or

3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(5) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(6) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Upon completion, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

1. Issue a license;

2. Renew the license;

3. Impose one (1) of the sanctions authorized in this section; or

4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the Kentucky Licensure Fee Schedule.

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

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

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(g) "Supplementary Application to Operate as an In-State Non-public Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(k) "Licensure Compliance Reporting Manual", September 8, 2009;

(l) "Kentucky Licensure Fee Schedule", June 2013~~[January 2010]~~; and

(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", September 2012.

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

PAM MILLER, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: June 24, 2013

FILED WITH LRC: June 28, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013 at 10:00 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. 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 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 4:30 pm EST, September 3, 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: Sarah Levy, Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 350, fax 502.573.1535, email sarah.levy@ky.gov

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the standards and rules related to the licensing of private nonprofit postsecondary education institutions, and proprietary postsecondary education institutions that are not licensed by the Commission on Proprietary Education.

(b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.947 states that the Council on Postsecondary Education, by regulation, shall adopt standards and procedures for the licensing of colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards institutions must meet in order to be licensed to operate in Kentucky. It also defines the process for new license applications, for amendments to licenses, and for license renewals.

(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: First, faculty qualification requirements will now be specifically identified in the regulation and applied consistently amongst all licensed institutions. Currently, an institution's respective accreditation faculty standards are applied, which vary depending on the accreditor. Second, the unearned tuition coverage requirement for in-state colleges is modified to a graduated schedule based on a percentage of overall annual net tuition and fees. Third, annual fees will now be instituted for licensed institutions with less than 100 Kentucky students. Fourth, licensure will no longer be required for out-of-state institutions "operating or soliciting" in Kentucky only as a result of less than one percent of their faculty delivering online instruction from Kentucky. Fifth, institutions that do not respond to notifications of deficiency in both initial and supplementary applications within sixty (60) days will now be required to submit a new application and fee in accordance with the fee schedule. Sixth, the annual licensure application will now be abbreviated in even numbered years. And finally, technical revisions are being made.

(b) The necessity of the amendment to this administrative regulation: The faculty requirement revisions will help ensure that Kentucky students are receiving quality instruction at any licensed institution they attend consistent with what is adhered to by Kentucky's public postsecondary institutions. The unearned tuition coverage for in-state colleges is revised to a level more commensurate with the refund liability and risk of non-payment to students. Annual fees are being instituted for institutions with less than 100 Kentucky students to help stabilize the recurring fees collected by the Council and to recognize resources dedicated to licensure functions each year. The licensure requirement for institutions with less than one percent of their faculty delivering online instruction from Kentucky is removed due to the de minimis nature of this contact to Kentucky. The requirement that institutions respond in sixty (60) days to a notice of deficiency is instituted to facilitate a more efficient application process. An abbreviated annual licensure process in even numbered years will help to alleviate the reporting burden on institutions. Finally, technical revisions are being made

for clarity, consistency, and conformance with regulation drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the requirements of KRS 164.947 by helping to ensure that licensed institutions provide a quality educational experience for Kentucky students.

(d) How the amendment will assist in the effective administration of the statutes: The amendment helps to better ensure quality education for Kentucky students and provides a licensure process better aligned with the statutory goals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Council currently licenses ninety (90) institutions with multiple licensed instructional sites, and eleven (11) new applications are currently under review. The primary impact is on institutions currently licensed or who are in the process of being licensed by the Council, and on those new institutions who will seek licenses from the Council.

(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, 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: In-state colleges licensed five (5) years or more will need to provide unearned tuition coverage in an amount based on the new calculation. All licensed institutions will now file an abbreviated annual licensure application in even numbered years. Licensed institutions with less than 100 Kentucky students will now be required to pay an annual fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For in-state institutions falling under the new unearned tuition coverage requirement, the coverage amount is likely to be less thereby requiring them to either maintain a smaller pool of funds or to purchase a surety bond or letter of credit for a smaller amount, which would cost less. Institutions licensed for more than five (5) years with 500 Kentucky students or less will now pay a \$500 annual fee. This is \$250 more for the institutions with 100-500 Kentucky students. Those institutions with less than 100 Kentucky students are not currently required to pay an annual fee. Institutions licensed less than five (5) years with 100 Kentucky students or less will pay \$1000 annually. Currently there is no fee for such institutions. The abbreviated annual application process in even years should result in cost savings of an undetermined amount for institutions as fewer resources will be required to complete the process in those years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): See 4(b) above. Cost of compliance with the unearned tuition requirement will likely decrease for some institutions. The annual licensure process burden will decrease in even numbered years.

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

(a) Initially: We estimate that there will be no additional cost in implementing the proposed changes to the regulation.

(b) On a continuing basis: We estimate that there will be no additional costs on a continuing basis to implement the proposed changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees and General Fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. Implementation of this amendment does not require an increase in fees or funding, however fees are being increased slightly for institutions with small enrollments to enable the Council to obtain more recurring fees to cover the cost of administration as the licensure of new institutions begins to wane.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. The proposed amendment to the regulation directly increases fees

slightly for institutions with very small enrollments of Kentucky students.

(9) TIERING: Is tiering applied? Tiering is applied. The amendment provides that in-state colleges licensed between five (5) and ten (10) years and ten (10) years or more will have an unearned tuition coverage requirement that differs from that of out-of-state institutions and in-state institutions licensed less than five (5) years. The risk for students being unable to recover unearned tuition payments in the event of a closure is less for in-state institutions, particularly those that have maintained licensure status with the Council through at least one accreditation cycle (ten (10) years).

#### 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? CPE is responsible for implementation, but this regulation only applies to private colleges and universities and public institutions in other states.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.947 and 164.020(37)

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 estimate revenue generation of \$325,000 per year for CPE. This increased fee is estimated to generate an additional \$50,000 per 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? See 3(a).

(c) How much will it cost to administer this program for the first year? Approximately \$345,500.

(d) How much will it cost to administer this program for subsequent years? Approximately \$345,500.

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: N/A

#### OFFICE OF KENTUCKY SECRETARY OF STATE (Amendment)

#### 30 KAR 5:010. Definitions for 30 KAR Chapter 5.

RELATES TO: KRS Chapter 355.9[Article 9]

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing[Article 9 of] KRS Chapter 355.9[355]. This administrative regulation establishes the definitions for 30 KAR Chapter 5.

Section 1. Definitions. (1) "Active Record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the searchable indexes.

(2) "Address" means either:

(a) A street address, route number or PO Box number plus the city, state, and zip code; or

(b) An address that purports to be a mailing address outside the United States of America.

(3) "Amendment statement" means a UCC record[including an assignment, continuation, or termination] that amends the information contained in a financing statement and includes an assignment, continuation, or termination.

(4)[(2)] "Assignment statement" means an amendment that assigns all or part of a secured party's power to authorize an amendment to a financing statement.

(5)[(3)] "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

(4)] "Filing office" or[and] "filing officer" is defined by KRS 355.9-102(1)(ak)[mean the Secretary of State].

(6)[(5)] "Filing officer statement" means a statement [of correction] entered into the filing office's information system to correct an error made by the filing office.

(7) "Information statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

(8)[(6)] "Individual" means a human being, or a decedent in the case of a debtor that is a decedent's estate.

(7)] "Initial financing statement" means a UCC record that[containing the information required to be an initial financing statement which, when filed,] causes the filing office to establish the initial record of filing of a financing statement[in the filing office's UCC information management system].

(8) "Organization" is defined by KRS 355.1-201(28)].

(9) "Remitter" means a person who[:(a)] tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing, and does not include a person responsible merely for the delivery of the record to the filing office, including the postal service or a courier service process.

(10) "Searchable indexes" means the searchable index of individual debtor names and the searchable index of organization debtor names maintained in the UCC information management system.

(11) "Secured party of record" means a secured party as defined in KRS 355.9-102(1)(bu) who meets the additional requirements established in KRS 355.9-511.

(12)[:(a)] and

(b) is not responsible merely for the delivery of the record to the filing office, such as the postal service, and who does not act as the filer's representative in the filing process.

(10)] "UCC" means the Uniform Commercial Code as adopted in this state.

(13) "UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements as required by 30 KAR 5:040.

(14)[(14)] "UCC record" means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement, or an information[a correction] statement, and includes a record thereof maintained by the filing office, without being limited[shall not be deemed to refer exclusively] to paper or paper-based writings.

(15) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system and that has not yet lapsed under KRS 355.9-515 with respect to all secured parties of record.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, at 10:00 a.m., at the Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3rd, 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: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for 30 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355 and to define terms that are utilized in 30 KAR Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of Article 9 of KRS Chapter 355.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statute by defining terms that are utilized in 30 KAR Chapter 5 and Article 9 of KRS Chapter 355.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This amendment adds definitions for new terms that are used in 30 KAR Chapter 5 and Revised Article 9 of KRS Chapter 355 and removes phrases and definitions that are no longer applicable to Revised Article 9 of KRS Chapter 355.

(a) How the amendment will change this existing administrative regulation: The existing administrative regulation will change with the addition of the following defined terms: Active record, Address, Searchable indexes, Secured party of record, UCC information management system, and Unlapsed record. Additionally, there were minor wording and phrasing changes made to the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355 and to define terms that are utilized in 30 KAR Chapter 5.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will simply have to familiarize themselves with the new terms that have been added 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): Entities identified in question (3) will experience costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will benefit from this amendment because it provides new terms that are utilized throughout 30 KAR Chapter 5 and Article 9 of KRS 355.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no estimated cost to implement this administrative regulation

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

OFFICE OF KENTUCKY SECRETARY OF STATE  
(Amendment)

30 KAR 5:020. General provisions.

RELATES TO: KRS Chapter 355.9[Article-9]

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing[Article 9 of] KRS Chapter 355.9[355]. This administrative regulation establishes the general provisions governing 30 KAR Chapter 5 relating to deliveries, approved forms, payments, and public[record] services.

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Section 1. UCC Record Delivery. (1) UCC records may be tendered for filing at the filing office as follows:

(a)[(4)] Personal delivery by remitter, at the filing office's street address. The file time for a UCC record delivered by this method shall:

1. Be when delivery of the UCC record is taken~~accepted~~ by the filing office (even though the UCC record has~~may~~ not~~yet have~~ been accepted for filing and subsequently may be rejected); and

2. Apply only to a remitter who tenders a UCC record to the filing office and awaits an immediate determination of whether or not the UCC record will be taken;[-]

(b)[(2)] Courier delivery by a person other than a remitter, at the filing office's street address.

1. The file time for a UCC record delivered by this method shall be, notwithstanding the time of delivery, at the earlier of the time the UCC record is first examined by a filing officer for processing~~the next close of business following the time of delivery~~ (even though the UCC record has~~may~~ not~~yet have~~ been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery.

2. A UCC record delivered after regular business hours or on a day the filing office is not open for business, if not examined for processing sooner, shall have a filing time of the close of business on the next day the filing office is open for business;[-]

(c)[(3)] Postal service delivery, to the filing office's mailing address.

1. The file time for a UCC record delivered by this method shall be the next close of business following the time of delivery (even though the UCC record has~~may~~ not~~yet have~~ been accepted for filing and may be subsequently rejected).

2. A UCC record delivered after regular business hours or on a day the filing office is not open for business shall have a filing time of the close of business on the next business day~~the filing office is open for business~~.

(d)[(4)] Electronic filing. UCC records, excluding information statements and filing officer~~correction~~ statements, may be transmitted electronically using the XML format~~standard~~ approved by the International Association of Corporation Administrators~~or through on-line entry~~.

1. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office.

2. The file time for a UCC record delivered by this method~~these methods~~ shall be the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable; or

(e) Through direct on-line and Web page data entry.

1. UCC records may be delivered by on-line data entry using the filing office's Web site on the internet.

2. The file time for a UCC record delivered by this method shall be the time the entry of all required elements of the UCC record in the proper format is acknowledged by the on-line entry system.

(2) Means of communication. Regardless of the method of delivery, a financing statement or amendment form shall designate separate fields for:

(a) Organization and individual names; and

(b) The surname, first personal name, additional names, initials, and suffixes for individual names.

(3) Transmitting utility, manufactured-home, and public-finance transactions.

(a) The appropriate box on a financing statement shall be marked to indicate that:

1. An initial financing statement is being filed in connection with a manufactured-home or public-finance transaction; or

2. A financing statement is being or has been filed against a debtor that is a transmitting utility.

(b) The requisite information shall be transmitted in the proper field in an electronic filing that is an initial financing statement or part of a financing statement to indicate that:

1. An initial financing statement is being filed in connection with a manufactured-home or public-finance transaction; or

2. A financing statement is being or has been filed against a debtor that is a transmitting utility.

(c) If the requirements of paragraph (a) or (b) of this subsection are not met, the filing shall not affect the filing office's determination of the lapse date under 30 KAR 5:040, Section 7 or 8.

Section 2. Search Request Delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office, in accordance with Section 1 of this administrative regulation.

Section 3.~~Approved~~ Forms. (1) ~~The forms~~~~The filing office shall only accept the forms~~ prescribed by KRS 355.9-521 shall be accepted by the filing office.

(2) A paper-based form approved~~or forms adopted~~ by the International Association of Corporation Administrators shall be accepted.

Section 4. Fees. The fee for filing a UCC record shall be the amount prescribed by KRS 355.9-525.

Section 5. Methods of Payment. Filing fees and fees for public records services~~copies of UCC records~~ may be paid by the following methods:

(1) Cash. Payment in cash shall be accepted if paid in person at the filing office;[-]

(2) Checks. Personal checks, cashier's checks and money orders made payable to the Kentucky State Treasurer shall be accepted for payment if the drawer, or the issuer if it is a cashier's check or money order, is deemed creditworthy by the filing office in its discretion~~if they are drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office~~.

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for the transfers and who authorize the relevant transfer pursuant to the arrangements and rules;[-]

(4) Prepaid account. A remitter may open an account for prepayment of fees by submitting a completed Application for Prepaid Account and prepaying an amount not less than \$250. The filing officer shall issue an account number to be used by a remitter who chooses to pay filing fees by this method. The filing officer shall deduct filing~~and copying~~ fees from the remitter's prepaid account if authorized to do so by the remitter;[-]

(5) Debit and credit cards. The filing office shall accept payment by debit cards and credit cards issued by approved issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the card issuer, the name of the person or entity to whom the card was issued, and the billing address for the card. Payment shall not be deemed tendered until the issuer or its agent has confirmed payment; or

(6) Interaccount. The filing office shall accept payment by interaccount from state agencies. The agency shall provide the interaccount number at the time of filing.

Section 6~~5~~. Overpayment and Underpayment Policies. (1) Overpayment. The filing officer shall refund the amount of an overpayment.

(2) Underpayment. Upon receipt of a UCC record with an insufficient fee, the filing officer shall do one (1) of the following:

(a) A notice of deficiency shall be sent to the remitter and the UCC record shall be held for a period of ten (10) days from the date of the notice for receipt of the fee. Upon receipt of the fee, the UCC record shall be filed as of the time and date of receipt of the full filing fee. If the fee is not received within ten (10) days of the date of the notice, the record shall be returned to the remitter with a written explanation for the refusal to accept the record; or

(b) The UCC record shall be returned to the remitter as provided in 30 KAR 5:030, Section 4. ~~A~~~~The~~ refund shall be included with the UCC record or delivered under separate cover.

Section 7~~6~~. Public Records Services. Public records services shall be provided on a nondiscriminatory basis to any member of

the public in accordance with this section. The following methods shall be available for obtaining copies of UCC records and copies of data from the UCC information management system:

(1) Individually-identified documents. Copies of individually-identified documents shall be available in the following forms:

- (a) Paper; or
- (b) JPG files via the web.

(2) Text data from the UCC information management system.

A list of available text data elements from the UCC information management system, and the file layout of the text data elements, shall be available from the filing office upon request. Text data from the UCC information management system shall be available as follows:

(a) Full extract. A bulk text data extract of information from the UCC information management system shall be available on a weekly basis.

(b) Update extracts. Updates of text data from the UCC information management system shall be available on a weekly basis.

(c) Format. Text data extracts from the UCC information management system shall be available in the following formats:

- 1. CD-ROM; or
- 2. FTP file transfer.

Section 8[7]. Incorporation by Reference. (1) "Application for Prepaid Account," Secretary of State, Uniform Commercial Code Branch, 10-5-11[07-04-04], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State, UCC Branch, 700 Capital Avenue, State Capitol, Suite 152[363C-Versailles Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, at 10:00 a.m., at the Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3rd, 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: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the general provisions governing 30 KAR Chapter 5 relating to deliveries, forms, payments, and public services.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of the statutes that fall under Article 9 of KRS Chapter 355.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended

administrative regulation will assist in the effective administration of Article 9 of KRS Chapter 355 by providing more detailed instruction and guidance in the following areas: UCC record delivery, forms, fees, payments and public services.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by providing more detailed guidance in the following areas: UCC record delivery, forms, fees, payments and public services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the new UCC forms and the additional methods of UCC record delivery that will be available.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will incur costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will benefit from this amendment because it provides additional avenues of UCC record delivery and more specific guidance on fees, payments, and public services.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no cost to implement this amended administrative regulation

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

### OFFICE OF KENTUCKY SECRETARY OF STATE (Amendment)

#### 30 KAR 5:030. Acceptance and refusal of records.

RELATES TO: KRS Chapter 355.9-515, 355.9-516, 355.9-520  
STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing ~~Article 9~~ of KRS Chapter ~~355.9~~[355]. This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

Section 1. Role of Filing Officer. The duties and responsibilities of the filing officer with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record pursuant to the UCC and 30 KAR Chapter 5, the filing officer shall not:

(1) Determine the legal sufficiency or insufficiency of the UCC[a] record;

(2) ~~Determine that a security interest in collateral exists or does not exist;~~ (3) Determine that information in the record is correct or incorrect, in whole or in part; or

(3)[4] Create a presumption that information in the record is correct or incorrect, in whole or in part.

Section 2. Time for filing a continuation statement[Timeliness of Continuation]. (1) First day permitted. The first day on which a continuation statement may be filed shall be the date corresponding to the date upon which the related financing statement would lapse, six (6) months preceding the month in which the financing statement would lapse. If there is no corresponding date, the first day[date] on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The foregoing rule shall be subject to the ability of the filing office to take delivery of the continuation statement as tendered and pursuant to 30 KAR 5:020.

(2) Last day permitted. The last day on which a continuation may be filed is the date upon which the related financing statement

lapses. The foregoing rule shall be subject to the ability of the filing office to take delivery of the continuation statement as tendered and pursuant to 30 KAR 5:020. Accordingly, the time of filing of the continuation statement under 30 KAR 5:020 shall be on or prior to the date upon which the related financing statement lapses and delivery by certain means of communication shall not be available on the last day if the filing office is not open for business on that day.

Section 3. Grounds for Refusal. In addition to refusing a record for any reason, or multiple reasons, as set forth in KRS 355.9-516 and 355.9-516A, a filing office ~~The filing officer~~ shall refuse to accept a UCC record that fails to provide an address that meets the minimum requirements set forth in 30 KAR 5:010 ~~for the reasons specified in KRS 355.9-516. In accordance with KRS 355.9-516(2)(a), the filing officer shall refuse a UCC record if:~~

(1) ~~The record contains more than one (1) secured party or assignee name or address and some names or addresses are missing or illegible; or~~

(2) ~~No address is given in the address field. An address shall include street address, city, state and postal code~~].

Section 4. Procedure Upon Refusal. (1) Except as provided in 30 KAR 5:020, Section 5(2)(b), if the filing officer finds grounds to refuse a UCC record, the filing officer shall refund the filing fee and return the record or a copy of the record in accordance with KRS 355.9-520(2).

(2) Communication of the refusal. The reason for the refusal and other related information shall be made to the remitter as soon as practicable and in any event within three (3) business days after the refused UCC record was received by the filing office, by the same means by which the UCC record was delivered to the filing office, or by mail or a more expeditious means as the filing office shall determine.

(3) Records of refusal, including a copy of the refused UCC record and the ground for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

Section 5. Notification of Defects. (1) A filing officer may communicate to a filer or remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing.

(2) The filer or remitter shall be responsible for the legal effectiveness of a filing. The filing office shall not bear responsibility for the effectiveness of records.

Section 6. Refusal Errors. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused under subsection (3) of this section, the filing officer shall file the UCC record with the filing date and time the UCC record was originally tendered for filing[assigned when the filing occurs. The filing officer shall file] A filing officer statement record relating to the relevant initial financing statement shall be placed in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system[that states the effective date and time of filing which shall be the date and time the UCC record was originally tendered for filing].

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, at 10:00 a.m., at the Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing

was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3rd, 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: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355 and to specifically establish the requirements relating to the acceptance and refusal of records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of KRS 355.9-515, 355.9-516, 355.9-516A, and 355.9-520.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the above statutes by providing more detailed guidance for the requirements that relating to the acceptance and refusal of records.

(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 changes wording and phrasing in the existing regulation. Additionally, this amendment provides more detailed guidance as to when a continuation statement can be appropriately filed. Under the "Grounds for Refusal Section," this amended regulation accounts for KRS 355.516A, which establishes additional grounds for refusal of a UCC record. Finally, this amendment provides additional guidance as to the procedure to which the filing officer must adhere when refusing a UCC record and when a refusal was made in error.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355 and to establish the requirements relating to the acceptance and refusal of records.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the wording and phrasing changes and the additional grounds for refusal that have been established by KRS 355.9-516A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will experience costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will collectively benefit from this amendment because it provides them with more detailed information and guidance as to the requirements relating to the acceptance and refusal of records.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no estimated cost to implement this administrative regulation

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

OFFICE OF KENTUCKY SECRETARY OF STATE  
(Amendment)

30 KAR 5:040. UCC Information Management System.

RELATES TO: KRS Chapter 355.9-515, 355.9-519, 355.9-526  
STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.9[355]. This administrative regulation establishes the requirements for the UCC Information Management System.

Section 1. General Provisions. The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors included on financing statements that are active records. The requirements in this administrative regulation describe the UCC Information Management System. The Information Management System shall:

- (1) Be used by the filing officer to store, index, and retrieve information relating to financing statements;
- (2) Include an index of the names of debtors named on the financing statements which have not lapsed; and
- (3) Comply with the requirements of this administrative regulation.

Section 2. Primary Data Elements. The primary data elements used in the UCC Information Management System shall be the following:

- (1) Identification numbers.
  - (a) Each initial financing statement shall be identified by its file number. Identification of the initial financing statement[which] shall be stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC Information Management System. A record shall be created in the Information Management System for each initial financing statement and all information comprising the record shall be maintained in the system. The record shall be identified by the same information assigned to the initial financing statement.
  - (b) A UCC record other than an initial financing statement shall be identified by a unique file number assigned by the filing officer. In the UCC Information Management System, records of all UCC records other than initial financing statements shall be linked to the record of their related initial financing statement.
- (2) Type of record. The type of UCC record from which data is transferred shall be identified in the UCC Information Management System from information supplied by the remitter.
- (3) Filing date and filing time. The filing date and filing time of UCC records shall be stored in the UCC Information Management System. Calculation of the lapse date of an initial financing statement shall be based upon the filing date and in accordance with KRS 355.9-515.
- (4) Identification of parties. The names and addresses of debtors and secured parties shall be transferred from UCC records to the UCC Information Management System[using one (1) or more data entry or transmittal techniques].
- (5) Page count. The total number of pages in a UCC record is maintained in the UCC Information Management System[Status of financing statement. In the Information Management System, each financing statement shall list a status of active or inactive].
- (6) Lapse indicator. An indicator shall be maintained by which the Information Management System identifies whether or not a financing statement will lapse and, if it does, when it will lapse.
- (7) Indexes of names. The filing office maintains in the UCC Information Management System a searchable index of organization debtor names, and a searchable index of individual debtor names.
- (8) Status of financing statement. In the UCC Information Management System, each financing statement shall list a status of active or inactive.

Section 3. Individual Debtor Names[of Debtors or Secured Parties Who are Individuals]. For purposes of these rules, an "indi-

vidual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Individual name fields. Individual debtor names[The names of individuals] shall be stored in files that include only the individual debtor names[of individuals], and not organization debtor names[the names of organizations]. Separate data entry fields shall be established for surnames (last or family names), first personal names (given), and additional names and initials[first (given), middle (given), and last names (surnames or family names)] of individuals. [A filer shall place] The name of a debtor with a single name (e.g., Cher) shall be treated as a surname and shall be entered in the individual surname [in the last name] field. The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the date in accordance with the filer's designations[shall:

- (a) Not assume responsibility for the accurate designation of the components of a name; and
- (b) Accurately enter the data in accordance with the filer's designation].

(2) Titles,[and] prefixes and suffixes[before names]. Titles,[and] prefixes (e.g. "Ms."), and suffixes or indications of status (e.g. "M.D.") are not typically part of a debtor's name[, such as "doctor", "reverend", "Mr.", and "Mrs.", shall not be provided by filers on a UCC record]. Suffixes used to distinguish between family members with identical names (e.g. "JR.") shall be provided in the suffix field. However, when entering a "name" into the UCC Information Management System[If a UCC record is submitted with titles or prefixes in the designated name fields], the data shall be entered exactly as it appears.

(3) Extended debtor name field. The financing statement form has limited space for individual debtor names. If any portion of the individual debtor name is too long for the corresponding field, the filer is instructed to check the box that indicates the name was too long and enter the name in item ten (10) of the Addendum. A filing officer shall not refuse to accept a financing statement that lacks debtor information in item one (1) or item two (2) if the record includes an Addendum that provides a debtor name in item ten (10)[Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" shall not be provided by filers on a UCC record. If a UCC record is submitted with titles or indications of status in the designated name fields, the data shall be entered exactly as it appears. Suffixes that indicate which individual is being named, such as "senior", "junior", "I", "II", and "III", shall be provided by filers in the field designated for name suffixes].

(4) Truncation [of] individual names. Personal name fields in the UCC Information Management System shall be fixed in length. Although filers shall continue to provide full names on their UCC records, a name that exceeds the fixed length shall be entered as presented to the filing officer, up to the maximum length of the data entry field[fields]. The lengths of data entry name fields shall be as follows:

- (a) Surname[First name]: fifty (50) characters.
- (b) First personal[Middle] name: fifty (50) characters.
- (c) Additional name(s) or initial(s)[Last name]: fifty (50) characters.
- (d) Suffix: fifty (50) characters.

Section 4. Organization Debtor Names[of Debtors or Secured Parties that are Organizations]. For purposes of these rules, an "organization debtor name" shall be any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Single field. Organization debtor names[The names of organizations] shall be stored in files that include only organization debtor names[the names of organizations] and not individual debtor names. A single field shall be used to store an organization debtor name[not the names of individuals].

(2) Truncation [of] organization names. The organization debtor name field in the UCC Information Management System shall be fixed in length. The maximum length shall be 300 characters.



Although filers shall continue to provide full names on their UCC records, a name that exceeds the fixed length shall be entered as presented to the filing officer, up to the maximum length of the organization debtor name[data entry] field.

Section 5. Collateral Being Administered by a Decedent's Personal Representative. The debtor name to be provided on a financing statement when the collateral is being administered by a decedent's personal representative shall be the name of the relevant decedent. In order for the UCC Information Management System to function in accordance with the usual expectations of filers and searchers, the filer shall provide the debtor name as an individual debtor name. However, the filing office shall enter data submitted by a filer in the fields designated by the filer exactly as it appears in the fields[Estates. An estate shall be treated as if the decedent were the debtor under Section 3 of this administrative regulation].

Section 6. Collateral Held in a Trust. (1) The debtor name to be provided when the collateral is held in a trust that is not a registered organization shall be the name of the trust as set forth in its organic record, if the trust has a name in its organic record or, if the trust is not so named, the name of the trust's settlor.

(2) In order for the UCC Information Management System to function in accordance with the usual expectations of filers and searchers, the name of a trust or of a settlor that is an organization shall be provided as an organization debtor name, and the name of a settlor who is an individual shall be provided as an individual debtor name, in each case without regard to the nature or character of the debtor. However, the filing office shall enter data submitted by a filer in the fields designated by the filer exactly as it appears in the fields[Trusts. (1) If the trust is named in its organic record, its full legal name, as set forth in the record, shall be used and the trust shall be treated as an organization.

(2) If the trust is not named in its organic record, the name of the settlor shall be used.

(a)1. If a settlor is indicated to be an organization, the name shall be treated as an organization name.

2. If the settlor is an individual, the name shall be treated as an individual name.

(b) A UCC record that uses a settlor's name shall include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor.

(3) All financing statements filed against trusts or trustees acting with respect to property held in trusts shall indicate the nature of the debtor].

Section 7. Initial Financing Statement. Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows.

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. Each debtor name provided by the initial financing statement shall be indexed in the UCC Information Management System if the financing statement is an active record.

(3) Status of financing statement. The financing statement shall be an active record as provided in KRS 355.9-519(7). A lapse date shall be calculated in accordance with KRS 355.9-515[Upon the filing of an initial financing statement, the status of the financing statement shall be active.

(2) The lapse date shall be calculated in accordance with KRS 355.9-515.

(3) A financing statement shall remain active as provided in KRS 355.9-519(7)].

Section 8. Amendments Generally[Amendment]. (1) Upon the filing of an amendment, the status of the parties shall be as follows:

(a) Unchanged, except that in the case of an amendment that adds a debtor or a secured party, the new debtor or secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC Information Management System, and an amendment that designates an assignee

shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC Information Management System.

(b) Notwithstanding the filing of an amendment that deletes a debtor or a secured party from a financing statement, no debtor or secured party of record is deleted from the UCC Information Management System.

(c) A deleted secured party shall be treated by the filing office as a secured party of record as the filing office cannot verify the effectiveness of an amendment.

(2) The filing of an amendment shall not affect the status of the financing statement. An amendment that indicates that the debtor is a transmitting utility shall cause the filing office to reflect in the UCC Information Management System that the amended financing statement has no lapse date[and the status of the financing statement shall be as follows:

(1) Status of secured party and debtor. An amendment shall affect the status of its debtor and secured party as follows:

(a) Collateral amendment or address change. An amendment that amends only the collateral description or one (1) or more address shall not affect the status of any debtor or secured party.

(b) Debtor name change. An amendment that changes a debtor's name shall not affect the status of a debtor or secured party. If the debtor's name is changed, the related initial financing statement and all UCC records that include an identification of the initial financing statement shall be cross indexed in the UCC Information Management System so that a search under either the debtor's old name or the debtor's new name will reveal the initial financing statement and the related UCC records.

(c) Secured party name change. An amendment that changes the name of a secured party shall not affect the status of a debtor or a secured party. The new name shall be added to the index as if it were a new secured party.

(d) Addition of a debtor. An amendment that adds a new debtor name shall not affect the status of any party to the financing statement. The new debtor name shall be added as a new debtor on the financing statement.

(e) Addition of secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement. The new secured party name shall be added as a new secured party on the financing statement.

(f) Deletion of debtor. An amendment that deletes a debtor shall not affect the status of any party to the financing statement, even if the amendment purports to delete all debtors.

(g) Deletion of secured party. An amendment that deletes a secured party shall not affect the status of any party to the financing statement, even if the amendment purports to delete all secured parties.

(2) Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement].

Section 9. Assignment of Powers of Secured Party. (1) Status of the parties. An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party.

(2) Status of financing statement. An assignment shall have no effect upon the status of the financing statement.

Section 10. Continuation Statement. (1) Continuation of lapse date. Upon the timely filing of one (1) or more continuation statements[continuations] by a[any] secured party, the lapse date of the financing statement shall be postponed for five (5) years. The lapse date shall be postponed once notwithstanding the fact that more than one (1) continuation statement is filed within a given six (6) month period prior to a lapse date. Notwithstanding the immediate postponement of the lapse date with respect to one (1) or more secured parties of record who file timely a continuation statement within a given six (6) month period prior to a lapse date, the lapse date shall remain effective solely for purposes of determining whether or not a subsequent continuation statement filed in the same six (6) month period is timely.

(2) Status[of parties]. The filing of a continuation shall have no

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affect upon the status of any party to the financing statement or upon the status of the financing statement. ~~[(3) Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement shall remain active.]~~

Section 11. Termination. ~~[(1) Status of parties.]~~ The filing of a termination shall have no effect upon the status of any party to the financing statement or upon the status of the financing statement. ~~[(2) Status of financing statement. A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active for the time period established in Section 7(3) of this administrative regulation.]~~

Section 12. Information statement. ~~[Correction Statement. (1) Status of parties.]~~ The filing of an information statement ~~[a correction statement]~~ shall have no effect upon the status of any party to the financing statement, the status of the financing statement, or to the information maintained in the UCC Information Management System. ~~[(2) Status of financing statement. A correction statement shall have no effect upon the status of the financing statement.]~~

Section 13. Filing Officer Statement. A filing officer statement affects the status of parties and of the relevant financing statement as provided in the corrective action described as having been taken in the filing officer statement.

Section 14. Procedure upon Lapse. If there is no timely filing of a continuation with respect to a financing statement ~~[a continuation statement is not timely filed]~~, the financing statement shall lapse on its lapse date but no action shall be taken by the filing office.

Section 15. Removal of Record. A financing statement shall remain as an active record until at least one (1) year after it lapses, or if it is indicated to be filed against a transmitting utility, until at least one (1) year after it is terminated with respect to all secured parties of record. On or after the first anniversary of the lapse or termination date, the filing office or the UCC Information Management System shall remove the financing statement and all related UCC records from the searchable indexes or from the UCC Information Management System and upon the removal, the removed UCC records shall cease to be active records ~~[On the first anniversary of the lapse date, the Information Management System shall render the financing statement inactive and the financing statement shall no longer be made available to a searcher unless:~~

- ~~(1) Inactive statements are requested by the searcher; and~~
- ~~(2) The financing statement is still retrievable by the Information Management System].~~

Section 16. ~~[44.]~~ XML Documents. The XML format as adopted by the International Association of Corporation Administrators shall be used for electronic transmission of UCC records except correction statements. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office.

Section 17. ~~[45.]~~ Direct On-line (Non-XML) Data Entry Procedures. A UCC record except correction statements may be filed electronically by accessing the Secretary of State's Web site.

Section 18. Incorporation by Reference. (1) "Addendum," Secretary of State, Uniform Commercial Code Branch, 07-01-2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State, UCC Branch, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, at 10:00 a.m., at the Office of the Secretary of State. Individuals interested in being heard at this hearing shall

notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3rd, 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: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the requirements for the UCC Information Management System.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates to the implementation of KRS 355.9-515, 355.9-519, 355.9-526.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will assist in administering the above statutes by providing a more detailed description of the UCC Information Management System which includes an index of the names of debtors included on financing statements which are active records.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a searchable index of organization debtors and a searchable index of individual debtor names in the UCC Information Management System. Individual debtor names and organization debtor names are more clearly defined by this amendment. Additionally, this amendment establishes the debtor name to be provided when collateral is being administered by a decedent's personal representative or when collateral is held in a trust. Moreover, the status of parties upon the filing of an initial financing statement, an amendment and a filing officer statement are clearly defined by this amendment. Finally, this amendment clarifies that a correction statement is now referred to as an information statement and defines the process for the removal of a UCC record.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the new UCC forms and the requirements for the UCC Information Management System.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will experience costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will collectively benefit from this amendment because it provides them with more detailed information and guidance as to the requirements for the UCC Information Management System.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no cost to implement this amended administrative regulation

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### OFFICE OF KENTUCKY SECRETARY OF STATE (Amendment)

##### 30 KAR 5:050. Filing and data entry procedures.

RELATES TO: KRS 355.9-526

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing[Article 9] of KRS Chapter 355.9[355]. This administrative regulation establishes requirements relating to filing and data entry procedures.

Section 1. Errors of the Filing Officer.[(1)] The filing office may correct data entry and indexing[the] errors of filing office personnel in the UCC Information Management System at any time.[(2)] If a correction is made to a record of a financing statement after the filing office has issued a search report with a through date and time that is on or after the filing date and time of the financing statement, the filing office shall associate with the record of the financing statement in the UCC Information Management System a filing officer statement on the date that the corrective action was taken providing the date and an explanation of the correction[the correction occurs after the filing officer has issued a certification date, the filing officer shall file a filing officer statement in the UCC Information Management System identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The filing officer statement shall be preserved as long as the record of the initial financing statement is preserved in the UCC Information Management System].

Section 2. Data Entry[of Names]. (1) Data shall be entered into the UCC Information Management System exactly as provided in a UCC record, without regard to apparent errors.

(2) Data provided in electronic form shall be transferred to the UCC Information Management System exactly as submitted by the remitter[A record shall designate whether a name is the name of an individual or an organization. If the name is that of an individual, the first, middle and last names and any suffix shall be given.

(4) Organization names. Organization names shall be entered into the UCC Information Management System exactly as set forth in the UCC record, even if it appears that:

(a) Multiple names are set forth in the record; or

(b) The name of an individual has been included in the field designated for an organization name.

(2) Individual names. The filing officer shall enter the names of individuals into the first, middle, and last name and suffix fields in the UCC Information Management System exactly as set forth on the record].

Section 3. Verification of Data Entry. The filing office shall verify accuracy of the data from UCC records entered in accordance with Section 2 of this administrative regulation into the UCC Information Management System. Data entry performed by remitters with respect to electronically filed UCC records shall be the responsibility of the remitter and is not verified by the filing office.

Section 4. Notice of Bankruptcy. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC Information Management System.

Section 5. Redaction of Certain Information. The filing officer shall redact certain information from the information it provides to searchers and bulk data purchasers in accordance with applicable privacy and identity theft protection laws. Such information shall not be included in UCC records and shall be redacted in accordance with such laws.

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 22, 2013, at 10:00 a.m., at the Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3, 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:** Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the requirements related to filing and data entry procedures.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of 355.9-526, Filing Office Rules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will assist in administering the above statute by providing more detailed guidance for filing and data entry procedures.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes that the filing office may correct "data entry and indexing errors" of the filing office. Additionally, this amendment establishes that data is to be entered into the UCC Information Management system exactly as it is provided for without regard to errors. Finally, this amendment clarifies that the process for verifying data has changed and that redaction of certain information in UCC records by the filing office is required.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the changes in the requirements relating to filing and data entry procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will incur costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will collectively benefit from this amendment because it provides them with more detailed information and guidance as to the requirements for filing and data entry procedures.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no estimated cost to implement this amended administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended administrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

**OFFICE OF KENTUCKY SECRETARY OF STATE  
(Amendment)**

**30 KAR 5:060. Search requests and reports.**

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing ~~Article 9~~ of KRS Chapter 355.9[355]. This administrative regulation establishes the requirements governing search requests and reports.

Section 1. General Requirements. The filing officer shall maintain for public inspection a searchable index of active records in the UCC Information Management System. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement, and each active record related to an initial financing statement shall be retrieved with the initial financing statement using either retrieval method for all UCC records. The index shall provide for the retrieval of:

(1) A record by the name of the debtor and by the file number of the initial financing statement; and

(2) Each filed UCC record relating to the initial financing statement].

Section 2.[Standardized] Search Requests – Required Information.[Standardized] Search requests shall include the following information]:

(1) Name searched. A search request shall set forth the ~~correct~~ name of the debtor to be searched using designated fields for organization or individual surname, first personal name, and additional name(s) or initial(s) ~~and shall specify whether the debtor is an individual or an organization~~. A search request shall be processed using the data and designated fields exactly as ~~name in the exact form it is~~ submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is subject of the search.

(2) Requesting party. The ~~search request shall include the~~ name and address of the person to whom the search report is to be sent ~~if the request is in writing~~.

(3) Fee. The appropriate fee shall be tendered ~~enclosed~~ if the request is in writing.

(4) Search Logic. The request shall specify if a search methodology other than that described in Section 4 of this administrative regulation is to be applied in conducting the search. If no such methodology is specified, the one described in Section 4 of this administrative regulation shall be applied ~~Search request with filing. If a filer requests a search at the time a UCC record is filed, the name searched shall be the debtor name as set forth on the record. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the certification date and time, which is normally two (2) business days prior to the date of the search. The search shall not include any active financing statements against the designated debtor or debtors filed after that certificate date and time and shall not include the current financing statement~~.

Section 3. Search requests - Optional Information. A search request may include the following:

(1) Copies. The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:

(a) Include a particular debtor address;

(b) Include a particular city in the debtor address;

(c) Were filed on a particular date or within a particular range of dates; or

(d) Include a particular secured party name.

(2) Scope of search. A requesting party may ask for a search that reports all active records retrieved by the search rather than only unexpired records retrieved by the search.

(3) Mode of delivery. A search request may specify a mode of delivery for search results and that request will be honored if the requested mode is made available by the filing office, and all requisite fees are tendered.

Section 4. Search Methodology. (1) Search results shall be produced by the application of search logic to the name presented to the filing officer. Human judgment shall not play a role in determining the results of the search.

(2) Standard search logic. The following rules describe the filing office's standard search logic and apply to all searches except for those where the search request specifies that a nonstandard search logic be used:

(a) There shall be no limit to the number of matches that may be returned in response to the search criteria;

(b) No distinction shall be made between upper and lower case letters;

(c) The character "&" (the ampersand) shall be deleted and replaced with the characters "and" each place it appears in the name;

(d) Punctuation marks and accents shall be disregarded. For the purposes of this administrative regulation, punctuation and accents include all characters other than the numerals zero through nine (9) and the letters A through Z (in any case) of the English alphabet;

(e) The word "the" at the beginning of an organization debtor name shall be disregarded;

(f) All spaces shall be disregarded;

(g) For first personal name and additional name(s) or initial(s) of individual debtor names, initials shall be treated as the logical equivalent of all names that begin with such initials, and first personal name and no additional name(s) or initial(s) is equated with all additional name(s) or initial(s). For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with the initial "A" or any name beginning with "A" in the additional name(s) or initial(s) field. If the search request were for "John Smith" (first personal name and surnames with no designation in the additional name(s) or initial(s) field), the search would retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname and with any name or initial or no name or initial in the additional name(s) or initial(s) field;

(h) If the name being searched is the surname of an individual debtor name without any first personal name or additional name(s) or initial(s) provided, the search shall retrieve from the UCC Information Management System all financing statements with individual debtor names that consist of only the surname; and

(i) After using the requirements outlined in paragraphs (a) through (h) of this subsection to modify the name being searched, the search shall retrieve from the UCC Information Management System all unexpired records, or, if requested by the searcher, all active records, that pertain to financing statements with debtor names that, after being modified as provided in Section 5 of this administrative regulation, exactly match the modified name being searched ~~Rules Applied to Standardized Search Requests. Standardized search results shall be produced by the application of standardized search logic, without application of human judgment, to the name presented to the filing officer. The following rules shall apply to standardized searches:~~

(1) There shall not be a limit to the number of matches that may be returned in response to the search criteria.

(2) Distinction shall not be made between upper and lower case letters.

(3) Punctuation marks and accents shall be disregarded.

(4) Words and abbreviations at the end of a name that indicate the existence or nature of an organization shall be disregarded.

(5) The word "the" at the beginning of the search criteria shall be disregarded.

(6) All spaces shall be disregarded.

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(7) For first and middle names of individuals, initials shall be treated as the logical equivalent of all names that begin with the initials, and first names and no middle name or initial is equated with all middle names and initials.

(8) After using the requirements established in subsections (1) to (7) of this section to modify the name to be searched the search, shall reveal only names of debtors that are contained in active financing statements and exactly match the name requested, as modified.

Section 4. Optional Information. A search request may contain any of the following information:

(1) The request may limit the records requested by limiting them by the address of the debtor, the city of the debtor, the date of filing or range of filing dates or the identity of the secured party on the financing statement.

(2) The request may ask for copies of UCC records identified on the primary search response if the search request is tendered in writing.

(3) Instruction on the mode of delivery desired, if other than by ordinary mail, which request may be honored if the requested mode is available to the filing office].

Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that will alter search results, the filing office shall provide public notice of such change.

Section 6.[Standardized] Search Responses. Responses to a[Reports created in response to a standardized] search[request] shall include the following:

(1) Copies. Copies of all UCC records retrieved by the search unless only limited copies are requested by the searcher. Copies shall reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(a) Filing office identification[officer]. Identification of the filing office responsible for the search response;

(b) Unique search report identification number. Unique number which identifies the search report;

(c)[officer and the certification of the filing officer. (2)] Report date and time. The date and time the report was generated;

(d) Through date and time. The date and time at or prior to which a UCC record must have been filed with the filing office in order for it to be reflected on the search.

(e)[(3) Name searched. Identification of the name searched. (4)] Certification date. The certification date and time for which the search is effective;

(f) Scope of search;

(g) Search logic used;

(h) Search logic disclaimer language;

(i) Name provided. Name as provided by searcher;

(j) Search string. Normalized name as provided by Section 4 of this administrative regulation;

(k) Lien type searched. UCC or other type of documents searched; and

(l)[. (5) Identification of initial financing statements. Identification of each active initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

(6) History of financing statement. For each initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or prior to the certification date.

(7) Copies. Copies of all UCC records revealed by the search and requested by the searcher. Copies of UCC records shall not be available for electronic search requests.

(3) Report. The search report shall contain the following:

(a) Identification. Identification of the filing office responsible for the search report;

(b) Search report identification number. Unique number assigned under subsection (2)(b) of this section; and

(c) Identification of financing statement. Identification of each initial financing statement, including a listing of all related amend-

ments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria (including whether the searcher has requested active records or only unexpired records). Financing statement information shall include the following:

1. Initial financing statement file number. The initial financing statement file number;

2. Initial financing statement filing date and time. The date and time it was filed;

3. Lapse date. Provide lapse date;

4. Debtor name. The debtor name(s) that appear(s) of record;

5. Debtor address. The debtor address(s) that appear(s) of record;

6. Secured party name. The secured party name(s) that appear(s) of record;

7. Secured party address. The secured party address(es) that appear(s) of record;

8. Amendment type. An indication of type of each amendment, if any;

9. Amendment filing date and time. The date and time each amendment, if any, was filed;

10. Amendment file number. The amendment file number of each amendment, if any;

11. Information statement filing date and time. The date and time a correction statement, if any, was filed; and

12. Filing officer statement filing date and time. The date and time a filing officer statement, if any, was filed.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

FILED WITH LRC: June 28, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, at 10:00 a.m., at the Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3, 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: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the requirements governing UCC search requests and reports.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 355.9-526(1) authorizes the Office of Secretary of State to promulgate administrative regulations to implement Article 9 of KRS Chapter 355. This amended administrative regulation relates directly to the implementation of 355.9-519, 355.9-523, and 355.9-525.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will assist in administering the above statutes by providing more detailed guidance for the requirements that govern UCC search requests and reports.

(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 changes some wording and phrasing of the existing regulation such as replacing the phrase "first, middle, last name" with "first personal name, additional name(s) or initial(s), surname." This phrasing change conforms to the language outlined in the statutes above. Moreover, this amended regulation defines what information is required and what information is optional when conducting a search. This amended regulation also establishes the rules for the filing office's standard search logic that is used to conduct a UCC search. Finally, this amended regulation establishes the information that the filing office shall include in a UCC search report.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 355.9-526(1) which requires the Secretary of State to promulgate administrative regulations implementing Article 9 of KRS Chapter 355.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect countless banks, mortgage companies, and other lending institutions who file financing statements against secured collateral of individuals and other entities that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will have to familiarize themselves with the changes in the requirements that govern UCC search requests and reports.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will incur costs as prescribed by KRS 355.9-525.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will collectively benefit from this amendment because it provides them with more detailed information and guidance as to the requirements that govern UCC search requests and reports.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this amended 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 amended ad-

ministrative regulation will not impact any units, parts, or divisions of state or local government except for the Office of Secretary of State since it will have to enforce the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this amendment and Revised Article 9 of KRS Chapter 355 during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Sales and Excise Taxes (Amendment)

#### 103 KAR 2:005. Life expectancy table.

RELATES TO: KRS 140.100

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 140.100(2) requires the application of the appropriate United States life mortality tables when ascertaining the value of [a] future, contingent or limited ~~estates~~ [estate, income or interest] which includes life estates and annuities. The purpose of this administrative regulation is to establish the appropriate United States life mortality table as required by KRS 140.100(2).

Section 1. The United States Decennial Life Tables~~for the period 1979-84~~ published by the United States Department of Health and Human Services, National Center for Health Statistics, shall be utilized when computing the value of a beneficiary's life estate, annuity, remainder interest or any other interest in the estate which is based on the life expectancy of the beneficiary or some other person.

Section 2. Table 1, Life Table for the Total Population: United States, 1999-2001~~[1979-84]~~, as published in~~[Volume 1, Number 1,]~~United States Decennial Life Tables for 1991-2001, United States Life Tables, Vol. 57, No. 1 (Aug. 5, 2008)~~[1979-84]~~, shall be the appropriate table from within the various tables printed and published in the decennial life tables when computing the value of future, contingent, or limited estates~~[computed an interest as specified in Section 1 of this administrative regulation]~~ for inheritance tax purposes.

Section 3. Incorporation by Reference. (1) "Table 1, Life Table for the Total Population: United States, 1999 - 2001, as published in United States Decennial Life Tables for 1991-2001, United

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States Life Tables, Vol. 57, No. 1", Aug. 5, 2008, is incorporated by reference. (1) Pursuant to Section 2 of this administrative regulation, the following table represents the average number of years remaining at the beginning of the age listed:

Age	Average Remaining Lifetime
0	73.88
1	73.82
2	72.89
3	71.93
4	70.97
5	70.00
6	69.02
7	68.05
8	67.07
9	66.08
10	65.10
11	64.11
12	63.12
13	62.14
14	61.16
15	60.19
16	59.24
17	58.28
18	57.34
19	56.40
20	55.46
21	54.53
22	53.60
23	52.67
24	51.74
25	50.81
26	49.87
27	48.94
28	48.00
29	47.06
30	46.12
31	45.18
32	44.24
33	43.30
34	42.36
35	41.43
36	40.49
37	39.56
38	38.63
39	37.71
40	36.79
41	35.87
42	34.96
43	34.06
44	33.16
45	32.27
46	31.39
47	30.51
48	29.65
49	28.79
50	27.94
51	27.10
52	26.28
53	25.46
54	24.65
55	23.85
56	23.06
57	22.29
58	21.52
59	20.76
60	20.02
61	19.29

62	18.58
63	17.88
64	17.19
65	16.51
66	15.85
67	15.20
68	14.56
69	13.93
70	13.32
71	12.72
72	12.14
73	11.58
74	11.02
75	10.48
76	9.95
77	9.44
78	8.93
79	8.45
80	7.98
81	7.53
82	7.11
83	6.70
84	6.32
85	5.96
86	5.61
87	5.29
88	4.99
89	4.70
90	4.43
91	4.17
92	3.93
93	3.71
94	3.51
95	3.34
96	3.19
97	3.05
98	2.93
99	2.82
100	2.73
101	2.64
102	2.57
103	2.50
104	2.44
105	2.38
106	2.33
107	2.29
108	2.24
109	2.20]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 14, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, from 10:00 a.m. to 12:00 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made un-



less 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 September 3, 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: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Applies the appropriate United States life mortality table as required by KRS 140.100(2).

(b) The necessity of this administrative regulation: Necessary to implement the provisions of KRS 140.100(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as KRS 140.100(2) references the table used in this regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment incorporates the table from the United States Department of Health and Human Services as required by KRS 140.100(2). The current regulation simply copies that information in table format. This amendment will make the process of keeping the table current, by simplifying the process of updating when changes occur.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates by reference the Life Table for the Total Population: United States, 1999-2001, as published in Volume 1, Number 1, United States, 1991.

(b) The necessity of the amendment to this administrative regulation: The United States Decennial Life Tables were recently updated by the United States Department of Health and Human Services. This amendment updates that data, and incorporates the table by reference.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment simply updates the life expectancy tables as referenced in KRS 140.100(2).

(d) How the amendment will assist in the effective administration of the statutes: This amendment simply updates the life expectancy tables as referenced in KRS 140.100(2).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Beneficiaries of a decedent's estate.

(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: NA

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): NA

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

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No continual 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: NA

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

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

(9) TIERING: Is tiering applied? Tiering does not apply. The life expectancy table is changing, but for all age groups and applies uniformly to all tax payers.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 140.100(2).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Income Taxation (Amendment)

#### 103 KAR 16:230. Intangible expenses, intangible interest expenses, and management fees.

RELATES TO: KRS 131.130, 141.205

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.205 disallows intangible expenses, intangible interest expenses and management fees when those expenses and fees are directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members~~[member of an affiliated group]~~ or with a foreign corporation, unless certain criteria are met. This administrative regulation establishes the requirements for when these expenses and fees are allowed or disallowed.

Section 1. Definitions. (1) "Actual comparables" means transactions between the recipient and unrelated parties that are identical~~[involving the same intangible property]~~ to the subject transaction.

(2) "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation or the withholding of tax on interest, dividends, and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information.

(3) "Measured by, in whole or in part, net income" means that the receipt of the payment by the recipient is reported and included in income for purposes of a tax on net income or in the franchise for purposes of the franchise tax.

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(4) "Reported and included in income for purposes of a tax on net income or in the franchise," means:

(a) For a tax on net income, reported and included in the net income apportioned or allocated to the taxing jurisdiction; or

(b) For a franchise tax, reported and included in the franchise apportioned or allocated to the taxing jurisdiction.

(5) "Subject transaction" means the transaction giving rise to the intangible expense, intangible interest expense or management fee.

Section 2. Disclosure; General. As part of the required disclosure, the entity[corporation] shall provide a description of the nature of the payment made to the recipient. This description shall contain:

(1) For intangible expenses or intangible interest expenses:

(a) A narrative regarding the subject transaction;

(b) The extent of the rights being transferred (for example, if a patent is being licensed, whether that license is exclusive or non-exclusive, and whether the transferee has any rights to sublicense);

(c) How the amount of the payment is calculated; and

(d) If there is a document that sets forth the terms of the subject transaction, a copy of that document; and

(2) For management fees:

(a) A narrative of the services being performed for the entity[corporation] by the recipient;

(b) How the amount of the payment is calculated; and

(c) If there is a document that sets forth the terms of the transaction, a copy of that document.

Section 3. Disclosure; Arm's Length Transaction. An entity[A corporation] may be required to establish that the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction.

(1) If there are actual comparables, the actual comparables shall be used.

(2) If there are no actual comparables, the two (2) primary factors to take into account when determining whether the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction shall be:

(a) The degree of comparability between the subject transaction and the proposed comparable transactions; and

(b) The quality of the data and assumptions used in the analysis.

Section 4. Disclosure; Intangible Expense, and Intangible Interest Expense, or Management Fee. With respect to an intangible expense, and intangible interest expense, or management fee, the entity[corporation] shall make additional disclosures if it cannot utilize any of the other methods to establish that it is entitled to the deduction. The entity[corporation] shall show that the payment made to the recipient reported and included in income for purposes of a tax on net income or franchise was subject to, in its state or country of commercial domicile, a net income tax, or a franchise tax, measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States.

Section 5. Corporation or Pass-Through Entity. A corporation or pass-through entity that during the taxable year directly or indirectly paid, accrued, or incurred intangible expenses, intangible interest expenses, or management fees to a related member or foreign corporation shall attach to its tax return filed with the department:

(1) Schedule RPC (Form number 41A720RPC), incorporated by reference in 103 KAR 3:040; and

(2) Any additional disclosures required by Sections 2, 3, and 4 of this administrative regulation.

Section 6. This administrative regulation shall apply to taxable years beginning on or after January 1, 2014.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 15, 2013

FILED WITH LRC: July 15, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, from 10:00 a.m. to 12:00 p.m., in Room 381, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 3, 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: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation prescribes the disclosures that must be attached to the Kentucky tax return of a corporation or pass-through entity that has directly or indirectly paid, incurred or accrued intangible expenses, intangible interest expenses or management fees to a related member or with a foreign corporation as defined in KRS 141.205.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary because KRS 141.205 was amended by HB 440 of the 2013 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will provide a corporation or pass-through entity the necessary disclosures, including Schedule RPC, which must be attached to a Kentucky tax return by a corporation or pass-through entity that has directly or indirectly paid, incurred or accrued intangible expenses, intangible interest expenses or management fees to a related member or to a foreign corporation as provided by KRS 141.205.

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

(a) How the amendment will change this existing administrative regulation: This amendment will provide that management fees paid to a related party shall be disallowed unless the recipient was subject to, in its state or country of commercial domicile a net income tax or franchise tax. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation to the provisions of KRS 141.205 which were amended by HB 440 of the 2013 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will provide a corporation or pass-through entity that has related party expenses as defined in KRS 141.205 the necessary disclosures to be attached to its tax return.

(3) List the type and number of individuals, businesses, organi-

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zations, or state and local governments affected by this administrative regulation: All corporate and pass-through entity filers that have related party expenses as defined by KRS 141.205.

(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: Corporate and pass-through entity filers will attach disclosures required by this amended administrative regulation including Schedule RPC to its tax return, if they have related party expenses as provided by KRS 141.205.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost of complying with this administrative regulation because the disclosures are required by statute and this administrative regulation clarifies those disclosures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation should simplify and expedite the reporting of related party expenses as required by KRS Chapter 141.205.

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

(a) Initially: The cost of administrative regulation process.

(b) On a continuing basis: There should be no additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the Department of Revenue.

(7) Provide an assessment of whether an 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 will be required to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies to all corporations and pass-through entities having related party costs as provided by KRS 141.205.

### 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? Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not increase tax revenue but will improve voluntary compliance by taxpayers and provide the Department of Revenue with necessary information in order to better compliance related party costs as defined in KRS 141.205 which was amended by HB 440 of the 2013 Regular Session.

(a) How much 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 increase tax revenue for the first year, but will improve voluntary compliance by taxpayers with KRS 141.205 which was amended by HB 440 of the 2013 Regular Session.

(b) How 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 increase tax revenue for subsequent years, but will improve voluntary compliance by taxpayers

with KRS 141.205 which was amended by HB 440 of the 2013 Regular Session.

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department operating budget.

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

### FINANCE AND ADMINISTRATION CABINET

#### Department of Revenue

#### Office of Sales and Excise Taxes

#### (Amendment)

### 103 KAR 41:120. Retention of records.

RELATES TO: KRS 138.135(4), 138.195

STATUTORY AUTHORITY: KRS 131.130(1)[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation prescribes rules for the retention of records required to be maintained by cigarette dealers licensed under KRS 138.195 and all other persons required to maintain records under the provisions of KRS 138.135(4) and 138.195.

Section 1. Every licensee or other person required by KRS 138.13(4) and 138.195 to preserve books, records, invoices, and documents shall keep copies of those books, records, invoices, and documents on the immediate premises of each place of business for a period of four (4) years, effective for books, records, invoices, and documents created, made, or received on or after July 1, 2013. These books, records, invoices, and documents[Copies of all documents, prepared or received by any person licensed under KRS 138.195, relative to the receipt and distribution of, or trafficking in, stamped or unstamped cigarettes shall be preserved by the licensee on the immediate premises of his place of business for a period of two (2) years. The records of all licensees] shall be available upon demand during this period of time for inspection by agents of the Department of Revenue.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 14, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, from 10:00 a.m. to 12:00 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3, 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: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

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### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Prescribes rules for the retention of records required to be maintained by cigarette dealers licensed under KRS 138.195 and other persons required to maintain records under the provisions of 2013 Ky. Acts Ch. 97, sec. 3(11) and sec. 4(4).

(b) The necessity of this administrative regulation: Necessary to implement the provisions of KRS 138.195 and recently enacted 2013 Ky. Acts Ch. 97, sec. 3(11) and sec. 4(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the Department the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Effective July 1, 2013, HB 361 will require records to be retained for no less than four (4) years on other tobacco products and snuff. However, the current Administrative Regulation, 103 KAR 41:120 states a two (2) year period for cigarettes instead of the four (4) year period. The change in the regulation will make 103 KAR 41:120 consistent with amendment language in HB 361 affecting KRS 138.195 and other Chapter 138 sections. With inspecting and/or auditing the licensees, the DOR will be able to review records for the previous four (4) years on a coordinated and consistent basis for all applicable tobacco excise taxes.

(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: Requires the licensee to maintain all documents pertaining to the receipt and distribution of, trafficking in, stamped or unstamped cigarettes for a period of four (4) years. The current regulation requires retention of records for a two (2) year period.

(b) The necessity of the amendment to this administrative regulation: HB 361 changes KRS Chapter 138 to require records to be retained for four (4) years. However, the current version of 103 KAR 41:120 only addresses cigarette dealers and requires records to be retained for two (2) years.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the Department the ability to promulgate regulations generally regarding retention of records.

(d) How the amendment will assist in the effective administration of the statutes: The change in the regulation will make 103 KAR 41:120 consistent with KRS 138.195 and other sections of Chapter 138 and allow the Department of Revenue to review records of the licensees for the previous four (4) years on a consistent basis for all related tobacco excise taxes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The change in regulation will affect approximately 200 wholesale licensees, twenty-five (25) to fifty (50) retail distributors and 100 tobacco manufacturers.

(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: Records will have to be retained on the premises of the place of business for a period of four (4) years, and must be available for inspection by the Department of Revenue. The current regulation establishes a two (2) year retention rate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): NA

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected licensees will be able to maintain a single record retention cycle for all documents related to tobacco excise taxes and prepare for a single audit cycle for these taxes.

(5) Provide an estimate of how much it will cost the administra-

tive body to implement this administrative regulation:

(a) Initially: None. Changes will be communicated through normal channels of notification that occur regularly with licensees.

(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: Departmental 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: None.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None. This amendment does not establish or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. All licensees will be required to retain records for the same amount of time.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 138.195 and recently enacted 2013 Ky. Acts Ch. 97, sec. 3(11) and sec. 4(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. No additional expenditures 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? None, but state tobacco excise receipts will be preserved more effectively with a 4-year record retention schedule.

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

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. None.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

#### 105 KAR 1:140. Employer's administrative duties.

RELATES TO: KRS 16.645(18), 18A.105, 61.546, 61.552(23), 61.565, 61.569, 61.598, 61.637(17), 61.675, 61.685, 61.702, 78.545(33), (37), 78.616, 78.625, 78.652, 26 U.S.C. 3121(b)(10), 26 C.F.R. 31.3121(b)(1)-2, 29 C.F.R. 519.2(a), 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. 160, 162, 164, 26 U.S.C. 401(a)(17), 401(a)(31), 403(b), 408(a), (b) 414(g)(6), 457(b), Pub. L. 104-191, Pub. L. 111-5, Div., A Title XIII, Div. B, Title IV

STATUTORY AUTHORITY: KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), 78.625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Employers partic-

icipating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required by KRS 16.645(18), 61.565, 61.675, 78.545(33), and 78.625 to make contributions to the retirement systems, to report creditable compensation to the retirement systems and other information that the Board of Trustees may require, and perform other duties and responsibilities as participating employers. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site by:

(a) The Enter Report Details Module; or

(b) Uploading an electronic file that meets the requirements of the Employer Contribution Record Layout. The employer shall submit a test file to the retirement systems, which shall be reviewed for compliance with the requirements of the Employer Contribution Record Layout. If the test file is in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall certify the electronic file and inform the employer of the month when the employer may begin using the electronic file for submitting reports. If the test file is not in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall inform the employer of the needed corrections to the test file. The employer shall not submit a report by electronic file pursuant to this subsection until the test file is certified by the retirement systems.

(2) The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site changes.

(3) Each employer shall submit the contributions required by KRS 61.675 and KRS 78.625:

(a) Electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site;

(b) By mailing or hand delivering a check;

(c) By the eMARS system maintained by the Finance and Administration Cabinet; or

(d) By wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the tenth day of the following month.

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting if the month the creditable compensation was earned is the month in which the employee:

1. Became employed;

2. Became eligible to participate in one of the systems administered by Kentucky Retirement Systems;

3. Was transferred to hazardous coverage from nonhazardous participation;

4. Was transferred from hazardous coverage to nonhazardous participation;

5. Terminated from employment; or

6. Became ineligible to participate in one (1) of the systems administered by Kentucky Retirement Systems.

(b) If the employee is paid creditable compensation in a lump sum or nonrecurring payment, the employer shall designate the reason for the lump sum or nonrecurring payment.

1. If the lump sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump sum or nonrecurring payment was earned.

2. If the employer fails to designate a specific time period during which the lump sum or nonrecurring payment was earned, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(5) The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.

(6) Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and

shall remit employer and employee contributions for those employees.

(7) If an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:

(a) The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee;

(b) The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.697, or 61.702 from the employee's creditable compensation and remit the additional contributions to the retirement systems;

(c) If the employee is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and

(d) If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be omitted service in accordance with KRS 61.552(23).

(8) Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(1)-2; and

(b) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).

(9)(a) An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(c) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.

(b) An employer participating in the County Employees Retirement System shall only classify an employee as temporary or probationary pursuant to KRS 78.510(21)(c) one (1) time. If the employee terminates employment with the employer and later returns to employment with the same employer, the employer shall not classify the employee as temporary or probationary pursuant to KRS 78.510(21).

(c) An employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System shall not change an employee's position status from full-time to seasonal, temporary, or interim in the same fiscal year.

(d) An employer shall not classify an employee as a seasonal employee pursuant to KRS 61.510(21)(a) or 78.510(21)(a) unless the duties of the job can only be performed during a defined time period during a fiscal year.

(e) If an employer violates the provisions of this subsection, the retirement systems shall determine if the employee worked or averaged the necessary hours to be in a regular full-time position as provided in KRS 61.510(21) or 78.510(21). If the employee worked or averaged the necessary hours to be in a regular full-time position as defined by KRS 78.510(21), the service credit shall be omitted service in accordance with KRS 61.552(23).

Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees

intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.

(b) Personal information includes the member's first name or first initial and last name in combination with the member's:

1. Social Security number;
2. Driver's license number;
3. Personal Identification Number permitting access to the member's account; or
4. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery.

(d) The employer shall notify the retirement systems of a disclosure upon discovery.

(e) The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.

(f) The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.

(g) If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.

(h) In transmitting any medically related personal information, the employer shall comply by all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.

(b) The employer shall remit payment to the retirement systems by the due date provided on the invoice.

(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.

Section 4. (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

Section 5. If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:

(1) Any funds due to the employer; or

(2) Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.

Section 6. (1) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-

living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(2) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(3) Effective with respect to plan years beginning on and after July 1, 2002, a plan member's annual compensation that exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(4) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

(a) The member's creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

(b) The member has filed a notification of retirement; and

(c) The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 7. (1) An employer may request that the retirement systems make a determination if a change in position or hiring of an employee is a bona fide promotion or career advancement prior to the employee's change of position or hiring as provided in KRS 61.598.

(2) An employer may submit a Form 6480, Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement, describing the proposed change in position or hiring of an employee or potential employee including:

(a) The employee's or potential employee's full name;

(b) The employee's or potential employee's Kentucky Retirement Systems Member Identification Number or Social Security Number;

(c) The potential employee's current employer;

(d) The employee's current job description;

(e) The job description for the employee's proposed job;

(f) Documentation of additional training, skills, education, or

expertise gained by the employee or potential employee;

(g) Employer's organizational chart; and

(h) Any additional information the employer wants to be considered by the retirement systems.

(3) The employer shall provide any additional information requested by the retirement systems.

(4) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(5) In determining if a change in position or hiring would be a bona fide promotion or career advancement, the retirement systems shall consider the following factors:

(a) If the employee's or potential employee's proposed job duties represent a significant increase in responsibility from the employee's previous job duties;

(b) If the employee or potential employee has gained training, skills, education, or expertise to justify a change in position; and

(c) If the employee's proposed job represents a promotion within the employee's organization from the employee's previous job.

(6) Increases or proposed increases in an employee's creditable compensation caused by overtime, compensatory time other than lump-sum payment made at the time of termination, or bonuses shall not be a bona fide promotion or career advancement.

(7) The retirement systems shall issue a final administrative decision in writing to the employer if an employee's change in position or potential employee's hiring is a bona fide promotion or career advancement. The retirement systems' determination shall be specific to the employee or potential employee and shall be based on the information and documentation provided by the employer. If the information or documentation provided by the employer is not accurate, the final administrative decision of the retirement systems shall not be binding on the retirement systems pursuant to KRS 61.685.

(8) An employer who disagrees with the retirement systems' final administrative decision may request an administrative hearing in accordance with KRS Chapter 13B. The request for administrative hearing shall be made in writing within thirty (30) days of the date of the final administrative decision of the retirement systems.

Section 8. (1) After the member retires, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(2) If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.

(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within thirty (30) days of the date of the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.

(4) The employer shall provide any additional information requested by the retirement systems.

(5) The retirement systems may require the employer to make

certifications regarding the information and documentation submitted.

(6) In determining if a change in position or hiring would be a bona fide promotion or career advancement, the retirement systems shall consider the following factors:

(a) If the employee's or potential employee's proposed job duties represent a significant increase in responsibility from the employee's previous job duties;

(b) If the employee or potential employee has gained training, skills, education, or expertise to justify a change in position; and

(c) If the employee's proposed job represents a promotion within the employee's organization from the employee's previous job.

(7) The retirement systems shall issue a final administrative decision in writing advising the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(8) If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within thirty (30) days of the date of the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(9) If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the final administrative decision.

(10) If the employer fails to file a written request for administrative hearing within thirty (30) days of the date of the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(11) The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.

(12) If at the time of his retirement the member was employed by more than one (1) participating employer, the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last participating employers.

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

(a) Form 6480, "Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement", July 2013; and

(b) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", July 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: July 1, 2013

FILED WITH LRC: July 1, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2013 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3, 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: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that employers must file contributions and reports at the retirement systems. This administrative regulation provides the procedures and requirements for employers to file reports and contributions at the retirement systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by providing the procedures and requirements for employers to file reports and contributions with the retirement systems.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member's retirement. It also establishes the procedure for processing of incomplete contributions where an employer failed to withhold the entire amount of contributions due from the employee's salary and cannot correct the error. It also establishes the parameters for employers who classify people under the exceptions to regular full time position found in KRS 61.510(21) and 78.510(21).

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member's retirement. It also necessary to establish the procedure for processing of incomplete contributions where an employer failed to withhold the entire amount of contributions due from the employee's salary and cannot correct the error and to establish the parameters for employers who classify people under the exceptions to regular full time position found in KRS 61.510(21) and 78.510(21).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing the procedure and necessary documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member's retirement, by establishing the procedure for processing of incomplete contributions where an employer failed to withhold the entire amount of contributions due from the employee's salary and cannot correct the error, and establishing the parameters for employers who classify people under the exceptions to regular full time position found in KRS 61.510(21) and 78.510(21).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing the procedure and necessary

documentation an employer will have to provide to make a determination if a proposed change of position or hiring is a bona fide promotion or career advancement both before and after a member's retirement, by establishing the procedure for processing of incomplete contributions where an employer failed to withhold the entire amount of contributions due from the employee's salary and cannot correct the error, and establishing the parameters for employers who classify people under the exceptions to regular full time position found in KRS 61.510(21) and 78.510(21).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1800 participating employers of Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers may request a determination regarding whether or not a proposed change in position or hiring will be a bona fide promotion or career advancement and will know the procedures for refund of incomplete contributions and classification of employees under KRS 61.510(21) and 78.510(21).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost to employers should be minimal because they already report electronically. It is within the employer's discretion to request a determination or administrative appeal of a determination of bona fide promotion or career advancement. Kentucky Retirement Systems will have a cost of staff time and resources to make the determination of bona fide promotion or career advancement if an employer makes a request for determination.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employer's will know how to request determination or administrative appeal of a determination of bona fide promotion or career advancement and will know how to correctly report non-participating positions and process refunded employee contributions.

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

(a) Initially: zero

(b) On a continuing basis: zero

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and 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: There is no increase in fees or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Procedures are the same for all participating employers; therefore, 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? All state and local government employers participating in Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.645(18), 61.565, 61.645(9)(g), 61.675, 78.545(33), and 78.625.

(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? The additional cost to employers should be minimal because they already report electronically. It is within the employer's discretion to request a determination or administrative appeal of a determination of bona fide promotion or career advancement. Kentucky Retirement Systems will have a cost of staff time and resources to make the determination of bona fide promotion or career advancement if an employer makes a request for determination.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost as employers have always been required by statute to report.

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 Commission  
(Amendment)**

**201 KAR 11:220. Errors and omissions insurance requirements.**

RELATES TO: KRS 324.010, 324.395

STATUTORY AUTHORITY: KRS 324.282, 324.395(4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. KRS 324.395(4) allows licensees the option of obtaining errors and omissions insurance independently, and KRS 324.395(5) requires the commission to determine the terms and conditions of errors and omissions insurance coverage. This administrative regulation sets forth procedures and standards for obtaining insurance independently.

Section 1. (1) An insurance company providing real estate errors and omissions insurance for real estate licensees shall provide a signed certification to the insured licensee which shall confirm that the obligations of the insurance company ~~meet~~<sup>meets</sup> the minimum requirements set forth in this administrative regulation.

(2) A licensee who chooses to be insured by other than the group insurance policy obtained by the commission shall file the private carrier certification of coverage with his or her license renewal application in accordance with KRS 324.395(6). This certification shall be available on the commission's Web site, [www.krec.ky.gov](http://www.krec.ky.gov), and shall be included in the yearly renewal package mailed to all principal brokers.

Section 2. The insurance for which the certification has been executed shall not be terminated, cancelled, lapsed, or nonrenewed unless the insurance company has provided the commission with prior written notice.

Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that: (1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.

(2) The limit of liability shall be no less than \$100,000 for any one (1) claim, excluding the cost of investigation and defense, nor less than \$1,000,000 annual aggregate limit of liability, excluding~~including~~ the cost of investigation and defense. A principal

broker who decides to purchase independent errors and omissions "firm coverage" insurance shall have the following aggregate amounts:

(a) One (1) - forty (40) licensees shall carry a \$1,000,000 annual aggregate;

(b) Forty-one (41)+ licensees shall carry a \$2,000,000 annual aggregate.

(3) The maximum deductibles, which may be separate deductibles, shall not exceed \$2,500 for judgment or settlement and \$1,000 for the cost of investigation and defense.

(4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987 unless the claim had been made against the licensee before the present insurance policy's inception or is insured by a previous insurance policy.

Section 4. Except as provided in Section 5 of this administrative regulation, coverage may not exclude claims brought against the insured arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.010.

Section 5. Coverage may exclude claims brought against the insured, regardless of whether the professional service involves an activity for which a license is required by the Commonwealth of Kentucky:

(1) Arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;

(2) Arising as a result of the insolvency of the insured;

(3) Brought about or contributed to by any inability or failure to pay or collect premium, escrow or tax money;

(4) Brought about by any employee or former employee arising out of the contract of employment with the insured and alleging breach thereof;

(5) Arising out of any injury or damage which the insured either expected or intended;

(6) For bodily injury, sickness, disease or death of any person or physical injury to or destruction of or loss of use of tangible property;

(7) Arising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or publications or utterances in violation of an individual's right of privacy, or malicious prosecution;

(8) Arising out of services performed by the insured which are subject to the Employee Retirement Income Security Act of 1974 as amended;

(9) Arising out of any violation of the Securities Act of 1933 as amended or the Securities Exchange Act of 1934 as amended or any state blue sky or securities law or similar state or federal statutes;

(10) Arising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;

(11) Brought against a real estate property manager for failure to effect or maintain adequate levels or types of insurance;

(12) Arising out of unlawful discrimination;

(13) Arising out of liability assumed by the insured under any indemnity, hold harmless or similar provisions or agreements, except this exclusion shall not apply to liability the insured would have in the absence of such agreements;

(14) Arising out of the insured's business and brought by or on behalf of an investor, shareholder or partner in any corporation, limited or general partnership, real estate trust or venture in which the insured has, or had, a participating interest, directly or indirectly, in the profits or losses thereof, or in connection with the insured's activities as an underwriter, sponsor, partner, joint or co-venturer or member in any real estate partnership, venture or syndicate;

(15) Arising out of, relating to or based upon the dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases or other materials, irritants, contaminants, or pollutants. Pollutants shall include any solid, liquid, gaseous, thermal, biological or radioactive sub-

stance, material, matter, toxin, irritant or contaminant, including radon, asbestos, chemicals and waste. Waste shall include materials to be recycled, reconditioned, or reclaimed;[-]

(16) That are excluded by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #IL 00 21 11 85;

(17) Arising from the sale or property management of property developed, constructed or owned by the insured, or by any firm or corporation in which the insured has a financial interest, or by any firm coming under the same financial control as the insured, except that this exclusion shall not apply and coverage is extended to claims arising from the sale of real property, provided all three (3) of the following conditions are met:

(a) The property was acquired by the insured under a guaranteed sale listing contract; and

(b) The title to the property was only temporarily held by the insured during the transit period (not to exceed one (1) year) from acquisition to resale; and

(c) The property is listed for sale during the entire transit period; or

(18) Arising out of the interests, operations or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager or property developer. An insured shall not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items.

LINDA CECIL, Chairperson

APPROVED BY AGENCY: July 12, 2013

FILED WITH LRC: July 15, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 2:00 p.m. Eastern Time at the Kentucky Real Estate Commission office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. 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 the close of business on September 3, 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: Angela Evans, KREC Acting General Counsel, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements for the errors and omissions insurance licensees are required to obtain.

(b) The necessity of this administrative regulation: This regulation is necessary because it sets the minimum amounts of errors and omissions insurance coverage a licensee is required to obtain and the minimum "firm coverage" aggregates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Commission is given the authority to establish regulations for the practice of real estate brokerage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the minimum amount of coverage licensees and firms are required to maintain.

(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 clarify that the cost of investigation and defense of a claim are not included in the minimum coverage required by the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to prevent the possibility of investigation and defense costs consuming the money that would otherwise be paid to cover damages to the injured party.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute because the Commission has the authority to determine the terms and conditions of the coverage mandated by the law.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will clarify the required terms and conditions of the insurance policy licensees are required to obtain.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 12,000 licensees, all of whom are required to have errors and omissions insurance.

(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: Licensees will need to make sure their insurance policy excludes the cost of investigation and defense from the minimum limit of liability. If it does not, they will be required to obtain insurance that complies.

(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 insurance varies by company. The amendment will not affect licensees who opt to be covered under the group policy offered by the Commission.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be permitted to be able to defend claims against their insurance without the concern of that cost depleting the limit of liability.

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

(a) Initially: An administrative fee of ten (10) dollars was established twenty years ago.

(b) On a continuing basis: The administrative fee will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission'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 is necessary to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: A processing fee of ten dollars has been in place for the past twenty years. The amendment does not increase that fee.

(9) TIERING: Is tiering applied? Tiering was not applied because all active brokers and sales associates are required to obtain errors and omissions insurance.

#### 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? Beyond the Real Estate Commission, no other unit, part or division of state or local government will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.395

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 regulation generates approximately \$120,000 per year in revenue for the Real Estate Commission.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The regulation generates approximately \$120,000 per year in revenue for the Real Estate Commission.

(c) How much will it cost to administer this program for the first year? The approximate cost to administer the program is \$120,000.

(d) How much will it cost to administer this program for subsequent years? The cost is expected to remain the same.

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

Revenues (+/-): N/A  
Expenditures (+/-): N/A  
Other Explanation: N/A

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

**201 KAR 12:020. Examination.**

RELATES TO: KRS 317A.010, 317A.020, 317A.050, 317A.100, 317B.025

STATUTORY AUTHORITY: KRS 317A.050, 317A.060, 317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations regarding examinations of applicants for licenses in cosmetology, nail technology, and esthetics. This administrative regulation establishes the procedure and qualifications for these examinations.

Section 1. (1) A graduate of any school of cosmetology licensed by this board shall not be accepted for apprentice examination who has not registered with the board at least ten (10) months[and two (2) weeks] prior to the examination.

(2) A graduate nail technician shall not be accepted for examination who has not registered with the board at least seventy-five (75) days prior to examination.

(3) A graduate esthetician shall not be accepted for examination who has not registered with the board at least six (6) months and two (2) weeks prior to examination.

Section 2. An applicant for licensure who completed hours in another state shall submit a certification from the state board or agency of the state in which the hours were obtained.

Section 3. A student, apprentice cosmetologist, nail technician, or esthetician shall not be permitted to take the board's examination whose application completed in full has not reached the office of the board at least ten (10) working days prior to the beginning date of examination.

Section 4. (1) The board's examination shall be given only to an applicant who has been notified to appear for the examination and who is wearing a professional clean, washable uniform, and who has with him or her instruments and all supplies needed to be used in the giving of the practical examination.

(2) A professional uniform shall be considered a lab jacket or smock over clothing.

(3) Bibs[or] aprons, shorts, or denim jeans shall not be allowed.

Section 5. The examination shall consist of both a written test and practical demonstration in subjects from the curriculum as specified in 201 KAR 12:082 and 201 KAR 12:088. The practical

demonstration shall be performed on a mannequin head and hand for the cosmetology practical examination, mannequin head for the esthetician practical examination and a mannequin hand for the nail technician practical examination provided by the applicant.

Section 6. (1) An average grade of seventy (70) percent in theory and practical shall be required as a passing grade on the board's apprentice cosmetologist nail technician and esthetician examination. A license shall not be issued to an applicant, not including instructors, with a grade below seventy (70) percent in any one subject. An applicant shall submit to reexamination on subjects not successfully completed.

(2) An instructor's license shall not be issued to any applicant receiving a grade below eighty (80) percent on written and eighty-five (85) percent on practical. An applicant shall submit to reexamination on subjects not successfully completed.

Section 7. A student who practices cosmetology, nail technology or esthetics in a beauty salon prior to the examination given by the board may be considered ineligible to take the examination pending a hearing before the board.

Section 8. A bulletin board shall be provided by a school and the examination schedule shall be conspicuously displayed thereon at all times.

Section 9. An applicant successfully completing the state board examinations shall buy his or her license within thirty (30) days following the examination. Failure to purchase the license shall require the paying of the appropriate restoration fee as required by 201 KAR 12:260 and appropriate restoration fee as required by 201 KAR 12:220(4) for an esthetics license. An applicant who does not purchase a license after one (1) year of passing the examination shall retake the examination and pay the appropriate examination fee.

Section 10. The fee accompanying an application shall not be refunded unless the application is rejected by the board.

Section 11. Any applicant who:

(1) Fails the state board examinations may be rescheduled for examination during any examination period if all qualifications are met; or

(2) Is caught cheating or impersonating another shall not be rescheduled for examination for a minimum of six (6) months.

Section 12. (1) Except as provided by subsections (2) or (3) of this section, any applicant that fails to report for examination on the date in which the applicant was notified shall submit an examination application and pay the examination fee as required by 201 KAR 12:260 prior to being rescheduled for examination.

(2) The board shall waive the examination fee with sufficient proof of[under] the following circumstances:

(a) Illness or medical condition of the applicant that prohibits the applicant from reporting to the examination; or

(b) Death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting to the examination[; (c) Car trouble or interstate closure on the way to the examination site that prohibits the applicant from arriving at the scheduled time; or

(d) For not more than two (2) consecutive examination periods, the applicant contacts the office of the board not later than two (2) business days prior to the scheduled examination].

(3) The board may waive the examination fee for other reasonable circumstances beyond the applicant's control.

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

(a) "Apprentice Cosmetologist Application for Examination", June 30, 2006;

(b) "Manicurist/Nail Technician Application for Examination", June 30, 2006; [and]

(c) "Esthetician Application for Examination", June 30, 2006;

(d) "Out of State Application", January 30, 2013; and

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(e) "Cosmetologist Application", January 30, 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets the standard for the examination process.

(b) The necessity of this administrative regulation: To meet the requirements set forth in 317A.050, 317A.060, and 317B.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes the requirements for licensure applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Defines the responsibilities of all persons that present to the board for examination.

(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 specifies dress code and a penalty for cheating during the exam.

(b) The necessity of the amendment to this administrative regulation: To clarify the consequence of appropriate attire or cheating.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is authorized to promulgate regulations on examination of applicants.

(d) How the amendment will assist in the effective administration of the statutes: It further defines behavior that has not been clearly addressed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 3,000 applicants annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Board will notify exam candidates about appropriate attire. Additionally, the regulations are reviewed by schools to familiarize the students with the laws that govern the profession. (b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be considered for licensure.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish a fee.

(9) TIERING: Is tiering applied? No, all applicants must meet the requirement.

### 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 Board of Hairdressers and Cosmetologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 317A.050, 317A.060, and 317B.020.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No fiscal 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenue generated or expended.

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

#### 201 KAR 12:040. Apprentices; ratio to operators.

RELATES TO: KRS 317A.030, 317A.060

STATUTORY AUTHORITY: KRS 317A.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050(2)(b) requires an apprentice cosmetologist to work six (6) months under the supervision of a licensed cosmetologist. This administrative regulation sets the standard for cosmetologist to

apprentice cosmetologist ratio.

Section 1. (1) Salons employing apprentice cosmetologists shall maintain the following ratio:

(a) Two (2) apprentice cosmetologists to one (1) cosmetologist;[-]

(b) Three (3) apprentice cosmetologists to two (2) cosmetologists; or[-]

(c) Four (4) apprentice cosmetologists to three (3) cosmetologists.

(2) Any salon employing more than four (4) apprentice cosmetologists shall maintain an equal ratio of one (1) apprentice cosmetologist per cosmetologist.

Section 2. A licensed cosmetologist shall be on site and continuously available for immediate supervision any time an apprentice cosmetologist provides any service relating to the practice of cosmetology.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for all apprentice cosmetologists.

(b) The necessity of this administrative regulation: To specify the requirements for apprentice cosmetologists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the requirements for apprentices, as authorized by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It defines supervision, ratio requirements and the proximity of supervision.

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

(a) How the amendment will change this existing administrative regulation: It specifies that the supervisor must be present on the premises where the apprentice works.

(b) The necessity of the amendment to this administrative regulation: To avoid confusion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires six months of immediate supervision before the Board may license an individual.

(d) How the amendment will assist in the effective administration of the statutes: It clearly defines what is expected of the apprentice and supervisor.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 2,500 apprentice cosmetologists

annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. An apprentice will work six months under immediate supervision.

(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): Apprentices will benefit from the experience of the supervisor and the public will be better protected.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees.

(9) TIERING: Is tiering applied? No; all apprentice cosmetologists licensed by this board must meet the requirement.

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 Board of Hairdressers and Cosmetologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 317A.050(2)(b) and 317A.060.

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. \$0

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenue is generated or expended

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

**201 KAR 12:045. Apprentice, nail technician, esthetician, and instructor's licensing.**

RELATES TO: KRS 317A.050, 317B.025

STATUTORY AUTHORITY: KRS 317A.060, 317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 authorize the board to promulgate administrative regulations regarding licenses in cosmetology, nail technology and esthetics. This administrative regulation establishes

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procedures for examination and license applications.

Section 1. An application for any examination established under KRS Chapter 317A and 317B shall be accompanied by a notarized certification of hours from the school the student attended.

Section 2. (1) An apprentice cosmetologist shall apply for a ~~cosmetologist[regular]~~ license no sooner than six (6) months and no longer than eighteen (18) months after passing the apprentice examination. Any extension of this period of time shall be granted at the discretion of the board.

(2) Proof of a six (6) month apprenticeship consists of working in a licensed beauty salon for an average of twenty (20) hours per week for six (6) months.

Section 3. An apprentice cosmetology instructor shall apply for an instructor license no sooner than six (6) months and no longer than twenty-four (24) months after receiving an apprentice instructor license. An[any] extension of this period of time shall not[te] be granted. If an instructor license has not been obtained within twenty-four (24) months, the apprentice cosmetology instructor shall lose instructional hours and return to school[at the discretion of the board].

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes exam and license requirements.

(b) The necessity of this administrative regulation: To specify the requirements to apply for and take examinations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute permits the Board to promulgate regulations regarding the training and examination of applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets out time periods in which to obtain a license and what must be submitted in order to take an exam.

(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 specifies how long an instructor has to test before the instructor will lose hours and need to return to school.

(b) The necessity of the amendment to this administrative regulation: To avoid confusion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It addresses the qualification of appren-

tice instructors, as authorized by KRS 316A.060(2)(d) and (h).

(d) How the amendment will assist in the effective administration of the statutes: It clearly defines a timeframe for licensure of an apprentice instructor.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 20 apprentice cosmetology instructors annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. An apprentice cosmetology instructor will have 24 months to obtain an instructor license.

(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): Students will have teachers with current knowledge teaching them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees.

(9) TIERING: Is tiering applied? No; all apprentice cosmetology instructors licensed by this board must meet the same requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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. \$0

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenue is generated or expended

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

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

#### 201 KAR 12:050. Reciprocity for valid licensee.

RELATES TO: KRS 317A.050, 317A.100, 317B.040

STATUTORY AUTHORITY: KRS 317A.060, 317A.100(1), 317B.020, 317B.040(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.100(1), (2), and (3) and 317B.040(1) allow the board to prescribe reasonable administrative regulations pertaining to the issuance of a [cosmetology] license to any person holding a comparable license by another state[, and the issuance of an esthetics license to any person holding a comparable license issued by another state or country]. This administrative regulation establishes reciprocity requirements for [cosmetology and esthetics] applicants licensed in other states [and for an esthetic practitioner licensed in another country].

Section 1. Any applicant from another state within the United States, who holds a valid license that is comparable to a license in Kentucky, requiring 1,800 hours of curriculum for cosmetology including a six (6) month apprenticeship, 600 hours of curriculum for nail technology and 1,000 hours curriculum for esthetics, [cosmetology or esthetic license] and who can show proof of two (2) years current experience, may come before the state board for examination (written and practical[only]) by paying the out-of-state [cosmetologist] examination fee established in KRS 317A.050[(10)(e)] and the [cosmetologist] license fee established in KRS 317A.050[(2)(d)], or by paying the esthetician license fee established in 201 KAR 12:220, Section 1(1) and the out-of-state esthetician examination fee established in 201 KAR 12:220, Section 3(3). [Section 2. An applicant shall provide:

(1) ~~A certification or official equivalent and copy of current license from the state board or state granting original license; and~~

(2)(a) ~~Proof of two (2) years high school education or its equivalent for a cosmetologist license; or~~

(b) ~~Proof of four (4) years high school education or its equivalent for an esthetician license.~~

Section 3. (1) ~~An esthetic practitioner who is a Comite' International D'Esthetique Et de Cosmetologie Organization (CIDESCO) Diplomate shall receive a license to practice esthetics without examination if the practitioner:~~

(a) ~~Provides proof of successful completion of the CIDESCO examination; and~~

(b) ~~Pays a fee of \$200.~~

(2) ~~Proof of successful CIDESCO examination completion shall be the following:~~

(a) ~~Date, time and place of sitting for and passing the CIDESCO examination; and~~

(b) ~~Copy of the CIDESCO diploma and statement of verification from the CIDESCO International organization in Zurich, Switzerland.]~~

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on Sep-

tember 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets standards for applicants applying for reciprocity.

(b) The necessity of this administrative regulation: Allows for the issuance of a license to an applicant who holds a comparable license in another state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the requirements for reciprocity.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Defines the responsibilities of all applicants that are applying for licensure thru reciprocity.

(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: Clarifies that a written and practical exam are required and deletes an unnecessary section (Section 2) that has never been invoked since inception of the language.

(b) The necessity of the amendment to this administrative regulation: To clarify that an applicant will have to take a written and practical exam.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The regulation is now consistent with the authorizing statute, which requires a theory and practical examination.

(d) How the amendment will assist in the effective administration of the statutes: It avoids confusion and creates harmony between the statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500 applicants apply for a cosmetology license, esthetic license, or nail technology license through reciprocity.

(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 applicant will have to take an exam and provide proof of comparable education and training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$125.00/200.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicant will be licensed in Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish a fee.

(9) TIERING: Is tiering applied? No, all applicants applying for license thru reciprocity are treated the same.

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### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: 317A.050, 317A.100(1), 317B.020, and 317B.040.(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$60,000 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? \$60,000.

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 Hairdressers and Cosmetologists (Amendment)

#### 201 KAR 12:060. Inspections.

RELATES TO: KRS 317A.050, 317A.060, 317B.025

STATUTORY AUTHORITY: KRS 317A.060, 317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050, 317A.060, and 317B.020 require the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, threading, and esthetics, and to protect the health and safety of the public. This administrative regulation establishes inspection and health and safety requirements for all schools and salons of cosmetology, nail technology, threading, and esthetics.

Section 1. Any board member, the administrator and inspectors shall be allowed to enter any establishment licensed by this board or any place purported to be practicing cosmetology, nail technology, threading, or esthetics[~~at any reasonable hour~~] for the purpose of determining if[the] individuals, salons, and schools are complying with KRS Chapters 317A and[~~;~~] 317B, and 201 KAR Chapter 12.

Section 2.(1) Each licensee or permit holder shall attach his or her picture to the license or permit[~~;~~] and place it in a conspicuous area in the salon or school.

(2) A conspicuous area is visible to the general public and includes:

(a) The main entrance door or window of the premises;

(b) The work station of the employee or independent contractor; or

(c) A public area within twenty (20) feet of the main entrance.

(3) A manager shall have the manager's license posted with a picture in a conspicuous area at all times.

(4) A salon or school shall post its license without a picture in a conspicuous area at all times.

Section 3.(1) Each salon and school shall post the most recent

inspection report in a conspicuous area in the salon or school.

(2) A conspicuous area is visible to the general public and includes:

(a) The main entrance door or window of the premises; or

(b) A public area within twenty (20) feet of the main entrance[~~Any salon closing for business but maintaining yearly license renewal shall be considered an inactive salon and shall remain same provided plumbing and equipment is not removed.~~

(2) The salon shall be inspected periodically.

(3) Any salon removing equipment and plumbing shall be considered out of business and the license voided].

Section 4.(1) All establishments licensed by this board shall be inspected a minimum of two (2) times per year.

(2) The owner and manager of each establishment licensed by the board are responsible for compliance with KRS Chapters 317A and[~~;~~] 317B, and 201 KAR Chapter 12.

Section 5. It shall be unprofessional conduct to withhold information or lie to an inspector who is conducting a lawful investigation of a violation of KRS Chapters 317A and 317B, and 201 KAR Chapter 12.

Section 6.(1) A salon or school shall schedule an inspection of the salon or school after an inspector twice attempts but is unable to inspect the salon or school.

(2) Failure of the owner and manager to schedule an inspection within thirty (30) days of two (2) attempts to inspect shall constitute unprofessional conduct.

Section 7.(1) It shall be unprofessional conduct for a salon or school to remain open to the public if it is not appropriately licensed by the board.

(2) It shall be unprofessional conduct for a person to provide cosmetology, nail technology, esthetic, or threading services unless appropriately licensed or permitted by the Board under 201 KAR Chapter 12.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes inspection and health/safety requirements for all salons.

(b) The necessity of this administrative regulation: To clearly state the responsibilities of salons during an inspection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes requirements for all salons, as authorized by KRS 317A.060(1)(a) and (2)(h).



(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It states what is expected during an inspection.

(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 specifies posting requirements for salons and licensees and defines unprofessional conduct in the course of an inspection

(b) The necessity of the amendment to this administrative regulation: KRS 317A.060. It will better clarify the responsibilities of owner, managers, and licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

It establishes requirements for all salons, as authorized by KRS 317A.060(1)(a) and (2)(h).

(d) How the amendment will assist in the effective administration of the statutes: The public will be able to better determine whether the individuals providing service are licensed and the sanitation record of the salon.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 5000 salons will be affected annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Salons will have to conspicuously post its past inspection, licensees will have to conspicuously post their pictures and licenses, and individuals will be deemed to act unprofessionally if they engage in specific conduct (e.g. providing unlicensed services, operating an unlicensed salon, failure to schedule inspections).

(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): The public will be better protected.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

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

(9) TIERING: Is tiering applied? No, all facilities licensed by this board must meet the requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 317A.060, 317B.020(2)(b), (c),(d), (f), (g) and (i).

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 fiscal 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenue will be generated or expended.

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

#### 201 KAR 12:065. New, relocated and change of owner salons.

RELATES TO: KRS 317A.050, 317A.060, 317B.025

STATUTORY AUTHORITY: KRS 317A.060, 317B.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations governing the operation of any salons of cosmetology, nail technology, and esthetics. This administrative regulation establishes requirements for beauty salons, nail salons, and esthetic salons which are new, relocating, or changing owners, and the separation of salons from barber shops.

Section 1. All beauty salons, nail salons, and esthetic salons which are new or relocating shall complete a "Beauty Salon Application" or "Nail Salon Application" furnished by the board.

Section 2. Five (5) days before opening for business, all beauty salons, nail salons, and esthetic salons which are new, relocating, or changing owners shall notify the board of the new location, date on which the salon is to be opened for business, and name of the owner and manager of the salon.

Section 3. All beauty salons, nail salons, and esthetic salons which are new or relocating shall be inspected by an inspector employed by the board before issuance of license. A salon shall not open for business prior to issuance of a salon license.

Section 4. All beauty salons, nail salons, and esthetic salons which are new or relocating shall comply with all city, county, and state zoning, building, and plumbing laws, administrative regulations, and codes.

Section 5. (1) Except as provided by subsection (2) of this section, all beauty salons, nail salons, and esthetic salons shall be separated from all barber shops by a solid partition extending to the ceiling and each facility shall have its own individual entrance.

(2) The provisions of subsection (1) of this section shall not apply to a nursing home if [it]:

(a) It has obtained a salon license from the board; and

(b) The practice of barbering does not occur at the same time as the practice of cosmetology.

(3) If the provisions of subsection (2) of this section have been met, a cosmetologist may engage in the practice of cosmetology on the premises of a nursing home in the same facility established by the nursing home for the practice of barbering.

Section 6. Any salon located in a residence shall have its own outside entrance separate from that of the residence.

Section 7. Any change to a license such as the addition or deletion of an owner or manager requires a new application to be filed.

Section 8. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

- (a) "Beauty Salon Application", [(2003)]; and
- (b) "Nail Salon Application", [(2003)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for new, relocating or changed owner salons.

(b) The necessity of this administrative regulation: To know the ownership and manager of a salon.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is authorized by KRS 317A.060(1)(a) and (2)(h) to regulate the course and conduct of salons.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It permits the Board to know who the Board regulates so that if there is an issue the Board can address it with the appropriate party.

(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 specifies that a change in the license requires the filing of a new application.

(b) The necessity of the amendment to this administrative regulation: KRS 317A.060. It permits the Board to know who it needs to deal with.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The Board is authorized by KRS 317A.060(1)(a) and (2)(h) to regulate the course and conduct of salons.

(d) How the amendment will assist in the effective administration of the statutes: There are many instances where ownership may change (salon sells, owner dies, etc). This makes it clear that a new application must be filed in those instances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. It is anticipated that approximately 300-500 applications will be filed annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. New owners will have to file an application with the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a thirty-five (35) dollar fee to file a new application, but this is not an additional fee. Currently, applications are non-transferable so the current practice is to file a new application. This is a question the Board is frequently asked, however, so it was not clear enough in the law and the amendment addresses the question directly.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board will know who to deal with on sanitation and compliance issues.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

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

(9) TIERING: Is tiering applied? No, all change in owner or manager applications are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 317A.060, 317B.020(2)(b), (c), (d), (f), (g) and (i).

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. n/a

(a) How much 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 new 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 amendment will not generate new revenue.

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment will not generate new revenue.

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

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

RELATES TO: KRS 317.050(8), 317A.090

STATUTORY AUTHORITY: KRS 317A.060(1), 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1) requires the board to promulgate administrative regu-

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lations governing schools of cosmetology, including their hours and courses of instruction. KRS 317A.090 establishes the requirements for schools of cosmetology. This administrative regulation establishes requirements for the hours and courses of instruction of schools of cosmetology.

Section 1. The regular courses of instruction for cosmetology students shall contain the following:

(1) Professional practices.

(a) The cosmetology profession.

1. Cosmetology vocabulary.
2. Brief history: how it began, and changes.
3. Ethics: ethics in a beauty salon; and salon conduct.

(b) Salon procedures.

1. Hygiene and good grooming.
  - a. Personal and public;
  - b. Personal characteristics; and
  - c. Responsibilities of a cosmetologist.
2. Professional attitudes and salesmanship.
  - a. Personality development;
  - b. Salesmanship and business management;
  - c. Customer relationship; and
  - d. Telephone personality.
3. Public relations and psychology.
  - a. Behavior; and
  - b. Proper image.

(c) Specialty services.

1. Facial treatments and make-up.
  - a. Facial treatment/make-up preparation;
  - b. Implements and supplies;
  - c. Procedure in giving a plain facial;
  - d. Purpose and effect of massage movements;
  - e. Facial cosmetics;
  - f. Special problems;
  - g. Eyebrow arching; and
  - h. Lash and brow dye and enhancements.
2. Nail technology.
  - a. Purpose and effect;
  - b. Preparation;
  - c. Equipment; and
  - d. Procedures, including the following:
    - (i) Plain manicure;
    - (ii) Oil manicure;
    - (iii) Removal of stains;
    - (iv) Repair work;
    - (v) Hand and arm massage;
    - (vi) Buffing;
    - (vii) Application of lacquer; and
    - (viii) Application of artificial nails.

(2) Life sciences (general anatomy).

- (a) Osteology.
  1. Definition; and
  2. Functions.
- (b) Myology.
  1. Definition;
  2. Functions; and
  3. Types.
- (c) Neurology.
  1. Definition;
  2. Functions;
  3. Types (motor and sensory); and
  4. Principal nerves of the head, face and neck.
- (d) Angiology.
  1. Definition;
  2. Composition of blood; and
  3. Function of blood.
- (e) Dermatology.
  1. Structure of skin;
  2. Functions of skin;
  3. Appendages of skin;
  4. Conditions of the skin; and
  5. Lesions of the skin.
- (f) Trichology.
  1. Structure of hair;

2. Composition;
3. Blood and nerve supply;
4. Growth and regeneration;
5. Color;
6. Texture;
7. Elasticity;
8. Porosity; and
9. Conditions to be recognized.

(g) Nails.

1. Structure and composition;
2. Growth and regeneration; and
3. Irregularities.

(3) Physical sciences (chemistry and treatment).

(a) Chemistry.

1. Elements, compounds, and mixtures.
  - a. Properties of;
  - b. Acid and alkali; and
  - c. Chemistry of water.
2. Composition and uses of cosmetics.
  - a. For the body;
  - b. For the skin and face; and
  - c. For the scalp and hair.
3. Chemistry of hair lightening.
4. Chemistry of hair coloring.
5. Chemical hair relaxing.
6. Chemistry of make-up.
7. Chemistry of facial treatments.
8. Chemistry of rinses.
  - a. Soaps and shampoos; and
  - b. Detergents.
9. Chemistry of cold waving.
- (b) Scalp and hair treatments.
  1. Purpose and effects;
  2. Preparation and procedure;
  3. Use of cap;
  4. Electricity and therapeutic ray; and
  5. Safety rules.

(c) Shampoos and rinses.

1. Importance of good shampoo;
2. Purpose of effects;
3. Required materials and implements;
4. Brushing and drying;
5. Types of shampoos;
6. Rinses (not colored); and
7. Composition.

(d) Hair coloring.

1. Principal reasons for coloring;
2. Advantages of coloring;
3. Classifications of hair coloring;
4. Variation of products;
5. Procedures; and
6. Safety measures.

(e) Hair lightening.

1. Types of lighteners;
2. Implements and supplies;
3. Procedure;
4. Special problems in hair lightening;
5. Fillers and toners;
6. Removal of aniline derivative tints; and
7. Tint back to natural coloring.

(f) Cold waving.

1. Basic requirements;
2. Scalp and hair analysis;
3. Hair porosity;
4. Hair texture;
5. Hair elasticity;
6. Hair density;
7. Curling rods and chemicals;
8. Variation of permanent wave products;
9. Procedures;
10. Problems; and
11. Safety measures.

(g) Sterilization and sanitation.

1. Definitions;

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2. Importance;
3. Sterilization rules; and
4. Methods of sterilization.
- (4) Hair designing or sculpturing.
- (a) Hair shaping.
  1. Fundamentals of hair shaping;
  2. Correct use of tools;
  3. Designing and planning the hair cut;
  4. Sectioning and thinning;
  5. Razor and shear shaping;
  6. Wig shaping; and
  7. Safety precautions.
- (b) Hair styling.
  1. Finger waving;
  2. Pin curls;
  3. Hair partings;
  4. Artistry hair styling;
  5. Dressing of the coiffure;
  6. Special consideration in hair styling;
  7. Chemical hair relaxing and styling;
  8. Facial types; and
  9. Hair pressing and types of hot-iron curling.
- (c) Care and styling of wigs.
  1. Purpose;
  2. Quality;
  3. Types of wigs;
  4. Ordering wigs;
  5. Cleaning;
  6. Shaping;
  7. Tinting and color rinsing;
  8. Setting; and
  9. Safety precautions.

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

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

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

Section 4. A student shall receive not less than 1,800 hours in clinical class work and scientific lectures with 450 minimum lecture hours for science and theory and 1,305 minimum clinic and practice hours; and forty-five (45) hours of applicable Kentucky statutes and administrative regulations.

Section 5. One (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A, and the administrative regulations of the board.

Section 6. A school of cosmetology shall maintain and teach the following curriculum:

- (1) Curriculum for freshmen students.
  - (a) Theory and related theory class, 100 hours.
    1. General theory, including Kentucky cosmetology law and applicable administrative regulations promulgated thereunder.
    2. Clinical theory.
    3. Lecturing theory.
  - (b) Clinical and related theory class (freshman practice class on students or mannequins), 200 hours.
    1. Cold waves.
    2. Facials and make-up.
    3. Complete "S" formations or complete finger waves.
    4. Pin curl technique.
    5. Hair shaping.
    6. Hair styling techniques.
    7. Lash and brow tint and enhancements.
    8. Eyebrow arches.
    9. Nail technology.
    10. Scalp treatments.
    11. Shampooing.

12. Hair coloring, bleaching, and rinsing (mixing and formulas).
13. Heat permanent.
14. Safety measures.
- (2) Curriculum for junior and senior students.
  - (a) Theory and related theory class, 500 hours, including:
    1. Professional practices;
    2. Life sciences (general anatomy);
    3. Physical sciences (chemistry and treatment);
    4. Hair designing safety measures; and
    5. Kentucky cosmetology laws and applicable administrative regulations.
  - (b) Clinical class, 1,000 hours.
    1. Hair conditioning treatments.
    2. Scalp treatments.
    3. Hair shaping.
    4. Shampoos.
    5. Cold waves.
    6. Chemical hair relaxing (permanent wave).
    7. Complete "S" formation and complete finger waves.
    8. Pin curl techniques.
    9. Hair styles.
    10. Iron curling.
    11. Hair coloring and toning.
    12. Bleaches and frostings.
    13. Facials and make-up.
    14. Nail technology.
    15. Lash and brow tints and enhancements.
    16. Eyebrow arches.
    17. Color rinses (certified color).
    18. Wiggery.
    19. Professional ethics and good grooming.
    20. Salesmanship.
    21. Reception desk and telephone answering.
    22. Recordkeeping.
    23. Dispensary (procedures for ordering supplies and retail merchandise).
    24. Personality development.
    25. Salon management.
    26. Public relations.

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

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

Section 9. A school shall furnish students text books that have been approved by the board, electronically or otherwise.

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

Section 11. A student of cosmetology shall be allowed a total of sixteen (16) hours for out-of-school activities pertaining to the profession of cosmetology per 1,800 hours, not to exceed eight (8) hours per day, if:

- {1} it is reported within ten (10) days of the field trip or education show to the board office on "Certification of Cosmetology Field Trip \* Hours (95)" form, or "Certification of Cosmetology Student Education Show \* Hours (95)" form, as appropriate[- and
- {2} ~~The form is received in the board office within ten (10) days of the date of the field trip].~~

Section 12. A student of cosmetology shall be allowed a total of sixteen (16) hours for attending educational programs per 1,800 hours, not to exceed eight (8) hours per day, if:

- {4} reported within ten (10) days of the field trip or education show to the board office on "Certification of Cosmetology Field Trip \* Hours" form, or "Certification of Cosmetology Student Education Show \* Hours" form, as appropriate[- and
- {2} ~~The form is received in the board office within ten (10) days of the date of the educational show].~~

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

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

Section 14. Nail technician curriculum shall include the following:

- (1) Science and theory; 200 hours.
- (a) 1. Equipment;
2. Sterilization;
3. Sanitation;
4. Chemistry and types of artificial nails;
5. Public and personal hygiene safety measures; and
6. Statutes and administrative regulations governing cosmetology and nail technology.

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

(e) 1. Personality;

2. Grooming;
3. Salon management;
4. Professional ethics; and
5. Cosmetic theory laws.

(f) Nails:

1. Structure and composition;
2. Growth and regeneration; and
3. Irregularities.

(2) Clinical; 400 hours.

(a) Oil and plain manicure.

(b) Nail polish changes;

1. Nail polish changes;

2. Moons;

3. Half-moons; and

4. Tips.

(c) Hand and arm massage.

(d) Safety measures.

(e) Care of equipment.

(f) Removal of stains.

(g) Repair work including wraps and tips.

(h) Buffing.

(i) Application of lacquer.

(j) Application of artificial nails.

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

(1) Orientation, fifteen (15) hours.

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

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

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

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

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

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

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

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

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

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

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

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

(14) Teacher assistant, ninety (90) hours.

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

Section 16. An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

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

Section 18. If the board permits an individual[a student] to enroll in a school for a special brush-up course in any of the following subjects, the individual[student] shall be required to have a

course of training of the following[~~number of hours in the~~] course or courses the individual[he] desires to take:

(1) Permanent waving, and all chemical control[~~150 hours~~];

(2) Nail technology, hand and arm massage, and application of artificial nails[~~100 hours~~];

(3) All iron curls[~~100 hours~~];

(4) Facials[~~125 hours~~];

(5) Hair coloring and bleaching[~~150 hours~~];

(6) Scalp massage[~~25 hours~~];

(7) Hair shaping, trimming, and thinning[~~125 hours~~];

(8) Science; or[~~100 hours~~];

(9) Hair dressing and styling[~~150 hours~~].

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

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for schools of cosmetology.

(b) The necessity of this administrative regulation: Defines the requirements of instruction for schools of cosmetology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets curriculum, course study and instruction for cosmetology schools, all of which is authorized by KRS 317A.060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides guidance to schools and students about course curriculum and instruction.

(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 adds the word "enhancements, in sections (1) and (6). It permits electronic course material to Section (9). It tightens language without removing or adding substance. It removes language that specifies the number of hours required for each subject, in section (18).

(b) The necessity of the amendment to this administrative regulation: Defines the requirements of instruction for schools of cosmetology.

(c) How the amendment conforms to the content of the authorizing statutes: It sets curriculum, course study and instruction for all cosmetology schools.

(d) How the amendment will assist in the effective administration of the statutes: It allows more flexibility in course curriculum, and cosmetology education falls within the purview of the Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately seventy (70) schools licensed with the Kentucky Board of Hairdressers and Cosmetologists.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. There are no new measures schools will have to take.

(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): It will give greater flexibility to the schools (e.g., a brushup course can be better customized to the student).

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

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

(9) TIERING: Is tiering applied? No, all schools licensed by this board must meet the requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenue either generated or expended

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

### 201 KAR 12:083. Educational requirements.

RELATES TO: KRS 317A.050, 317A.140, 317B.025(1)(c), 4)(c)

STATUTORY AUTHORITY: KRS 317A.060, 317B.020(3)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050, 317A.060, and 317B.020 require the board to promulgate administrative regulations governing the operation of schools of cosmetology and esthetics, including the proper education and training of students. This administrative regulation establishes proof of education and other enrollment requirements.

Section 1. (1) Any person enrolling in a school~~[of cosmetology]~~ for a cosmetology~~[or]~~ nail technician~~[or]~~ esthetics course shall complete a "Student Enrollment Application~~[for Kentucky Cosmetology School]~~" provided by the board.

(2) The applicant shall furnish proof that the applicant~~[he or she]~~ has:

(a) A high school diploma, unless the applicant is enrolled in a board approved cosmetology program in an approved Kentucky high school;

(b) A General Educational Development (GED) diploma; or  
(c) Results from the Test for Adult Basic Education indicating a score equivalent to the twelfth grade of high school.

(3) The applicant shall provide with the application a passport style photograph taken within thirty (30) days before submitting the application~~[completed two (2) years of high school or its equivalent.~~

(3) The required proof shall be any one (1) of the following:  
(a) A transcript of subjects and grades showing the applicant has completed grade 10;

(b) Results from the Test for Adult Basic Education (TABE) indicating a score equivalent to tenth grade high school; or

(c) High school diploma or G.E.D. certificate.

Section 2. Any person enrolling in a school of cosmetology for the esthetics course shall complete the application for enrollment provided by the board. The applicant shall furnish proof that he or she has completed four (4) years of high school or its equivalent. The required proof shall be any one (1) of the following:

(1) A high school diploma;

(2) A G.E.D.; or

(3) Results from the Test for Adult Basic Education (TABE) indicating a score equivalent to 12th grade high school].

Section 2[3]. (1) The student enrollment application, accompanied by the applicant's proof of education, shall be received by the board no later than ten (10) working days after the student's~~[student]~~ date of enrollment.

(2) A student shall not receive credit hours if the application is not received within the ten (10) day period.

(3) The school shall forward to the board the enrollment application and proof of education so that the board receives the information no later than ten (10) working days after the student date of enrollment.

(4) Failure of the school to timely forward the information to the board may result in suspension or revocation of the school's license or a fine of twenty-five (25) dollars a day for every day the application is late.

Section 3[4]. (1) A person shall not be permitted to enroll in a school of cosmetology for a brush-up course unless:

(a) The applicant holds a current license issued by this board; or

(b) The applicant has obtained special permission from the board.

(2) The applicant shall complete the application for enrollment.

Section 4[5]. Incorporation by Reference. (1) "Student Enrollment Application", January 30, 2013~~[for Kentucky Cosmetology School, 2003]~~, is incorporated by reference.

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(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Governs the operation of schools of cosmetology and esthetics.

(b) The necessity of this administrative regulation: It defines the requirements to enroll in a school.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It defines the requirements to enroll in a school, which is authorized by KRS 317A.060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides guidance to schools and students about enrolling in a school.

(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 adds the word "esthetics" to include enrollments in esthetic schools. It includes language that allows a student in a high school cosmetology program to enroll in school without first graduating from high school.

(b) The necessity of the amendment to this administrative regulation: It defines the process for enrolling in a school, which is authorized by KRS 317A.060.

(c) How the amendment conforms to the content of the authorizing statutes: It defines the process for enrolling in a school, which is authorized by KRS 317A.060.

(d) How the amendment will assist in the effective administration of the statutes: It will define the enrollment process for esthetic students and high school students in a cosmetology program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately ? enrollments that will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. There are no new measures schools will have to take.

(b) In complying with this administrative regulation or amend-

ment, 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): It will give greater flexibility to the enrolling students.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

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

(9) TIERING: Is tiering applied? No, all enrollees must meet the same requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-):?

Expenditures (+/-):

Other Explanation:

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

#### 201 KAR 12:088. Esthetic course of instruction.

RELATES TO: KRS 317B.020(1)(d), 317B.025

STATUTORY AUTHORITY: KRS 317B.020(3)

NECESSITY, FUNCTION AND CONFORMITY: KRS 317B.020 requires the board to promulgate administrative regulations establishing course work and conduct of school owners, instructors, estheticians, esthetic salons, and cosmetology schools conducting classes in esthetic practices; set the requirements for the proper education and training of students; and set the standard for the hours and courses of instruction in esthetic practices. This administrative regulation establishes requirements for the hours and courses of instruction for esthetician students.

Section 1. Definition. "Cosmetic resurfacing exfoliating procedures" means the application of cosmetic resurfacing exfoliating substances by licensed practitioners for the purpose of improving the aesthetic appearance of the skin.

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Section 2. The regular course of instruction for esthetician students shall consist of the following:

- (1) Professional practices.
- (a) The esthetics profession.
  1. Orientation.
  2. History and evolution of skin care.
  3. Esthetics vocabulary.
  4. Ethics: personal and professional.
  5. State law.
- (b) Salon procedures.
  1. Hygiene and grooming.
  2. Responsibilities of an esthetician.
  3. Standards and procedures.
  4. Salesmanship.
  5. Personality development.
  6. Customer relations and business developments.
- (2) Science, theory and state and federal law relating to the practice.
  - (a) Life sciences, anatomy and physiology of the skin.
    1. Skin function.
    2. Biochemistry.
    3. Layers of the skin.
  - (b) Body systems.
    1. Skeletal.
    2. Muscular.
    3. Circulatory.
    4. Nervous.
    5. Endocrine.
    6. Immune.
    7. Respiratory.
    8. Digestive.
    9. Reproductive.
    10. Integumentary.
  - (c) Bones, muscles and nerves of the face and skull.
  - (d) Chemistry.
    1. Elements, compounds and mixtures.
    2. Composition and uses of cosmetics for the skin and face.
    3. Chemistry of makeup.
    4. Chemistry of facial treatments and products.
  - (e) Bacteriology and sanitation.
    1. Microorganisms.
    2. Sanitation and sterilization.
    3. State and federal requirements.
  - (f) Disorders and diseases.
    1. Dermatological terms.
    2. Lesions.
    3. Common, contagious and other diseases.
    4. Allergens.
    5. Autoimmune diseases.
  - (g) Facials.
    1. Products, supplies and set up.
    2. Benefits, purpose and function.
    3. Procedures including:
      - a. Skin analysis.
      - b. Consultation.
      - c. Deep cleansing.
      - d. Exfoliation.
    - e. Extractions, including:
      - (i) Comedone extractor.
      - (ii) Light therapy.
      - (iii) Brushes.
    - f. Use of steamer and brush.
    - g. Electrodes.
    - h. Massage.
    - i. Masks.
  4. Equipment and technological tools.
    - a. Machines: use and safety.
    - b. Electricity and light therapy.
    - c. Microdermabrasion.
  5. Body treatments.
    - a. Sanitation and hygiene.
    - b. Cleansing, exfoliation, scrubs and wraps.
    - c. Hydrotherapy.
  - (h) Pharmacology.

1. Over the counter and prescription drugs.
2. Allergic reactions.
3. State and federal requirements.
  - (i) Methods of hair removal.
  - (j) Make up application.
    1. Color theory.
    2. Facial shapes.
    3. Products, tools and equipment.
    4. Client consultation.
    5. Basic, corrective and camouflage application.
    6. Artificial eye lashes.
    7. Lash and brow tint.
  - (k) Advanced skin care.
    1. Aging.
    2. Reactions to sun.
    3. Sensitive skin.
    4. Ethnic skin.
    5. Exfoliation.
    6. Alternative skin care.
  - (l) Clinical skin care.
    1. Plastic and reconstructive surgery under the supervision of a medical doctor.
    2. Glycolic peels.
      - a. Cosmetic resurfacing exfoliating substance and equipment, which includes cosmetic use of the following:
        - (i) Thirty (30) percent alpha hydroxy acid (AHAs which include glycolic and lactic acids with a pH of three (3.0) or higher).
        - (ii) Zero percent beta hydroxy acid (BHAs which include salicylic acid with a pH of three (3.0) or higher).
        - (iii) Trichloroacetic acid (TCA) with levels less than twenty (20) percent.
        - (iv) Jessner's solutions fourteen (14) percent salicylic acid, lactic acid, and two (2) percent resorcinol).
        - (v) Proteolytic enzymes (papain and bromelain).
      - b. Equipment and instruments that mechanically administer substances, including:
        - (i) Brushing machines.
        - (ii) Polyethylene granular scrubs.
        - (iii) Loofah or textured sponges.
        - (iv) Gommage.
        - (v) Lancets with blades less than 2mm.
        - (vi) Microdermabrasion instruments, provided the manufacturer has established and substantiated product and equipment safety with the Federal Food and Drug Administration (FDA).
      - c. Glycolic peels exclude all other chemical and mechanical exfoliation/peeling procedures and substances, including:
        - (i) Carbohic acid (phenol).
        - (ii) Products listed above that exceed the stated maximum levels or combinations thereof.
        - (iii) Lancets when used to penetrate the stratum corneum or remove hair.
        - (iv) All adulterated chemical exfoliating/peeling substances.
        - (v) Devices that penetrate beyond the stratum corneum of the epidermis.
      - d. Cosmetic resurfacing exfoliating procedures.
    3. Microdermabrasion.
      - a. The FDA lists microdermabrasion equipment as Class I devices intended for use by licensed practitioners trained in the appropriate use of such equipment.
      - b. For purposes of this rule, microdermabrasion equipment is considered a cosmetic resurfacing exfoliating substance only if the equipment is used in a manner that is not intended to remove viable (living) skin below the stratum corneum.
    4. Pre- and postoperative procedures.

Section 3. A student of esthetics shall not receive less than 1,000 hours in clinical and theory class work with 350 minimum lecture hours for science and theory; fifty (50) hours of applicable Kentucky statutes and administrative regulations; and 600 minimum clinic and practice hours.

Section 4. A student of esthetics shall have completed 150~~300~~ hours in clinical and related theory class before working on and providing services to the general public. Clinical practice



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shall be performed on other students or mannequins.

Section 5. A school of cosmetology shall maintain and teach the following curriculum:

(1) Curriculum for beginning students:

(a) Theory and related theory class, 100 hours.

1. General theory, including applicable Kentucky statutes and administrative regulations and applicable federal requirements.

2. Clinical theory.

3. Scientific lecturing theory.

(b) Clinical and related theory class with clinical practice class on students or mannequins, 200 hours.

1. Skin analysis.

2. Esthetic practices.

3. Diseases and disorders of the skin.

4. Electricity and light therapy.

5. Sanitation and sterilization.

6. Basic facials.

7. Chemistry.

8. Color theory and makeup.

9. Introduction and safety of machines.

10. Procedures for arching by ~~tweezing~~<sub>[or]</sub> waxing, or hair removal.

(2) The curriculum for students with more than 300 hours shall include theory and clinical practice as follows:

(a) Chemical peels - 100 hours.

(b) Esthetic practices - 175 hours.

1. Consultation.

2. Skin analysis.

3. Facial and body treatments.

4. Disorders and diseases of the skin.

5. Electricity and light therapy.

6. Eyebrow arching by tweezing or waxing.

7. Skin care machines - proper use and safety.

8. Techniques of massage.

9. Artificial eyelash application.

10. Lash and brow tinting, and enhancements.

(c) Facial and body procedures with and without machines including disincrustation, ionization, all skin types, acne, body wraps - 125 hours.

(d) Makeup application and artistry including corrective and camouflage - fifty (50) hours.

(e) Removal of excess or unwanted hair~~[by tweezing or waxing]~~ - twenty-five (25) hours.

(f) Beautifying or cleansing of the body with preparations, anti-septics, tonics, lotions or creams - twenty-five (25) hours.

(g) Providing preoperative and postoperative skin care under the immediate supervision of a licensed physician - seventy-five (75) hours.

(h) Salon management - twenty-five (25) hours.

Section 6. Time not utilized in theory or clinic work and practice shall be used for study periods and library work to be counted toward the necessary number of hours to be completed as established in Sections 2, 3, and 4 of this administrative regulation.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on Sep-

tember 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for the hours, and courses of instruction for esthetician students.

(b) The necessity of this administrative regulation: Defines the curriculum and hours for an esthetics educational program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets curriculum, course study and instruction for all cosmetology schools that teach an esthetic curriculum.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It lists the approved course curriculum and instruction for cosmetology schools that teach esthetics courses.

(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 4 changes the hours of completed clinic floor work from 300 to 150. Section (5)(1)(b)10, adds language that extends hair removal beyond waxing and tweezing. Section 5(2)(b)10 adds enhancements (e.g., eyelash extensions).

(b) The necessity of the amendment to this administrative regulation: It makes the curriculum more current.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the Board to set course of instruction for cosmetology schools that teach an esthetic course curriculum.

(d) How the amendment will assist in the effective administration of the statutes: It provides language that describes the curriculum and instruction for cosmetology schools that teach an esthetics course curriculum.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 100 students and seventy (70) schools.

(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: Participating schools would add to the curriculum.

(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): Course requirements will be clearly defined.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish a fee.

(9) TIERING: Is tiering applied? No, all participating schools must meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 317B.020 (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. No fiscal 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenue will be generated or expended.

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

**201 KAR 12:100. Sanitation standards.**

RELATES TO: KRS 317A.060, 317B.020(3)

STATUTORY AUTHORITY: KRS 317A.130, 317B.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020(3) authorize the Kentucky State Board of Hairdressers and Cosmetologists to regulate the practice of cosmetology, nail technology and esthetics in Kentucky and establish uniform standards for sanitation. This administrative regulation establishes sanitation standards for all facilities.

Section 1. General Sanitation. The entire licensed facility, including all equipment, employees, and implements contained therein must be continually maintained in a sanitary manner satisfactory to the board.

Section 2. Methods of Sanitizing. (1) Any implements to be used on the public shall be properly sanitized and all methods of sanitation shall be bacteriologically effective.

(2) All commercially prepared sanitizing agents shall be used in accordance with the manufacturer's instructions.

Section 3. Disinfection of Implements and Spills; Blood and Body Fluids. (1) Disinfectants are inactivated and ineffective when visibly contaminated with debris, hair, dirt, particulates or when heavily soiled; thus, implements and surfaces shall first be thoroughly cleaned prior to disinfection.

(a) Disinfectants shall be prepared fresh daily or more often if solution becomes diluted or soiled.

(b) Contact Time: Leave surface wet or completely immersed for ten (10) minutes or longer as required by manufacturer for disinfecting against HIV, HBV, and all other viruses, bacteria, and fungi.

(2) All used implements shall first be cleaned of visible dirt, debris or bodily fluids with warm soapy, detergent water and then disinfected by completely immersing in an appropriate disinfectant.

(a) All non-porous implements that come into contact with intact skin shall be thoroughly cleaned before immersion in an ap-

propriate disinfectant. An appropriate disinfectant for objects that come into contact with intact skin is:

1. An Environmental Protection Agency registered, hospital grade bactericidal (especially pseudomonacidal), virucidal, and fungicidal that is mixed and used according to the manufacturer's directions; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) All non-porous implements which have come in contact with blood or body fluids shall be thoroughly cleaned before immersion in an appropriate disinfectant. An appropriate disinfectant includes:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(c) For personal protection against blood-borne pathogens, cleanup should always be done wearing protective gloves and also gowns, and eye protection for large spills.

(d) All implements, which have come in contact with blood or body fluids, shall be disinfected by complete immersion in an appropriate disinfectant.

(3) Any non-porous surface that comes in contact with blood or body fluids shall first be cleaned with warm soapy, detergent water, and then an appropriate disinfectant shall be used.

(a) An appropriate disinfectant for surfaces which have come in contact with blood or body fluids, include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) For personal protection against blood-borne pathogens, cleanup should always be done wearing protective gloves and also gowns, and eye protection for large spills.

(4) Household bleach is an effective disinfectant for all purposes in a salon or school, with the following considerations.

(a) Bleach solutions shall be mixed daily and used in a ten (10) to one (1) solution, nine (9) parts tap water and one (1) part bleach).

(b) Bleach shall be kept in a closed covered container and not exposed to sunlight.

(c) Bleach may produce eye irritation or mouth, esophageal, and gastric burns.

(d) Bleach is corrosive to metals.

(e) Bleach vapors might react with vapors from other chemicals, and therefore should not be placed or stored near other chemicals used in salons (i.e. acrylic monomers, alcohol, other disinfecting products, or near flame).

(f) Used or soiled bleach solution shall be discarded every day by pouring the solution down a sink basin or toilet bowl.

(5) A bottle container other than the original manufacturer's container used for application of appropriate disinfectant shall be properly labeled as to contents, percentage solution, and date mixed.

(6) Cleanup items from minor cuts shall be double bagged or placed in biohazard containers. Licensees should consult with the local health department for directions about disposal.

(7) All Food and Drug Administration designated "medical devices" shall only be disinfected by appropriate Environmental Protection Agency approved disinfectants.

(8) Environmental Protection Agency approved disinfectants are indicated by their registration number on the product label and the manufacturer's directions for use shall always be followed.

Section 4. Shampoo Bowls. All shampoo bowls, shampoo boards, cups, or similar items shall be sanitized after each use.

Section 5. Proper Protection of Neck. (1) No shampoo apron, hair cloth, or similar article shall be placed directly against the neck of the patron, and they shall be kept from direct contact with the patron by means of a paper neck band or clean towel.

(2) No neck band of paper or cloth shall be used more than once.

(3) No towel shall be used more than once without proper laundering.

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Section 6. Use of Creams. (1) All creams and other semi-solid substances shall be removed from containers with a clean sanitized spatula.

(2) Spatulas made of a washable nonabsorbent material shall be sanitized before being used again.

(3) Spatulas made of wood shall be discarded after one (1) use.

Section 7. Use of Styptics. Styptics to arrest bleeding shall be used only in liquid or powder form and shall be applied by clean gauze, cotton, or any other sanitary item.

Section 8. Special Solution Containers. Product containers shall be used to prevent the contamination of unused solution.

Section 9. Use of Powder. All powder shall be dispensed from a shaker or similar receptacle and shall be applied with disposable puffs or cotton pledgets, or other disposable applicators.

Section 10. Walls and Floors. Walls, floors, and fixtures shall be sanitary and kept clean at all times.

Section 11. Proper Laundering Methods. (1) All cloth towels, robes, and similar items shall be laundered in a washing machine with laundry detergent and chlorine bleach used according to the manufacturer's directions for sanitation purposes.

(2) A closed, dustproof cabinet must be provided for clean towels and linen, and a closed, dustproof hamper or receptacle must be provided for all soiled towels and linens.

Section 12. Personal Hygiene. (1) Every person licensed or permitted by the board shall thoroughly cleanse his or her hands with soap and water or an alcohol-based handrub immediately before serving each patron.

(2) All licensees shall wear a clean washable outer garment while serving a patron in a salon.

(3) Instruments or implements shall not be carried or stored in pockets, belts, aprons or smocks. ~~Section 1. (1) All establishments, and all furniture, equipment, utensils, floors, walls, ceilings, restrooms and lavatories used in those establishments, shall be kept in a clean and sanitary condition.~~

~~(2) Clean towels or linens shall be provided for use of the patrons.~~

~~(3) The use in common of towels or linens of any type shall be prohibited.~~

~~Section 2. (1) Each student, apprentice cosmetologist, and cosmetologist shall have a sufficient number of combs and brushes at their disposal.~~

~~(2) Combs and brushes shall be sterilized after each use.~~

~~(3) A comb or brush shall not be used in common on any patron.~~

~~(4) Any article dropped on the floor shall be disinfected before being used again.~~

~~Section 3. All water supply and waste connections shall be constructed in conformity with the city, county, and state plumbing statutes, administrative regulations and code.~~

~~Section 4. A sufficient number of covered waste receptacles shall be provided in every establishment for disposal of trash and other waste.~~

~~Section 5. (1) A protective covering shall be placed around the patron's neck so the cape does not come into contact with the skin.~~

~~(2) The protective covering shall be discarded after each use.~~

~~Section 6. The Cabinet for Health Services Department for Public Health, has approved the following methods of disinfection.~~

~~(1) Dry disinfection. The use of Formalin, ultraviolet rays, or any other dry disinfectant approved by the Cabinet for Health Services and EPA are considered acceptable methods of dry disinfection provided labels and manufacturer's directions are followed.~~

~~(2) Liquid disinfection.~~

~~(a) A ten (10) percent solution of Formalin shall be satisfactory for disinfection of all equipment. Formalin does not attack copper, nickel, zinc, or other metal substances.~~

~~(b) A seventy (70) percent solution of alcohol or bleach shall be an effective disinfectant for cleaning equipment.~~

~~(c) Any other liquid disinfectant approved by the Cabinet for Health Services shall be acceptable, provided labels and manufacturer's directions are followed.~~

~~Section 7. Implements shall be disinfected and sanitized as follows:~~

~~(1) Remove all debris, dirt and foreign material;~~

~~(2) Wash implement with soap in warm water;~~

~~(3) Immerse implement in liquid disinfectant according to manufacturer's direction;~~

~~(4) Air dry; and~~

~~(5) Place implement in dry sanitizer or autoclave.~~

~~Section 8. Use of brush rollers shall be prohibited in any establishment licensed by this board.~~

~~Section 9. (1) The following grading shall be used for the inspection of any salon or school of cosmetology: 100 percent – 90 percent = A; 89 percent – 80 percent = B; 79 percent – 70 percent = C.~~

~~(2) Any standard of less than an "A" rating shall indicate failure to comply with the statutes and administrative regulations of the board.~~

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for sanitation standards for facilities licensed by the board.

(b) The necessity of this administrative regulation: KRS 317A.130, 317B.020(3) requires the board to regulate the practice of cosmetology, nail technology and esthetics; and to establish uniform sanitation standards for all facilities licensed with the board

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes sanitation standards for all facilities licensed by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Defines all sanitation practices for all facilities licensed by the board to protect public health and safety.

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

(a) How the amendment will change this existing administrative regulation: The amendments update all sanitation standards.

(b) The necessity of the amendment to this administrative regulation: KRS 317A.130 and 317B.020(3) requires the board to regulate the practice of cosmetology, nail technology and esthetics; and to establish uniform sanitation standards for all facilities licensed with the board.

(c) How the amendment conforms to the content of the authorizing statutes: Establishes sanitation standards for all facilities licensed by the board.

(d) How the amendment will assist in the effective administration of the statutes: Defines sanitation practices in salons and schools that protect public health and safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 5,700 facilities are licensed with the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Each facility will have to meet the requirements for sanitation standards.

(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): Updated sanitation standards will better protect public health.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish a fee.

(9) TIERING: Is tiering applied? No, all facilities licensed by this board must meet the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 317A.130 and 317B.020(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. \$0

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenues will be generated or expended.

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

#### 201 KAR 12:101. Equipment sanitation.

RELATES TO: KRS 317A.130, 317B.020

STATUTORY AUTHORITY: KRS 317A.060, 317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations governing the operation of any cosmetology, nail technology and esthetics schools and salons and to protect the health and safety of the public. This administrative regulation establishes sanitation requirements for schools and salons.

Section 1. (1) All equipment used in a salon shall be maintained in a sanitary manner.

(2)(a) Electrical equipment that provides circulating, whirlpool, or vacuum effects (for example, a microdermabrasion machine, facial machine, pedicure station, nail drill, and body treatment equipment) shall be:

1. Cleaned and disinfected after each use; and

2. Flushed, cleaned, and disinfected on a bi-weekly schedule.

(b) A record of such cleaning log shall be kept and made available upon any salon inspection.

(c) A bi-weekly cleaning shall include the use of a hospital grade disinfectant or ten (10) percent bleach solution that is circulated through the machine for the minimum time recommended by the manufacturer.

(3)(a) Heated electrical equipment such as thermal irons, pressing combs, and stoves are sanitized by the heat source.

(b) Unheated parts of heated electrical equipment shall be cleaned and disinfected according to manufacturers' recommendations.

(c) Any other electrical equipment such as clippers and attachments shall be cleaned and disinfected after each use using the following method:

1. Remove hair and all foreign matter from the equipment; and

2. Completely saturate clipper blade and attachment with an EPA-registered high-level disinfectant solution, spray, or foam used according to the manufacturer's instructions.

Section 2. Rooms used for multiple purposes such as massage and esthetics are permissible as long as all instruments, implements, and supplies are properly sanitized[Section 1. All implements, tools and equipment shall be cleaned and sterilized before using.

Section 2. Combs or brushes shall not be used on more than one (1) person without first cleaning and sterilizing.

Section 3. Towels, linens, bed and chair coverings shall be changed after each use.

Section 4. All instruments shall be kept in a closed sterilizing container when not in use.

Section 5. All student kits shall contain an approved method of sterilization and shall be kept closed when not in use.

Section 6. All creams, lotions, tonics, shampoos, and other liquids shall be kept covered when not in use.

Section 7. Covered containers shall be supplied for disposal of waste.

Section 8. Floors, walls, furniture, and fixtures shall be kept clean at all times.

Section 9. All bowls and basins shall be kept clean at all times.

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~~Section 10. All glass and other metallic electrodes shall be sterilized between patrons.~~

~~Section 11. (1) Treatment of any kind shall not be given to any person manifesting a physical sign of a suspected communicable disease except those excluded by the Americans with Disabilities Act without written clearance by a medical physician licensed by the Kentucky Board of Medical Licensure.~~

~~(2) When a beauty salon or cosmetology school has reasonable cause to suspect the possibility of infection or disease transmission from a licensee or student, except those excluded by the Americans with Disabilities Act, it may require any or all of the following measures:~~

~~(a) The immediate exclusion of the licensee or student from the beauty salon or cosmetology school; and~~

~~(b) A written clearance by a medical physician licensed by the Kentucky Board of Medical Licensure.~~

~~Section 12. All creams shall be removed from the container by a disposable spatula or sterile spoon and any unused cream remaining thereon shall not be replaced in the container or used on any other person.~~

~~Section 13. Any comb, brush, implement, or other instruments that are dropped on the floor shall be washed, disinfected and placed in a sterilizer.~~

~~Section 14. Combs, brushes, tweezers, shears, razors, or other implements shall not be kept in the pockets of the students or licensees.~~

~~Section 15. Towels shall not be used more than once without being laundered. Towels intended for use on patrons shall not be dried on lines, radiators, or steam pipes used towels shall not be dipped into a receptacle containing hot water and used on patrons.~~

~~Section 16. Each licensed place of business shall provide an appropriate space in which to keep all linens sanitized].~~

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for equipment sanitation in salons and schools.

(b) The necessity of this administrative regulation: KRS 317A.060 and 317B.020(3) requires the board to regulate the practice of cosmetology, nail technology and esthetics; and to establish uniform sanitation standards for all facilities licensed with the board

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes equipment sanitation standards for all facilities licensed by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Defines equipment sanitation practices for all facilities licensed by the board to protect public health and safety.

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

(a) How the amendment will change this existing administrative regulation: The amendments update equipment sanitation standards.

(b) The necessity of the amendment to this administrative regulation: KRS 317A.060 and 317B.020(3) requires the board to regulate the practice of cosmetology, nail technology and esthetics; and to establish uniform sanitation standards for all facilities licensed with the board.

(c) How the amendment conforms to the content of the authorizing statutes: Establishes equipment sanitation standards for all facilities licensed by the board.

(d) How the amendment will assist in the effective administration of the statutes: Defines equipment sanitation practices in salons and schools, thereby protecting public health and safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately? facilities are licensed with the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Each facility will have to meet the requirements for sanitation standards.

(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): Updated sanitation standards will better protect public health.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish a fee.

(9) TIERING: Is tiering applied? No, all facilities licensed by this board must meet the same requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 317A.060 and 317B.020(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. \$0

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenues will be generated or expended.

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

**201 KAR 12:120. School faculty.**

RELATES TO: KRS 317A.020(5), 317A.060(1), 317A.090, 317B.025(4)

STATUTORY AUTHORITY: KRS 317A.060(1), 317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 authorize the board to promulgate administrative regulations relating to the activities and responsibilities of instructors and apprentice instructors. This administrative regulation establishes the standards that shall be met by instructors and apprentice instructors.

Section 1. (1) A[any] person employed by a school for the purpose of managing, teaching, and instruction~~[-]~~ shall be licensed as a cosmetologist instructor or esthetic instructor.

(2) A[Each] licensed instructor~~or apprentice instructor~~ shall keep a personal photograph posted with his or her license.

Section 2. A student~~[All students]~~ shall be under the immediate supervision of a licensed instructor during a class~~[all classes and] study hours, and practical student work.~~

Section 3. (1) A licensed cosmetologist, nail technician, or esthetician shall not render services in a school.

(2) Instructors and apprentice instructors shall render services only incidental to and for the purpose of instruction.

Section 4. An~~[Every]~~ instructor ~~[and apprentice instructor]~~ employed in a school of cosmetology shall devote his or her~~[their]~~ entire time during the school hours to that of instructing~~[the]~~ students and shall not apply his or her time to that of private or public practice for compensation during school hours or permit students to instruct or teach other students in the absence of a teacher.

Section 5. Teaching by a demonstrator~~[demonstrators]~~ shall be prohibited, unless a~~[except that]~~ properly qualified, licensed individual is demonstrating~~[individuals may demonstrate to the students] new processes, new preparations, or~~~~[and] new appliances in the presence of licensed instructors. A demonstration shall~~~~[may only] take place in a licensed school. [Schools shall not permit more than one (1) demonstration in any calendar month.]~~

Section 6. All services rendered in a school on patrons shall be done by students only. Instructors shall be allowed to teach and aid the students in performing the various services.

Section 7. An instructor or~~[instructors and]~~ apprentice instructors in attendance shall~~[- at all times]~~ wear a clean, washable uniform~~[-]~~ and an insignia or badge indicating that he or she is~~[they are]~~ an instructor or apprentice instructor in the school.

Section 8. A~~[Each]~~ school of cosmetology shall, within five (5) days after the termination, employment, or other change in faculty personnel, notify the board of that change.

Section 9. A school~~[Schools]~~ enrolling an apprentice instructor

shall maintain the following ratio: one (1) apprentice instructor to one (1) instructor.

Section 10. The following minimum faculty to student ratio shall be maintained at all times:

(1)~~[(a)]~~ One (1) instructor for every twenty (20) cosmetology students enrolled, which includes nail technician students; and

(2)~~[(b)]~~ One (1) instructor for every twenty (20) esthetician students enrolled.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for faculty in schools of cosmetology.

(b) The necessity of this administrative regulation: To determine the qualifications of teachers pursuant to KRS 317A.060 and KRS 317B.025.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes the requirements that shall be met by instructors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Defines the responsibilities of teachers employed by a school of cosmetology.

(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 permits more than one demonstration in a calendar month and removes language that suggests an apprentice instructor is an employee of the school.

(b) The necessity of the amendment to this administrative regulation: To permit more than one demonstration in a calendar month and to remove the conflict in having an employee who is also a student instructor in the school.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute allows the Board to establish standards for instructors in cosmetology schools.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will remove the suggestion of a conflict and impediments to demonstrations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately sixty-seven (67) apprentice instructors enrolled in cosmetology schools.

(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: It will allow expanded Practical and Theory education

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offered by professional industry groups.

(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: Place in current curriculum.

(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): Demonstrations by the school will be more flexible and apprentice instructors will avoid the appearance of real or perceived conflict since they will not be students in the school that also employs them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees.

(9) TIERING: Is tiering applied? No, since all apprentice instructors will be treated the same and demonstrations may be freely and equally utilized by cosmetology schools.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. \$0

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenues will be generated or expended.

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

#### 201 KAR 12:125. Schools' student administrative regulations.

RELATES TO: KRS 317A.090, 317B.020(3)(b), (c), (d), (f), (g), (i)

STATUTORY AUTHORITY: KRS 317A.060, 317B.020(2)(b), (c), (d), (f), (g), (i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.090 and 317B.020 authorize the board to protect the health and safety of the public and to protect the general public and stu-

dents enrolled in schools of cosmetology against misrepresentation, deceit, or fraud while seeking services or while enrolled. This administrative regulation establishes requirements for students and requirements for schools regarding students.

Section 1. A ~~person~~[student] enrolled in a school of cosmetology shall not be permitted to receive a salary or commission from the school while enrolled as a student in the school.

Section 2. A student shall not be permitted to smoke while providing services to patrons.

Section 3. A student shall not be allowed to remain in the school to work on patrons upon completion of the required hours for the appropriate course of enrollment.

Section 4. (1) An apprentice instructor shall be considered a student.

(2) An apprentice instructor shall not be employed by the school where the apprentice instructor serves as an apprentice prior to graduation, completion of the program at the school, withdrawal from the program, or licensure as an instructor. After graduation from school, a student shall not be allowed to return to that school or any other school for further practice or work in the pay departments without permission of the board.

Section 5. A school shall, at all times, display in a centralized conspicuous place the enrollment permits of all students enrolled.

Section 6. A ~~student~~[school] shall ~~require a student to~~ wear some kind of insignia, badge, cap, or marking on his or her uniform to indicate that he or she is a student in the school.

Section 7. A ~~student~~[school] shall ~~require students to~~ wear a clean, washable uniform, coat, or smock while on school premises.

Section 8. A student shall be on time for all class studies and work.

Section 9. A student shall not be permitted to leave during school hours without special permission from the manager.

Section 10. A student shall not be permitted to leave a class during a lecture or demonstration without permission from the instructor.

Section 11. A student shall not be permitted to operate any equipment in which there is a known operating hazard.

Section 12. All student kits containing all equipment, tools, and implements shall remain on school premises until completion of the course of enrollment or the student's withdrawal from the school.

Section 13. A student desiring to change from one (1) school to another shall notify the school in which the student is presently enrolled of the student's withdrawal and shall complete an application for enrollment when entering another school.

Section 14. A student shall be required to comply with the rules of his or her school, as long as those rules do not conflict with KRS Chapter 317A or 201 KAR Chapter 12, ~~the administrative regulations of the board~~.

Section 15. An owner of a school shall include the school's refund policy in school-student contracts.

Section 16. ~~A~~[Each] student ~~may~~~~[in a school shall be permitted to]~~ file a complaint with ~~the~~[this] board concerning the school in which the student is enrolled, provided the information is clearly and concisely given and the complaint ~~is~~~~[shall at all times be]~~ signed by the complainant.

Section 17. Student Leave of Absence. (1) A student is entitled to one (1) leave of absence while enrolled in an 1,800 hour pro-

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gram. A request for a leave of absence shall:

- (a) Be in writing from the student to the school;
- (b) Not be for a duration longer than six (6) months; and
- (c) Clearly denote the beginning and end dates for the leave of absence.

(2) The school shall report the leave of absence to the board within ten (10) days.

(3) The school shall retain the written request for a minimum of one (1) year. ~~Student Dismissal and Appeals. (1) A school may dismiss a student for law violations, rule violations, insubordination, or for any reason for which the board could deny, refuse to renew or revoke a license if the student was licensed pursuant to KRS Chapter 317A.~~

(2) A school may dismiss a student for a violation of any of KRS Chapter 317A or for the violation of any administrative regulation adopted by the board or for violation of any school rule not in conflict with KRS Chapter 317A or the administrative regulations.

(3) Any student aggrieved by dismissal from a school may appeal to the board by writing the board and requesting that an appeal be granted, but the appeal shall be taken within ten (10) days after the date of dismissal and the appeal shall be docketed by the board for a hearing within thirty (30) days after the appeal request is received. The hearing day shall be set for as early a day as possible. The hearing and production of evidence shall be in conformity with that provided for board hearings in KRS Chapters 317A and 317B.

(a) Upon hearing the appeal, the board shall determine: whether the school acted within the scope of its power; and whether or not there is sufficient evidence to support the order of dismissal appeal from the school.

(b) After the hearing the board shall enter an order sustaining or setting aside the school's order of dismissal. If the order of dismissal is overruled and set aside by the board, then the school shall reinstate the student.

Section 18. Within ten (10) working days from a student's withdrawal, a cosmetology school shall report the name of the withdrawing student [and send the permit card and a notarized certification of the total number of hours that the withdrawing student has acquired in the cosmetology school] to the board's office.

Section 19. In the event that the school, after receiving request for the information outlined in Section 18 of this administrative regulation, does not forward that information to the board within ten (10) days after receiving requests, a verified affidavit from the student as to the number of hours received may be accepted by the board and entered on their records as the appropriate number of hours earned.

Section 20. (1) A training period for a student [students] shall be as follows: eight (8) hours per day, forty (40) hours per week (maximum but excluding field trip hours).

(2) A student of cosmetology shall have a minimum of 221 [225] days of school attendance under instruction.

(3) A student of nail technology shall have a minimum of seventy-five (75) days of school attendance under instruction.

(4) A student of esthetics shall have a minimum of 125 days of school attendance under instruction.

Section 21. A student shall be allowed thirty (30) minutes toward the middle of any eight (8) hour day for eating or taking a rest break. A student shall not be given credit for the one-half (1/2) hour break toward meeting the 1,800 hour requirement.

Section 22. An informational copy of KRS Chapter 317A and 201 KAR Chapter 12 [the statutes and administrative regulations of the Kentucky Board of Hairdressers and Cosmetologists] shall be provided to each student enrolled in a school of cosmetology. Copies may be obtained from the board's office.

Section 23. A student shall not be in attendance in a school of cosmetology more than eight (8) hours in one (1) day and no more than five (5) days in one (1) week.

Section 24. (1) A person completing hours in an acceptable [a] school of cosmetology within a period of five (5) years from date of enrollment shall be given full credit by the board for hours completed.

(2) A person completing hours in an acceptable school of cosmetology within a period of five (5) years and one (1) day to ten (10) years from date of enrollment shall be given half credit by the board for hours completed.

(3) Credit for hours shall not be awarded by the board after ten (10) years from date of enrollment [Any extension of this period of time may be granted at the discretion of the board].

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for students enrolled in schools of cosmetology and all schools of cosmetology.

(b) The necessity of this administrative regulation: KRS 317A.060, and KRS 317B, 020(2)(b), (c), (d), (f), (g) and (i) requires the board to protect the health and safety of the public and to protect the general public and students enrolled in schools against misrepresentation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes requirements for students and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It defines the responsibilities of students enrolled in a school of cosmetology and schools of cosmetology.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that an apprentice instructor is a student and shall not be employed by the school while the apprentice instructor is enrolled as a student. The amendment specifies the length of time that accumulated hours are acceptable and when those hours expire. The amendment eliminates student appeals to the Board when a school dismisses a student.

(b) The necessity of the amendment to this administrative regulation: To eliminate a real or perceived conflict, to comply with statutory change, and to give deference to the relationship between a student and school.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes the requirements for students and schools.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help prevent fraud and



deceit, and will notify students about status and the number of hours that may be carried forward in a particular timeframe.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 2,500 students are enrolled in cosmetology schools.

(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 school will be permitted to employ a student while the student is attending that school as a student.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All students will be treated equally and will know how long their hours will remain current.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees.

(9) TIERING: Is tiering applied? No, all enrolled students of schools licensed by this board and schools licensed by this board must meet the requirement.

#### 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 Board of Hairdressers and Cosmetologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 317A.060 and 317B.020 (2) (b), (c), (d), (f), (g) and (i).

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. \$0

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenue will be generated or expended.

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

##### 201 KAR 12:150. School records.

RELATES TO: KRS 317A.060(1)

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 authorizes the board to promulgate administrative regulations to set standards for the operation of schools and to protect the students. This administrative regulation establishes the requirements relating to the records kept, the retention requirements, and the information that is to be forwarded to the board.

Section 1. A daily record of the attendance of the enrollment, including full-time~~er~~ and part-time students and apprentice instructors, shall be kept by each school~~[the schools]~~ and shall be available to the employees of the state board or to the members of the state board at all times.

Section 2. A school shall keep a daily record~~[records]~~, approved and signed by the instructor, showing practical work and work performed on clinic patrons. Those records shall be available to the employees of the state board or to the members of the state board at all times.

Section 3. A detailed record shall be kept of all enrollments, withdrawals and dismissals.

Section 4. All records shall be kept in a lockable fireproof file on the premises of the school and shall be available for inspection by the state board or its employees during hours of operation.

Section 5. The student permit and certification of hours completed shall be forwarded to the office of the board within ten (10) working days of the date of a~~[the]~~ students' withdrawal, dismissal, completion, or closure of the cosmetology school.

Section 6. A cosmetology school shall be held fully responsible for the completeness, accuracy, and~~[mailing or]~~ delivery to the state board office no later than the 10th of each month on forms that are incorporated by reference in 201 KAR 12:082 showing the total hours obtained for the previous month and the total accumulated hours to date for students enrolled. Only the hours recorded shall be submitted each month and that report shall not be amended without satisfactory proof of error.

Section 7. A copy of the students' hours, provided to the office of the board, shall be posted monthly on a bulletin board in the school and shall~~[te]~~ be available to the students and employees or agents of the board.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements relating to the records kept, the retention requirements, and the information that is to be forwarded to the Board.

(b) The necessity of this administrative regulation: To comply with KRS 317A.060, regarding requirements for schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute authorizes the board to govern the course and conduct of schools, which includes their records.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Defines the responsibilities of schools with respect to school records.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the mailing of a record since the record is now submitted electronically.

(b) The necessity of the amendment to this administrative regulation: To accommodate evolving practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation deals with school records, which the Board is authorized to regulate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment governs the method by which a school submits a record, which is permitted by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately seventy (70) schools are licensed with 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. Schools will submit monthly hours electronically.

(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): Electronic records are easier, faster, more reliably conveyed and save resources.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees.

(9) TIERING: Is tiering applied? No, all schools licensed by this Board must meet the requirement.

### 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 Board of Hairdressers and Cosmetologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation KRS 317A.060.

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. \$0

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenues will be generated or expended.

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

#### 201 KAR 12:180. Hearing procedures.

RELATES TO: KRS 317A.070, 317A.140, 317A.145

STATUTORY AUTHORITY: KRS 317A.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.140 authorizes the board to fine, revoke, suspend, or refuse to issue or renew a license[provides for the revocation or suspension of licenses by the board]. This administrative regulation sets forth procedural guidelines for hearings before the board.

Section 1. The board may discipline an applicant, licensee, or permittee by fine, refusal[refuse] to issue or renew a license, or revocation or suspension[may revoke or suspend such licenses as are issued] based upon the grounds set forth in KRS 317A.140.

Section 2. When the board has grounds to discipline an applicant, licensee, or permittee[refuse to issue or renew or revoke or suspend a license], the board shall give the licensee or applicant twenty (20) days written notice of the board's intent to hold an administrative hearing[deny, suspend, or revoke the license] prior to taking[any] final action. The notice shall inform the licensee or applicant of the grounds upon which potential discipline[the denial, suspension, or revocation] is based and the licensee's right to request a hearing before the board. The notice shall also inform the licensee or applicant of the date, time and place of the hearing in the event that a hearing is requested, the right to be represented by counsel, the right to present witnesses on his or her behalf and the right to cross-examine any witnesses who may appear against him or her.

Section 3. Within ten (10) days of receipt of the board's notice, the licensee shall notify the board in writing if a hearing is requested. If the licensee does not request a hearing, in writing, within ten (10) days, the board may take final action and discipline by fine, refusal to issue or renew a license, revocation, or suspension of a license[on denial, suspension, or revocation of the license].

Section 4. The chairman of the board or the designated hearing officer shall preside over all hearings and shall have the authority to rule on all motions and objections, to establish the hearing procedures, and to admit or exclude testimony or other evidence.

Section 5. The rules of civil procedure and[the] strict rules of evidence shall not apply to hearings before the board. Unless varied by the presiding chairman or designated hearing officer, the order of proof shall be:

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(1) Evidence and witnesses testifying on behalf of the board as to violations and grounds for discipline~~(denial, suspension, or revocation)~~];

(2) Evidence and witnesses testifying on behalf of the licensee or applicant;

(3) Rebuttal evidence and witnesses on behalf of the board;

(4) Closing statement or argument by the licensee or applicant; and

(5) Closing statement or argument by the board.

Section 6. After the conclusion of the hearing and the board's consideration of the evidence, the board or the designated hearing officer shall prepare findings of fact, conclusions of law and order. The findings of fact, conclusions of law and order shall be reviewed by the board for final approval at the next regularly scheduled meeting of the board or as soon thereafter as possible. Following the board's final approval of the findings of fact, conclusions of law and order, the licensee shall be notified of the board's decision.

Section 7. Nothing shall prohibit the board from attempting to resolve potential disciplinary matters informally or through mediation.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes procedural guidelines for hearings before the board.

(b) The necessity of this administrative regulation: To establish a process for administrative hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute provides due process in the form of a hearing before discipline is imposed by the board and the regulation sets the procedures for a hearing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Licensees will receive due process before the board may impose disciplinary sanctions.

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

(a) How the amendment will change this existing administrative regulation: The amendment includes additional disciplinary options since the statute was amended and also permits informal resolution.

(b) The necessity of the amendment to this administrative regulation: To be consistent with the statute since KRS 317A.140 was amended in 2012.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: The regulation authorizes a broader array of disciplinary options since KRS 317A.140 was amended in 2012.

(d) How the amendment will assist in the effective administration of the statutes: The amendment brings consistency between the regulation and the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The board resolves approximately ? disciplinary cases 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. The board will schedule a hearing when disciplinary cases are not informally resolved.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A hearing is only necessary if a disciplinary case is not resolved informally through mutual agreement between the board and licensee. A hearing can cost upwards of \$5,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will get due process before disciplinary action is taken and informal resolution obviates the high costs of a formal hearing.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees.

(9) TIERING: Is tiering applied? No, all disciplinary cases are treated in the same manner.

### 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 Board of Hairdressers and Cosmetologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 317A.070 and 317A.140.

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? \$90,000

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? \$90,000

(c) How much will it cost to administer this program for the first year? The board spends approximately \$40,000 to resolve cases informally because it would not have sufficient funds for formal hearings in each case.

(d) How much will it cost to administer this program for subsequent years? \$0

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 2 – AUGUST 1, 2013

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

#### 201 KAR 12:190. Investigations and complaints.

RELATES TO: KRS 317A.140, 317A.145

STATUTORY AUTHORITY: KRS 317A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060, 317A.145. The board shall receive and investigate complaints relating to licensee's business or professional practices and illegal practices.

Section 1. The board or other board personnel shall receive all complaints against a[any] person or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12 relating to the licensee's business or professional practices.

Section 2. The board shall make available to the public a complaint form which shall[may] be used by any person filing a complaint against any licensee.

Section 3. "Complaint" shall be defined as any writing received by the board which contains the name of the complainant and alleges violations of KRS Chapter 317A and 201 KAR Chapter 12~~[any board statute or administrative regulation or other wrongdoing]~~ by any licensee relating to the licensee's business or professional practices.

Section 4. A complaint~~[A log or record shall be maintained and shall be made available for public inspection, containing at least the following information concerning complaints received by the board:~~

- ~~(1) Licensee's name;~~
- ~~(2) Complainant's name;~~~~(3) Date complaint was received by the board;~~
- ~~(4) Brief statement of the complaint; and~~
- ~~(5) Ultimate disposition of the complaint by the board.~~

Section 5. All complaints received by the board concerning a[any] person or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12 relating to the licensee's business or professional practices shall be investigated.

Section 5~~[6]~~. The board may, at any time, on their own volition or on the basis of information available, conduct an investigation or inspection and file a complaint against a[any] person or salon licensed under the provisions of KRS Chapter 317A and 201 KAR Chapter 12.

Section 6. A~~[7. Any] complaint that[, as defined in Section 3 of this administrative regulation, that is filed with the board, which] alleges that a licensee or salon has violated a~~[statutory] provision of KRS Chapter 317A or 201 KAR Chapter 12~~[an administrative regulation of the board,]~~ shall be sent to the licensee or salon before the complaint is placed on the board agenda. The licensee shall be provided~~[at least]~~ ten (10) days after the complaint is mailed to file a written response to the complaint.

Section 7~~[8]~~. The complaint and the response, if any is received, shall be placed on the board agenda for consideration at the next board meeting, or as soon thereafter as is practicable, following receipt of the written response or the expiration of the ten (10) days provided for a response, whichever occurs first.

Section 8~~[9]~~. The board members shall review the complaint and any response received and shall take such action as it deems necessary.

Section 9~~[10]~~. Any board member~~[,]~~ who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint which could influence an impartial decision by the board member, shall disqualify himself or herself~~[themselves]~~ from participating in the adjudication of the

complaint.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for the board to investigate complaints relating to licenses, business or professional practices and illegal practices.

(b) The necessity of this administrative regulation: To establish criteria for complaints investigated by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes a process for complaints, and the board is charged by KRS 317A.145 to receive and investigate complaints.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes a process for complaints.

(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 removes language in section (4) that requires the board to "log" a complaint. Complaints and dispositions are available upon conclusion of a disciplinary matter pursuant to open records.

(b) The necessity of the amendment to this administrative regulation: To eliminate an old requirement in light of the open records law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes a process for the receiving and investigation of complaints, which are available upon conclusion of the case pursuant to the open records law.

(d) How the amendment will assist in the effective administration of the statutes: It removes an unnecessary requirement given our open records law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The board receives approximately forty (40) complaints annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The board will not have to keep a log; it will just supply information pursuant to open records requests.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): \$0

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board won't have to maintain a log for public inspection; rather it will supply information pursuant to open records requests.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees.

(9) TIERING: Is tiering applied? No, all complaints and requests for information about complaints are treated in the same manner.

#### 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 Board of Hairdressers and Cosmetologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 317A.145.

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. n/a

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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 revenue is generated or expended by the regulation.

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

#### 201 KAR 12:260. License fees, examination fees, renewal fees, restoration fees and miscellaneous fees.

RELATES TO: KRS 317A.050, 317A.162[2004 Ky. Acts ch. 96, sec. 5]

STATUTORY AUTHORITY: KRS 317A.050, 317A.162[2004 Ky. Acts ch. 96, sec. 5]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.162[2004 Ky. Acts ch. 96, sec. 5] requires the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations, licenses, and renewal of licenses. This administrative regulation establishes fees relating to cosmetology and nail technology.

Section 1. The initial license fees shall be as follows:

- (1) Apprentice cosmetologist - twenty-five (25) dollars;
- (2) Cosmetologist - twenty-five (25) dollars;

- (3) Nail technician - twenty-five (25) dollars;
- (4) Apprentice instructor - thirty-five (35) dollars;
- (5) Cosmetology instructor - fifty (50) dollars;
- (6) Beauty salon - thirty-five (35) dollars;
- (7) Nail salon - thirty-five (35) dollars;
- (8) Cosmetology school - \$1,500;[-]
- (9) Student enrollment permits - fifteen (15) dollars;[and]
- (10) School of cosmetology, transfer of ownership - \$1,500;
- (11) School manager change - \$250;
- (12) Threading facility permit - twenty-five (25) dollars; and
- (13) Threader permit - twenty (20) dollars.

Section 2. The annual renewal license fees shall be as follows:

- (1) Apprentice cosmetologist - twenty (20) dollars;
- (2) Cosmetologist - twenty (20) dollars;
- (3) Nail technician - twenty (20) dollars;
- (4) Apprentice instructor - twenty-five (25) dollars;
- (5) Cosmetology instructor - thirty-five (35) dollars;
- (6) Beauty salon - twenty-five (25) dollars;
- (7) Nail salon - twenty-five (25) dollars;[and]
- (8) Cosmetology school - \$150;
- (9) Threading facility permit - twenty-five (25) dollars; and
- (10) Threader permit - twenty (20) dollars.

Section 3. Applications for examination required by KRS Chapter 317A shall be accompanied by an examination fee as follows:

- (1) Apprentice cosmetologist - seventy-five (75) dollars;
- (2) Cosmetologist - seventy-five (75) dollars;
- (3) Nail technician - seventy-five (75) dollars;
- (4) Cosmetology instructor - \$100;
- (5) Out-of-state cosmetologist - \$120; and
- (6) Out-of-state cosmetology instructor - \$200.

Section 4. The fees for retaking an examination or any portion of an examination that an applicant has not successfully completed shall be as follows:

- (1) Apprentice cosmetologist - thirty-two (32) dollars;
- (2) Cosmetologist - thirty-two (32) dollars;
- (3) Nail technician - thirty-two (32) dollars;
- (4) Cosmetology instructor - fifty (50) dollars;
- (5) Out-of-state cosmetologist - sixty (60) dollars; and
- (6) Out-of-state cosmetology instructor - \$100.

Section 5. The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration, shall be as follows:

- (1) Apprentice cosmetologist - seventy-five (75) dollars;
- (2) Cosmetologist - seventy-five (75) dollars;
- (3) Nail technician - seventy-five (75) dollars;
- (4) Beauty salon - seventy-five (75) dollars;
- (5) Nail salon - seventy-five (75) dollars; and
- (6) Cosmetology school - \$750.

Section 6. Miscellaneous fees shall be as follows:

- (1) Demonstration permits for guest artists - fifty (50) dollars;
- (2) Certification of licenses - twenty (20) dollars;
- (3) Duplicate licenses - twenty-five (25) dollars;
- (4) Reciprocity application - \$100;
- (5) School manager change - \$250[Inactive licenses for cosmetologist, nail technician and cosmetology instructors - twenty (20) dollars; and
- (6) Continuing education provider application - \$300].

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes fees relating to the practice of cosmetology, nail technology, esthetics and threading.

(b) The necessity of this administrative regulation: To establish a reasonable schedule of fees and charges for examinations, licenses, renewals of licenses, and miscellaneous fees associated with practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets a fee schedule, as authorized by KRS 317A.050 and 317A.062.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Defines fees as directed by 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: By adding a fee for: a Threading Facility permit, a Threading Practitioner permit, and a Cosmetology School Manager Change.

(b) The necessity of the amendment to this administrative regulation: To comply with KRS 317A.050 and 317A.062.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets fees.

(d) How the amendment will assist in the effective administration of the statutes: It sets fees clearly so licensees are aware of costs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 100 Threading Practitioners, twenty (25) Threading Facilities and seventy (70) schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals will have to meet the requirements as set forth in the fee schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): twenty-five (25) dollars, twenty (20) dollars, and \$250 respectively.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to purchase a license or permit.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: \$0

(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: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, it establishes fees.

(9) TIERING: Is tiering applied? No, because all applicable people are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 317A.050 and 317A.062.

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. It will create revenues of approximately \$25,000 with offsetting costs for inspections of \$5,000-10,000.

(a) How much 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 \$25,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$25,000 annually

(c) How much will it cost to administer this program for the first year? \$5,000-8,000 for inspections.

(d) How much will it cost to administer this program for subsequent years? \$8,000-10,000 for inspections.

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

Revenues (+/-): \$25,000

Expenditures (+/-): \$8,000-10,000

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Board of Speech-Language Pathology and Audiology (Amendment)

##### 201 KAR 17:012. Requirements for licensure.

RELATES TO: KRS 334A.033, 334.035(1)(c), 334A.050, 334A.187

STATUTORY AUTHORITY: KRS 334A.033, 334A.050, 334A.080(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.033 and 334A.050 require the board to promulgate administrative regulations concerning licensure as a speech-language pathologist, including a requirement that an applicant meet specified education and experience criteria as determined by the board. This administrative regulation establishes criteria for licensure for speech-language pathologists.

Section 1. Education and Experience. In addition to the citizenship requirements of KRS 334A.050, each applicant for licensure in speech-language pathology in Kentucky shall meet the requirements established in this section.[:]

(1)(a) An applicant shall provide a certified transcript confirming attainment of a master's degree in the area of speech-language pathology or communication disorders from a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association, or possess equivalent education.

(b) An applicant shall have ["Equivalent"] education if the applicant holds a doctoral degree in speech-language pathology, communication disorders, or a related area from a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association.

(2) The applicant shall have passed a national PRAXIS examination in speech-language pathology.

(3) In accordance with KRS 334A.035(1)(c), within thirty (30) days after completion of the postgraduate professional experience, the applicant shall submit a complete application for licensure under this section. The applicant's supervisor shall verify the successful completion of postgraduate professional experience by signing the Application for License.

(4) In addition to fulfilling the requirements of this administrative regulation and paying the requisite fees established in 201 KAR 17:030, Section 1[(4)], an applicant licensed in another state shall comply with the provisions of KRS 334A.187.

Section 2. Incorporation by Reference. (1) "Application for License", July 2013[January 2012], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

ANNE OLSON, Board Chair

APPROVED BY AGENCY: July 8, 2013

FILED WITH LRC: July 11, 2013 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 27, 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 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 September 3, 2013 at close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Marcia Egbert, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for licensure as a speech language pathologist.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 334A.030.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the requirements for licensure as a speech language pathologist.

(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 modifies a form.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clarify information requested on the forms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board in administering this program the efficient collection of necessary information submitted by the licensee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are app. 1985 speech-language pathologists licensed by the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will not be impacted. Prospective licensees will need to provide the documentation listed 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): Costs will be minimal.

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

entities identified in question (3): Prospective licensees will be provided greater notice and clarity regarding the documentation required for licensure.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish fees. Nor does it increase any fees

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 334A.080(3)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Speech-Language Pathology and Audiology (Amendment)

#### 201 KAR 17:030. License fees and renewal requirements.

RELATES TO: KRS 334A.160, 334A.170

STATUTORY AUTHORITY: KRS 334A.080(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.080(6) requires the board to establish fees for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, in accordance with the maximum limits established in KRS 334A.160 and 334A.170. This administrative regulation establishes the required fees and the requirements for inactive status.

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

Section 1. Fee Schedule. (1) The following fees shall be paid in connection with speech-language pathologist ~~or~~~~and~~ audiologist applications, renewals, ~~or~~~~and~~ penalties: [-]

(a) [(4)] Application fee for a speech-language pathologist license: [-] fifty (50) dollars: [-]

(b) [(2)] Application for an audiologist license: [-] fifty (50) dollars: [-]

(c) [(3)] Combined application fee for a speech-language pathologist and audiologist license: [-] \$100: [-]

(d) [(4)] Application fee for a speech-language pathology assistant license: [-] fifty (50) dollars: [-]

(e) [(5)] Application fee for interim licensure for a speech-language pathologist: [-] fifty (50) dollars: [-]

(f) [(6)] Application fee for interim licensure for an audiologist: [-] fifty (50) dollars: [-]

(g) [(7)] Combined fee for speech-language pathologist and audiologist interim licensure: [-] \$100: [-]

(h) [(8)] Application fee for interim licensure for a speech-language pathology assistant: [-] fifty (50) dollars: [-]

(i) [(9)] Initial speech-language pathologist license fee:

1. ~~of~~ \$100 if issued for one (1) year; or

2. \$150 if issued for the biennium: [-]

(j) [(10)] Initial audiologist license fee:

1. ~~of~~ \$100 if issued for one (1) year; or

2. \$150 if issued for the biennium: [-]

(k) [(11)] Combined speech-language pathologist and audiologist license fee: ~~of~~ \$200 if issued for the biennium: [-]

(l) [(12)] Initial speech-language pathology assistant license fee:

1. ~~of~~ Seventy-five (75) dollars if issued for one (1) year; or

2. \$125 if issued for the biennium: [-]

(m) [(13)] Biennial renewal fee for speech-language pathologist license: [-] \$100: [-]

(n) [(14)] Biennial renewal fee for audiologist license: [-] \$100: [-]

(o) [(15)] Biennial combined renewal fee for speech-language pathologist and audiologist license: [-] \$200: [-]

(p) [(16)] Biennial renewal fee for speech-language pathology assistant: [-] \$100; ~~or~~ [-]

(q) [(17)] ~~There shall not be a renewal fee for interim licensure. The application fee of fifty (50) dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.~~

(r) [(18)] Biennial renewal fee for grace period extending from January 31 to March 2:

1. [(a)] For speech-language pathologist license: [-] \$150: [-]

2. [(b)] For audiologist license: [-] \$150: [-]

3. [(c)] ~~For a~~ combined ~~fee for~~ speech-language pathologist and audiologist license: [-] \$300; ~~or~~ [-]

4. [(d)] For speech-language pathology assistant: [-] \$150.

(2) [(19)] In addition to the biennial renewal fees provided for in subsection (1)(m) through (p) of this section, [Section 1(9) through (10)] delinquency fees after March 2 shall be:

(a) For a speech-language pathologist license: [-] \$150: [-]

(b) For an audiologist license: [-] \$150: [-]

(c) ~~For a~~ biennial combined ~~fee for~~ speech pathologist and audiologist license: [-] \$300: [-]

(d) For a speech-language pathology assistant: [-] \$150; ~~or~~

(e) For an [-] initial speech-language pathologist license: ~~fee~~, \$100.

(3) ~~There shall not be a renewal fee for interim licensure. The application fee of fifty (50) dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.~~

Section 2. (1) A completed Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate, shall be submitted if the licensee wants to:

(a) Renew his license;

(b) Request to return to an active status from an inactive status;

(c) Request, or remain on, an inactive status; or

(d) Terminate licensure.

(2) [The] Schedule of Licensure Renewals, ~~shall be as follows:~~

(a) A licensee shall renew his or her license biennially.

(b) The licensee shall pay the appropriate renewal fee as established in Section 1(1)(m)-(p) [(13)-(16)] of this administrative

regulation.

Section 3. If an application is filed during the period of December 1 to January 30 and a license is issued, the board shall waive the renewal of the license for the ensuing licensing year.

Section 4. Inactive Licenses. (1) Fees.

(a) The inactive license fee for a speech-language pathologist for a biennial licensing period shall be twenty (20) dollars.

(b) The inactive license fee for an audiologist for a biennial licensing period shall be twenty (20) [(2)] dollars.

(c) The combined inactive license fee for a speech-language pathologist and audiologist for a biennial licensing period shall be twenty (20) dollars.

(d) The inactive license fee for a speech-language pathology assistant for a biennial licensing period shall be twenty (20) dollars.

(2) Reactivation of an inactive license to practice speech-language pathology or audiology ~~shall~~ [may] be obtained by:

(a) Filing a completed Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate;

(b) Payment of the current renewal fee as set forth in Section 1 of this administrative regulation; and

(c) Compliance with the continuing education requirements established in 201 KAR 17:090, Sections 10 and 11.

(3) Application for an inactive license shall be made to the board prior to March 2 and shall be accompanied by the appropriate fee for the licensing year.

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

(a) "Renewal Application", July 2013 [September 2010]; and

(b) "Renewal Application for Speech-Language Pathology Assistants", July 2013 [September 2010].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE OLSON, Board Chair

APPROVED BY AGENCY: July 8, 2013

FILED WITH LRC: July 11, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 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 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 September 3, 2013 at close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marcia Egbert, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 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 license fees and renewal requirements for speech language pathologists, audiologists, and speech-language pathology assistants.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 334A.130, KRS 334A.160, and KRS 334A.170.



(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the licensing fees and renewal requirements for speech-language pathologists, audiologist, and speech-language pathology assistants.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies a form and corrects a typographical error.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clarify information requested on the forms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board in administering this program the efficient collection of necessary information submitted by the licensee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2,300 individuals are licensed by the Board. The vast majority, 1985, are speech-language pathologists.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will be impacted only to the extent that they are already required to renew biennially by statute. They will be charged the appropriate fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The will be provided a license to practice.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

regulation: KRS 334A.080(3)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Speech-Language Pathology and Audiology (Amendment)

#### 201 KAR 17:034. Requirements for licensure as a Speech-Language Pathology Assistant.

RELATES TO: KRS 334A.030, 334A.033

STATUTORY AUTHORITY: KRS 334A.033, 334A.080(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.033 requires the board to promulgate administrative regulations to set forth requirements for supervision, education and postgraduate professional experience for speech-language pathology assistants. This administrative regulation establishes criteria for licensure for speech-language pathology assistants.

Section 1. Education and Experience. Each applicant for licensure as a speech-language pathology assistant in Kentucky shall meet the requirements established by this section. (1) In order to receive a license to become a speech-language pathology assistant, the applicant shall possess a bachelor's degree in speech-language pathology or communication disorders, or possess equivalent education, as described in subsection (2) of this section, from a regionally accredited institution, such as the Southern Association of Colleges and Schools.

(2) An applicant shall have equivalent education if the applicant has obtained a bachelor's degree and a minimum of twenty-seven (27) hours in the core areas of communication sciences or disorders including the following:

(a) Anatomy and physiology;

(b) Phonetics and speech science;

(c) Speech and language development;

(d) Communication disorders in children;

(e) Audiology;

(f) Aural rehabilitation; and

(g) Intervention for children with communication disorders.

Section 2. Supervision. (1) The licensee shall function under the supervision of an appropriate supervisor during the period of licensure.

(2) The supervisor shall design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(3) The supervisor may require additional supervision based on

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the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(4) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

(5) Treatment for the pupils served shall remain the responsibility of the supervisor. The level of supervision required shall be the minimum level necessary for the supervisor to retain direct contact with the pupils.

(6) Each speech-language pathology assistant shall be required to receive direct supervision as stated in KRS 334A.033. Supervision shall be adjusted proportionally for less than full-time employment. The supervisor shall have direct contact time with the speech-language pathology assistant as well as with the pupil.

(7)(a) Direct supervision shall consist of on-site, in-view observation and guidance as a clinical activity is performed.

(b) A speech-language pathology assistant shall be supervised by either:

1. A speech-language pathologist who holds a Kentucky license; or

2. A speech-language pathologist who holds Education Professional Standards Board Master's level certification as a teacher of exceptional children in the areas of speech and communication disorders.

(8) The supervisor shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(9) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;

(b) Agreement between the assistant and the supervisor on correct or incorrect judgment of target behavior;

(c) Accuracy in recording data; and

(d) Ability to interact effectively with the pupil.

(10) Indirect supervision shall be required as stated in KRS 334A.033. Supervision shall be adjusted proportionally for less than full-time employment. Indirect supervision may include:

(a) Demonstration;

(b) Record review;

(c) Review and evaluation of audio or videotaped sessions; or

(d) Supervisory conferences that may be conducted by telephone.

(11) The minimum total of direct and indirect supervision as stated in KRS 334A.033 shall be required for each speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

(12) A speech-language pathology assistant shall not provide direct services if a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

(13) If, for any reason (including maternity leave, illness, or a change of jobs), the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant shall not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

(14) Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, a supervisor shall not be listed as the supervisor of record for more than two (2) speech-language pathology assistants. If multiple supervisors are used, each supervisor shall be responsible for that portion of the caseload that is theirs and each shall sign the license application and postgraduate professional experience report.

Section 3. Within thirty (30) days after completion of postgraduate professional experience, the applicant shall submit a complete application for licensure under this section. The applicant's supervisor shall verify the successful completion of postgraduate professional experience by signing the Application for License.

Section 4. Incorporation by Reference. (1) "Application for Licensure", July 2013~~December 2014~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE OLSON, Board Chair

APPROVED BY AGENCY: July 8, 2013

FILED WITH LRC: July 11, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 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 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 September 3, 2013 at close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marcia Egbert, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for licensure for a speech-language pathology assistant.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 334A.030 and KRS 334A.033.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by delineating application procedures and requirements for those seeking to become licensed as a speech-language pathology assistant.

(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 modifies a form.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clarify information requested on the forms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board in administering this program by the efficient collection of necessary information submitted by the licensee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1985 speech-language pathologists licensed by the Board.

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

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will not be impacted. Prospective licensees will be on greater notice regarding the application process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective licensees will be on greater notice regarding the application process.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 334A.080(3)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Speech-Language Pathology and Audiology (Amendment)

#### 201 KAR 17:036. Requirements for licensure for an audiologist.

RELATES TO: KRS 334A.030, 334A.050, 334A.185, 334A.187  
STATUTORY AUTHORITY: KRS 334A.050, 334A.080(3), 334A.185.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.050 and 334A.185 require the board to promulgate administrative regulations delineating education and experience criteria for licensure for audiologists. This administrative regulation establishes requirements for licensure for an audiologist.

Section 1. Education and Experience. Each applicant for licensure as an audiologist in Kentucky shall meet the requirements established by this section. (1)(a) An applicant shall provide a certified transcript confirming attainment of a doctorate degree in the area of audiology or substantive equivalent as described in paragraph (b) of this subsection, from a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association or the Accreditation Commission for Audiology Education of the American Academy of Audiology.

(b) An applicant shall have equivalent education if the applicant holds:

1. A doctoral degree in audiology from a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association; or

2. A master's degree from a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association conferred before January 1, 2007.

(2) The applicant shall have passed a national PRAXIS examination in audiology. Official documentation of scores shall be sent to the board directly from Educational Testing Services.

(3) Within thirty (30) days of obtaining employment, the applicant shall apply for full licensure.

(4) In addition to fulfilling the requirements of this administrative regulation and paying the fees specified in 201 KAR 17:030, an applicant licensed in another state[or-states] shall submit a letter[or-letters] of good standing from each[the-other] state[or states] where the applicant is licensed.

Section 2. Incorporation by Reference. (1) "Application for Licensure", July 2013[January-2012], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE OLSON, Board Chair

APPROVED BY AGENCY: July 8, 2013

FILED WITH LRC: July 11, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 9:00 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 September 3, 2013 at close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative

regulation to the contact person.

CONTACT PERSON: Marcia Egbert, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for licensure as an audiologist.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 334A.030, KRS 334A.050, and KRS 334A.185.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by delineating application procedures and requirements for those seeking to become licensed as an audiologist.

(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 modifies a form.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clarify information requested on the forms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board in administering this program with the efficient collection of necessary information submitted by the licensee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 173 licensed audiologists.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will not be impacted. Prospective licensees will be on greater notice regarding the application process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective licensees will be on greater notice regarding the application process.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this

regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 334A.080(3)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

##### 301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area[establishing the procedures for taking fish and the areas from where fish may be taken]. This administrative regulation establishes the areas where commercial fishing is allowed[permitted].

Section 1. Rivers and Creeks. (1) The following rivers and creeks shall be open to commercial fishing pursuant to 301 KAR 1:146 and 1:155:[Commercial Fishing Waters. (1) The following streams and rivers shall be open to commercial fishing.]

(a) Barren River from its junction with Green River upstream to Greencastle, Kentucky;

(b)[Big Sandy River from its junction with the Ohio River upstream to the junction of the Levisa and Tug Forks;

(c) Levisa Fork from its junction with the Big Sandy River upstream to 200 yards below the mouth of Paint Creek in Johnson County;

(d) Cumberland River from its junction with the Ohio River upstream to the Highway 62 bridge;

(c)[(e)] Eagle Creek from its junction with the Kentucky River upstream to the Highway 22 bridge in Grant County;

(d)[(f)] Green River from its junction with the Ohio River upstream to 200 yards below Lock and Dam 6;

(e)[(g)] Highland Creek from its junction with the Ohio River upstream to the Rock Ford Bridge in Union County;

(f)[(h)] Kentucky River from its junction with the Ohio River

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upstream to the junction of the North and Middle Forks of Kentucky River;

~~(g)(4)~~ North Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Walker's Creek;

~~(h)(4)~~ South Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Cow Creek;

~~(i)(4)~~ Licking River from its junction with the Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;

~~(j)(4)~~ Mississippi River from the mouth of the Ohio River downstream to the Tennessee line;

~~(k)(4)~~ Ohio River from its junction with the Mississippi River upstream to the West Virginia state line except those segments of the river that extend below the following locks and dams where slat baskets are the only piece of commercial gear allowed, except for the first 200 yards below the dam pursuant to ~~as prescribed by~~ KRS 150.445:

1. Lock and Dam 53 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion;[-]

2. Lock and Dam 52 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion;[-]

3. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

4. J.T. Myers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;[-]

5. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

6. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

7. McAlpine Dam downstream to the K&I railroad bridge;[-]

8. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

9. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; and;[-]

10. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

~~(l)(4)~~ Pond River from its junction with the Green River upstream to the Highway 62 bridge;

~~(m)(4)~~ Panther Creek from its junction with the Green River upstream to the head of the creek;

~~(n)(4)~~ Rough River from its junction with the Green River upstream to the Highway 69 bridge at Dundee, Kentucky;

~~(o)(4)~~ Tennessee River from its junction with the Ohio River upstream to River Mile 17.8;

~~(p)(4)~~ Tradewater River from its junction with the Ohio River upstream to the Highway 365 bridge; and

~~(q)(4)~~ Salt River from its junction with the Ohio River upstream to the northwestern boundary of Ft. Knox.

(2) Lakes. The following lakes are open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream except as specified in subsection 3;[-]

(a) Barkley;

(b) Herrington; and

(c) Kentucky; ~~(d) Nolin;~~

~~1. Shall be open to commercial fishing through February 28, 2011.~~

~~2. Only those persons reporting commercial harvest from Nolin River Lake from March 1, 2000 through February 28, 2006, shall be permitted to commercially fish Nolin River Lake.~~

~~(e) Rough River;~~

~~1. Shall be open to commercial fishing through February 28, 2011.~~

~~2. Only those persons reporting commercial harvest from Rough River Lake from March 1, 2000 through February 28, 2006, shall be permitted to commercially fish Rough River Lake].~~

(3) Exceptions.

(a) Cumberland Lake shall be closed to commercial fishing above the confluence of Koger Creek on the Big South Fork Tributary.

(b) Permanent overflow lakes adjacent to the Mississippi and Ohio Rivers that may be accessed from either river by a boat dur-

ing high flow conditions shall be open to statewide commercial fishing during these high flow events, except as prohibited on department wildlife management areas pursuant to 301 KAR 4:020 and 301 KAR 4:050 ~~in 301 KAR 4:050 and 301 KAR 4:020.~~

~~(c) Permanent overflow lakes along the Mississippi and Ohio rivers when access from either river by a boat is not possible;~~

~~1. A no-charge commercial Asian carp removal permit shall be obtained, following landowner and Fisheries Division approval, to remove any rough fish, except catfish and paddlefish.~~

~~2. Only licensed commercial fisherman shall be eligible for the permit.~~

~~3. Permit holders shall follow all gear restrictions listed in 301 KAR 1:146 and requirements described in 301 KAR 1:155.~~

~~4. The permit shall be valid for a period of ninety (90) days from the date of issuance.~~

~~Section 2. Incorporated by Reference. (1) List of commercial fisherman reporting harvest of fish from Nolin River and Rough River lakes from March 1, 2000 through February 28, 2006, 2006 edition, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: July 10, 2013

FILED WITH LRC: July 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 9 a.m. at August 21, 2013, at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business, September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the areas where commercial fishing is allowed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the commercial harvest of fish in Kentucky by establishing the waters open to commercial fishing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing the procedures for taking fish and the areas from where fish may be taken.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by listing the waters that are open to commercial fishing in Kentucky.

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

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(a) How the amendment will change this existing administrative regulation: This amendment will eliminate commercial fishing in the Big Sandy River and in the Levisa Fork.

(b) The necessity of the amendment to this administrative regulation: Commercial harvest of fish has not been reported from the Big Sandy River and Levisa Fork since at least 2007. Commercial fishing is illegal in West Virginia. Removing the Big Sandy River from Kentucky's list of waters open to commercial fishing will not impact any commercial fishermen and will also prevent potential law enforcement problems for Kentucky's commercial fishermen.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Persons who may want to commercially fish in the Big Sandy River or Levisa Fork.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will need to be taken as no commercial fisherman has commercially fished in either the Big Sandy River or the Levisa Fork since at least 2007.

(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 incurred by the commercial fishermen.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A Kentucky licensed commercial fisherman will now not be potentially cited by a West Virginia conservation officer for fishing in West Virginia's waters.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used because all people who commercially fish the waters of Kentucky will be treated the same.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to promulgate administrative regulations establishing the procedures for taking fish and the areas from where fish may be taken.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? There will be no revenues generated 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? There will be no revenues generated in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to implement this administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make ~~these~~[such] requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing[~~"Cull"~~ means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace] it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5)[~~"Daylight hours"~~] are defined by KRS 150.010(6).

(6)[~~"Lake"~~] means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6)[~~(7)~~] "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7)[~~(8)~~] "Processed fish" means a fish that has been gutted and head removed.

(8)[~~(9)~~] "Recreational fishing" means the act of taking or attempting to take for personal use, and not for sale, any freshwater fish species by traditional fishing methods, including a line that is held in the hand or is attached to a rod that is held in the hand or closely attended, and to which one (1) or more hooks are attached.

(9)[~~(10)~~] "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(10)[~~(11)~~] "Single hook" means a hook with no more than one (1) point.

(11)[~~(12)~~] "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(12)[~~(13)~~] "Slot limit" means a size range of a fish species that shall be released by an angler[~~minimum and maximum size limit~~]

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that requires a fish of that size range to be released].

(13)[(14)] "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Size Limits, Daily Creel Limits, and Possession Limits. (1) A person fishing in public or private waters shall observe the following daily creel limits and size limits, except as ~~established~~specified in Section 3 of this administrative regulation or ~~by~~ 301 KAR 1:180.

(a) Black bass[:]; daily creel limit, six (6).

1. Largemouth bass and smallmouth bass[:]; size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass[:]; no size limit.

(b) Rock bass[:]; daily creel limit, fifteen (15).

(c) Sauger, walleye, and their hybrids[:]; daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge[:]; daily creel limit, one (1); size limit, thirty (30) inches.

(e) Chain pickerel[:]; daily creel limit, five (5); no size limit.

(f) White bass and hybrid striped bass~~[singly or in combination]~~[:]; daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass[:]; daily creel limit, five (5); size limit, fifteen (15) inches.

(h) Crappie[:]; daily creel limit, thirty (30); no size limit.

(i) Rainbow trout and brown trout daily creel limit, singly or in combination~~[:; daily limit]~~, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish[:]; daily creel limit, twenty (20); no size limit.

(k) Yellow bass[:]; daily creel limit, thirty (30); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as specified in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release lake sturgeon.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or~~and~~

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler~~[Fishing tournament organizers and their representatives, excluding tournament anglers]~~, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) When transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler~~[Fishing tournament organizers and their representatives, excluding the tournament anglers]~~, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites specified in subsection (7) of this section for subsequent disposal by one (1) of the following methods:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated~~Given~~ to a charity for the purposes of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) ~~[While]~~ Fishing;

(b) On the shoreline; or

(c) ~~[While]~~ On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170~~(2)~~(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the following items to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year round.

Section 3. ~~Exceptions to Statewide Administrative Regulations~~. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the following exceptions:

(1) AJ Jolly Lake. A person shall release all flathead catfish.

(2) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook.

(3) Barkley Lake.

(a) Largemouth bass and smallmouth bass[:]; size limit, fifteen (15) inches.

(b) Crappie[:]; size limit, ten (10) inches; daily creel limit, twenty (20).

(c) Sauger[:]; size limit, fourteen (14) inches.

(4) Barren River Lake.

(a) Crappie[:]; size limit, nine (9) inches.

(b) Largemouth and smallmouth bass[:]; size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge.

(5) Beaver Lake, Anderson County.

(a) Largemouth bass[:]; size limit, fifteen (15) inches.

(b) Channel catfish[:]; size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait.

(7) Beshears Lake, Caldwell County. Channel catfish[:]; size limit, twelve (12) inches.

(8) Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Channel catfish[:]; size limit, twelve (12) inches.

(9) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait.

(10) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass[:]; size limit, fifteen (15) inches.

(b) Muskellunge[:]; size limit, thirty-six (36) inches.

(c) Crappie size limit, nine (9) inches.

(11) Bullock Pen Lake, Grant County. Channel catfish[:]; size limit, twelve (12) inches.

(12) Carnico Lake, Nicholas County. Largemouth bass[:]; size limit, fifteen (15) inches.

(13) Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait.

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- (14) Carr Creek Lake.  
(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.  
(b) Crappie[: size limit, nine (9) inches.  
(15) Carter Caves State Park Lake, Carter County.  
(a) Fishing shall be during daylight hours only.  
(b) Largemouth bass:  
1. There shall be a slot limit between twelve (12) and fifteen (15) inches.  
2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches[no size limit].  
(c) A person shall not possess shad or use shad as bait.  
(16) Cave Run Lake.  
(a) Largemouth bass: There shall be a slot limit[–a person shall release fish] between thirteen (13) and sixteen (16) inches.  
(b) Smallmouth bass[: size limit, eighteen (18) inches.  
(c) Muskellunge[: size limit, thirty-six (36) inches.  
(17) Cedar Creek Lake, Lincoln County.  
(a) Largemouth bass[: size limit, twenty (20) inches; daily creel limit, one (1).  
(b) Channel catfish[: size limit, twelve (12) inches.  
(c) A person shall not possess shad or use shad as bait.  
(18) Chimney Top Creek, Wolfe County. Brown trout[: size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.  
(19) Corinth Lake, Grant County.  
(a) A person shall not possess shad or use shad as bait.  
(b) Channel catfish[: size limit, twelve (12) inches.  
(20) Cumberland Lake shall extend up:  
(a) The Cumberland River to Cumberland Falls;  
(b) The Big South Fork to Devils Jump;  
(c) The Rockcastle River to The Narrows; and  
(d) The Laurel River to Laurel River Dam:  
1. Largemouth bass[: size limit, fifteen (15) inches.  
2. Smallmouth bass[: size limit, eighteen (18) inches.  
3. Striped bass[: size limit, twenty-two (22) inches; daily creel limit, two (2).  
4. Crappie[: size limit, ten (10) inches.  
(21) Cumberland River downstream from Barkley Lake Dam. Sauger[: size limit, fourteen (14) inches.  
(22) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.  
(a) Brown trout[: size limit, twenty (20) inches; daily creel limit[no cull], one (1), with no culling.  
(b) Brook trout[: size limit, fifteen (15) inches; daily creel limit one (1), with no culling.  
(c) Rainbow trout: There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit with no culling[slot limit –a person shall release fish between fifteen (15) and twenty (20) inches. Daily creel limit with no cull], five (5), which shall not include more than one (1) fish greater than twenty (20) inches.  
(d) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.  
(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.  
(23) Dale Hollow Lake.  
(a) Smallmouth bass: There shall be a slot limit[–a person shall release fish] between sixteen (16) and twenty-one (21) inches. The daily creel limits[limit] shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.  
(b) Walleye and any walleye hybrid[its hybrids:] daily creel limit, five (5); size limit, sixteen (16) inches.  
(c) Sauger[: daily creel limit, ten (10); size limit, fourteen (14) inches.  
(d) Rainbow trout and brown trout[: no size limit; daily creel limit, seven (7), singly or in combination.  
(e) Largemouth bass[: size limit, fifteen (15) inches.  
(f) Black bass[: aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.  
(g) Crappie[: size limit, ten (10) inches; daily creel limit, fifteen (15).  
(24) Dewey Lake.  
(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.  
(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.  
(25) Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish[not fish except] with artificial bait.  
(26) Doe Run Lake, Kenton County.  
(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).  
(b) Channel catfish[: daily creel limit, four (4).  
(c) A person shall not possess shad or use shad as bait.  
(27) Dog Fork, Wolfe County. A person shall:  
(a) Only fish[Not fish except] with an artificial bait with a single hook; and  
(b) Release brook trout.  
(28) Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass: There shall be a slot limit[–a person shall release fish] between twelve (12) and sixteen (16) inches. The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches.  
(29) Elmer Davis Lake, Owen County.  
(a) Largemouth bass: There shall be a slot limit[–a person shall release fish] between twelve (12) and fifteen (15) inches.  
(b) Channel catfish[: size limit, twelve (12) inches.  
(c) A person shall not possess shad or use shad as bait.  
(30) Fishtrap Lake.  
(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.  
(b) Crappie[: size limit, nine (9) inches.  
(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.  
(31) Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1).  
(32) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish: daily limit, five (5); size limit, fifteen (15) inches.  
(33)[(32)] General Butler State Park Lake, Carroll County.  
(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).  
(b) Channel catfish[: daily creel limit, four (4).  
(c) A person shall not possess shad or use shad as bait.  
(34)[(33)] Grayson Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.  
(35)[(34)] Greenbo Lake, Greenup County.  
(a) A person shall not possess shad or use shad as bait.  
(b) Bluegill and sunfish[: daily and possession limit, fifteen (15) fish.  
(36)[(35)] Green River Lake.  
(a) Crappie[: size limit, nine (9) inches.  
(b) Muskellunge[: size limit, thirty-six (36) inches.  
(37)[(36)] Guist Creek Lake, Shelby County. Channel catfish[: size limit twelve (12) inches.  
(38)[(37)] Jerrico Lake, Henry County.  
(a) Largemouth bass[: size limit, fifteen (15) inches.  
(b) A person shall not possess shad or use shad as bait.  
(39)[(38)] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.  
(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.  
(b) Crappie[: size limit, ten (10) inches; daily limit, twenty (20).  
(c) Sauger[: size limit, fourteen (14) inches.  
(40)[(39)] Kincaid Lake, Pendleton County. Channel catfish[: size limit, twelve (12) inches.  
(41)[(40)] Lake Blythe, Christian County. Largemouth bass: There shall be a slot limit[–a person shall release fish] between twelve (12) and fifteen (15) inches.  
(42)[(41)] Lake Malone, Muhlenburg and Logan County.



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(a) Largemouth bass: There shall be a slot limit~~[-a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

(b) Channel catfish[: size limit, twelve (12) inches.

~~(43)[(42)]~~ Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait.

~~(44)[(43)]~~ Lake Pollywog, Grant County. A person shall not possess shad or use shad as bait.

~~(45)[(44)]~~ Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches; daily creel limit three (3).

(b) Channel and blue catfish[: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

~~(46)[(45)]~~ Lake Shelby, Shelby County.

(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish[: daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait.

~~(47)[(46)]~~ Laurel River Lake.

(a) Largemouth bass[: size limit, fifteen (15) inches.

(b) Smallmouth bass[: size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie: size limit, nine (9) inches; daily creel limit, fifteen (15).

~~(48)[(47)]~~ Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass: There shall be a slot limit~~[-a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

~~(49)[(48)]~~ Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish[: daily limit, four (4).

~~(50)[(49)]~~ Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish[: daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait.

~~(51)[(50)]~~ Marion County Lake.

(a) Largemouth bass[: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait.

~~(52)[(51)]~~ McNeely Lake, Jefferson County.

(a) Channel and blue catfish[: size limit, twelve (12) inches.

(b) A person shall not possess shad or use shad as bait.

~~(53)[(52)]~~ Mill Creek Lake, Powell County.

(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait.

~~(54)[(53)]~~ New Haven Optimist Lake, Nelson County.

(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish[: daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait.

~~(55)[(54)]~~ Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie[: size limit, nine (9) inches.

~~(56)[(55)]~~ Ohio River.

(a) Walleye, sauger, and any hybrid thereof,~~[their hybrids:]~~ no size limit; daily creel limit, ten (10), singly or in combination.

(b) White bass, striped bass and any hybrid thereof,~~[their hybrids:]~~ daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

~~(57)[(56)]~~ Otter Creek, Meade County.

(a) Smallmouth and largemouth bass: There shall be a slot limit~~[-a person shall release fish]~~ between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches.

~~(58)[(57)]~~ Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout[: size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.

~~(59)[(58)]~~ Paintsville Lake.

(a) Largemouth bass: There shall be a slot limit~~[-a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass[: size limit, eighteen (18) inches.

~~(60)[(59)]~~ Parched Corn Creek, Wolfe County. A person shall:

(a) Only fish~~[Not fish except]~~ with an artificial bait with a single hook; and

(b) Release brook trout.

~~(61)[(60)]~~ Pennyryle Lake, Christian County. Largemouth bass: There shall be a slot limit~~[-a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

~~(62)[(61)]~~ Pikeville City Lake, Pike County. A person shall~~[Catch and]~~ release largemouth bass ~~[fishing (no harvest)]~~.

~~(63)[(62)]~~ Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:

(a) Only fish~~[Not fish except]~~ with an artificial bait with a single hook; and

(b) Release brook trout.

~~(64)[(63)]~~ Reformatory Lake, Oldham County. Channel and blue catfish[: size limit, twelve (12) inches.

~~(65)[(64)]~~ Rough River Lake.

(a) Crappie[: size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

~~(66)[(65)]~~ Shanty Hollow Lake, Warren County.

(a) Largemouth bass[: size limit, fifteen (15) inches.

(b) Channel catfish[: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

~~(67)[(66)]~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:

(a) Only fish~~[Not fish except]~~ with an artificial bait with a single hook; and

(b) Release brook trout.

~~(68)[(67)]~~ Sportsman's Lakes, Franklin County. A person shall not possess or use shad as bait.

~~(69)[(68)]~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait.

~~(70)[(69)]~~ Sympson Lake, Nelson County. Largemouth bass[: size limit, fifteen (15) inches.

~~(71)[(70)]~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie[: size limit, nine (9) inches; daily creel limit, fifteen (15).

~~(72)[(71)]~~ Tennessee River downstream from Kentucky Lake Dam. Sauger: size limit, fourteen (14) inches.

~~(73)~~ Trammel Creek, Allen County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).

~~(74)[(73)]~~ Wood Creek Lake. Largemouth and smallmouth bass[: size limit, fifteen (15) inches.

~~(75)[(74)]~~ Yatesville Lake: Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through[-] March 31 for the bodies of water listed in subsection 3 of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all ~~[caught]~~ trout.

(3) The following streams shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

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- (e) Casey Creek in Trigg County;
  - (f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
  - (g) East Fork of Indian Creek in Menifee County;
  - (h) Elk Spring Creek in Wayne County;
  - (i) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;
  - (j) Middle Fork of Red River in Natural Bridge State Park in Powell County;
  - (k) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; ~~and~~
  - (l) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and
  - (m) Trammel Creek in Allen County.
- (4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from~~The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be~~ October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

- (a) Size limits for selected species;
  - (b) Daily creel limits for selected species;
  - (c) Eligible participants; and
  - (d) Dates and times of special limits.
- (2) An event sponsor shall post signs informing anglers of any special limits for~~Event sponsors shall post signs informing anglers of the special limits~~ a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds.

(1) The following requirements shall apply to all bodies of water listed in subsection (2) of this section:

- (a) Largemouth bass~~;~~ size limit, fifteen (15) inches; daily creel limit, one (1);
  - (b) Channel catfish~~;~~ daily creel limit, four (4);
  - (c) Sunfish or bream~~;~~ daily creel limit, fifteen (15); and
  - (d) Rainbow trout~~;~~ daily creel limit, five (5).
- (2) Special lakes and ponds:
- (a) Alexandria Community Park Lake, Campbell County;
  - (b) Anderson County Community Park Lake, Anderson County;
  - (c)~~(b)~~ Bloomfield Park Lake, Nelson County;
  - (d)~~(c)~~ Bob Noble Park Lake, Nelson County;
  - (e)~~(d)~~ Brickyard Pond, Knox County;
  - (f)~~(e)~~ Camp Ernst, Boone County;
  - (g)~~(f)~~ Carlson Lake, Meade County in Fort Knox;
  - (h)~~(g)~~ Cherokee Park Lake, Jefferson County;
  - (i)~~(h)~~ Dickerson Lake, Meade County in Fort Knox;
  - (j)~~(i)~~ Easy Walker Park Pond, Montgomery County;
  - (k)~~(j)~~ Fisherman's Park lakes, Jefferson County;
  - (l)~~(k)~~ Kingdom Come State Park Lake, Harlan County;
  - (m) Jacobsen Park Lake, Fayette County;
  - (n) James D. Beville Park Lake, Grayson County;
  - (o)~~(l)~~ Lake Mingo, Jessamine County;
  - (p)~~(m)~~ Lake Pollywog, Grant County;
  - (q)~~(n)~~ Lower Sportsman's Lake, Franklin County;
  - (r)~~(o)~~ Lusby Lake, Scott County;
  - (s)~~(p)~~ Madisonville City Park lakes, Hopkins County;
  - (t)~~(q)~~ Martin County Lake, Martin County;
  - (u)~~(r)~~ Middleton Mills Long Pond, Kenton County;
  - (v)~~(s)~~ Middleton Mills Shelterhouse Pond, Kenton County;
  - (w)~~(t)~~ Mike Miller Park Lake, Marshall County;
  - (x)~~(u)~~ Miles Park lakes, Jefferson County;
  - (y)~~(v)~~ Millennium Park Pond, Boyle County;
  - (z)~~(w)~~ Panther Creek Park Lake, Daviess County;
  - (aa)~~(x)~~ Prisoners Lake, Kenton County;
  - (bb)~~(y)~~ Scott County Park Lake, Scott County;
  - (cc)~~(z)~~ Southgate Lake, Campbell County;
  - (dd)~~(aa)~~ Stein Community Park Lake, Campbell County;
  - (bb)~~(dd)~~ Three Springs Lake, Warren County;
  - (ee)~~(cc)~~ Tom Wallace Park Lake, Jefferson County;
  - (ff)~~(dd)~~ Upper Sportsman's Lake, Franklin County;
  - (gg)~~(ee)~~ Watterson Park Lake, Jefferson County;
  - (hh)~~(ff)~~ Waverly Park Lake, Jefferson County;

- (ii)~~(gg)~~ Waymond Morris Park Lake, Daviess County;
- (jj)~~(hh)~~ Whitehall Park Lake, Madison County; and
- (kk)~~(ii)~~ Yellow Creek Park Lake, Daviess County.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: July 10, 2013

FILED WITH LRC: July 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business, September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish creel and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the minimum size limit on smallmouth and largemouth bass in Floyds Fork from 12 to 15 inches and reduce the daily creel limit from 6 fish to only one over 15 inches. Largemouth bass size limits in Carter Cave Lake will change from a no size limit regulation to a 12 to 15 inch slot limit and a 6-fish daily creel, only one of which can be over 15 inches. Limits on brown trout in Trammel Creek will change from a 12-inch minimum size limit and 3 fish daily creel limit to a 16-inch minimum size limit and one fish daily creel limit. In addition, at Trammel Creek, a seasonal catch and release period will be implemented where all trout caught between October 1 and March 31 must be immediately released and only artificial baits shall be used. Blue and channel catfish limits at Dewey and Fishtrap lakes will change from a no-size limit and unlimited daily creel limit to an aggregate daily creel limit of 15 fish of which only one of either species can be over 25 inches. Two lakes were added to the special lakes and

ponds section (Fishing in the Neighborhoods program).

(b) The necessity of the amendment to this administrative regulation: Size limits on bass in Floyds Fork were increased and daily creel limits reduced to prevent the bass from being over harvested. A slot limit and a 6 fish daily creel limit, of which only one fish over 15 inches can be harvested was implemented on bass at Carter Caves to improve the quality and size structure of bass in the lake. A seasonal catch and release period was implemented and brown trout size limits were changed at Trammel Creek to increase quality of trout fishery in the stream. Size and creel limits were implemented on channel and blue catfish at Dewey and Fishtrap lakes to prevent them from being over harvested and to attempt to create a trophy blue catfish fishery in both lakes. Two lakes (Jacobsen Park Lake and James D. Beville Park Lake) were added to the special lakes and ponds section to increase the fishing opportunity in Fayette and Grayson counties.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The following individuals will be affected by this amendment: All individuals who fish for bass in Floyds Fork and Carter Caves, who fish for trout in Trammel Creek, who fish for catfish in Dewey and Fishtrap lakes, and those who fish in the 2 added special lakes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will need to comply with the changes identified in 2(a).

(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 incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish for bass at Floyds Fork Creek and Carter Caves Lake, for trout in Trammel Creek, for catfish at Dewey and Fishtrap lakes, and in the two new special lakes will all benefit in the long run from higher quality sport fisheries.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program the State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky are treated equally with these amendments.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

regulation. KRS 150.025(1) authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate direct revenue. It is unknown if this administrative regulation could indirectly increase any fishing license sales during the first year, but it is doubtful.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no direct revenue generated in subsequent years, and it is doubtful if fishing license sales will be indirectly increased because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area~~hunting seasons, bag limits, and the methods of taking wildlife~~. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "At-large north" means any portion of the elk zone not included in a limited entry area and that lies north of US Hwy 15.

(4) "At-large south" means any portion of the elk zone not included in a limited entry area and that lies south of US Hwy 15.

(5) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal

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agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(6) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

(7) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(8) "Elk" means *Cervus elaphus nelsoni*.

(9) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(10) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for at least five (5) years.

(11) "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

(12) "Out-of-zone" means all counties not included in the restoration zone.

(13) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(14) "Spike" means an elk having one (1) or two (2) antler points on each side.

(15) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

**Section 2. Elk Damage Control.** The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued disposal permit to an elk prior to moving the carcass; and

(2) Not remove the disposal permit until the carcass is processed.

**Section 3. Elk Quota Hunts.** (1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at [fw.ky.gov](http://fw.ky.gov); and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ten (10) either-sex elk permits that shall be valid for use during all elk seasons:

(a) Anywhere in the at-large north or at-large south portions of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section 5(3) of this administrative regulation.

(6) A youth applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunts as established in subsection (12) of this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) No more than ten (10) percent of all drawn applicants in each quota hunt pool shall be nonresidents.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be four (4) separate regular elk quota hunts consisting of:

(a) Antlered archery and crossbow;

(b) Antlered firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not apply for more than two (2) of the four (4) quota hunts established in subsection (12) of this section;

(c) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools;

(d) Only be selected by a random electronic drawing; and

(e) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an antlered elk quota hunt shall be ineligible to be drawn for any antlered elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

**Section 4. Landowner Cooperator Permits.** (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

(3) A landowner cooperator permit is transferable, but shall only be used on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) Prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

1. Name;

2. Social Security number;

3. Address; and

4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

**Section 5. Hunter Requirements.** (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) A drawn hunter may apply to hunt in up to three (3) areas in any combination of limited entry and at-large areas by completing the application process on the department's Web site.

(4) A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned by the department to either the:

(a) At-large north portion of the elk zone; or

(b) At-large south portion of the elk zone.

(5) A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(6) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(7) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

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- (d) Drive elk from outside the assigned area;
- (e) Take an elk while it is swimming;
- (f) Use electronic calls or electronic decoys; or
- (g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(8) A person shall:

- (a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(9) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the person's firearm.

(10) An adult accompanying a person under sixteen (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(11) A hunter may use any deer hunting method authorized by 301 KAR 2:172.

(12) A person shall not use any of the following items to take an elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than .270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

(13) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(14) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts in accordance with the seasons and limits established in Section 6 of this administrative regulation.

(15) A person who is drawn for an archery or crossbow permit or has a landowner or special commission permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:

(a) Is a youth;

(b) Is sixty-five (65) years or older; or

(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through the third Monday in January; and

(b) A crossbow to take an antlered elk:

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31.

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the third Saturday in October through the third Monday in January; and

(b) A crossbow to take an antlerless elk:

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31.

(4) A person drawn for an antlered firearms permit shall use a modern gun or muzzleloader to take an antlered elk during one (1) of the following two (2) seven (7) day periods randomly assigned by the department:

(a) From the first Saturday in October for seven (7) consecu-

tive days; or

(b) From the second Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use a modern gun or muzzleloader to take an antlerless elk during one (1) of the following two (2) seven (7) periods randomly assigned by the department:

(a) From the second Saturday in December for seven (7) consecutive days; or

(b) From the third Saturday in December for seven (7) consecutive days.

Section 7. LEA boundaries. (1) Caney LEA – Starting at the Intersection of State Hwy 550 and Kentucky 1697, the boundary proceeds north on State Hwy 550 through Mousie and Betty to the intersection with State Hwy 7 near Lackey. The boundary then goes south on State Hwy 7, past Dema to intersection with State Hwy 899. The boundary then goes south on State Hwy 899, through Pippa Passes to intersection with Kentucky 1697 at Alice Lloyd College. The boundary then goes west on Kentucky 1697 to intersection with State Hwy 550 in Garner, completing the boundary.

(2) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(3) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.

Section 8. Post-season Quota Hunt on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants:

(a) Who were not drawn for the previous elk quota hunts; and

(b) Who are residents of counties included, wholly or in part, within an EMU boundary~~(the elk restoration zone)~~.

(3) A drawn applicant shall comply with the requirements in Section 5 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be:

(a) Knott County EMU - Starting at the intersection of KY Route 777 and KY Route 550 near Porter Junction, the boundary proceeds east along KY Route 777 to the intersection with KY Route 680. The boundary then proceeds east along KY Route 680 to the intersection with KY Route 122 at Minnie. The boundary proceeds south along KY Route 122 to the intersection with KY Route 1498 near Bevinville. The boundary then continues south on KY Route 1498 to the intersection with KY Route 7. The boundary then proceeds south on KY Route 7 to the intersection with KY Route 1410. The boundary then proceeds west on KY Route 1410 to the intersection with KY Route 160. The boundary then proceeds north on KY Route 160 to the intersection with KY Route 550 in Hindman. The boundary then proceeds north on KY Route 550 to the intersection with KY Route 7, with which KY Route 550 merges and both continue north, to the intersection with KY Route 777 near Porter Junction, thus completing the boundary~~(State Hwy~~

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550 and State Hwy 7 near Lackey, the boundary proceeds south along State Hwy 7 to the intersection with State Hwy 582 then southeast on State Hwy 582 to the intersection of State Hwy 582 and 160. The boundary then proceeds north on State Hwy 160 to the intersection with State Hwy 550 at Hindman, turning northeast on State Hwy 550 to the intersection with State Hwy 7, thus completing the boundary].

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 9. Tagging and Checking Requirements. (1) Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(a) Record on a hunter's log the following information:

1. The species harvested;
2. The sex of the animal;
3. Date of harvest; and
4. County of harvest; and

(b) Check the harvested elk by:

1. Calling (800) 245-4263 and providing the requested information; or

2. Completing the online check-in process at fw.ky.gov.

(2) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

(3) A person shall not provide false information in:

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

Section 10. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), Hunter Access Areas, state forests, the Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone are subject to the requirements established in Section 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 6 of this administrative regulation.

(b) A firearm shall not be used to hunt elk.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 11. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall not use any of the following to take elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty (20) gauge;

(e) Any arrow without a broadhead point; or

(f) A handgun:

1. With a barrel length of less than six (6) inches;

2. With a bore diameter of less than .270 caliber; and

3. That produces less than 550 foot-pounds of energy at 100 yards.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 13. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, or special commission permit may defer use of the permit to the following year if:

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

(a) A marriage certificate;

(b) A birth certificate; or

(c) An affidavit of paternity or maternity.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: July 10, 2013

FILED WITH LRC: July 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business, September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes elk hunting requirements and legal methods to handle elk depredation problems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the boundaries of the areas and units to which hunters are assigned, to establish hunting procedures, and to effectively manage elk in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows youth, seniors, and hunters with an elk tag and a crossbow method exemption permit for deer to hunt elk with a crossbow during the archery only portions of the elk season, expands the Knott County Elk Management Unit, and restricts eligibility for the late season hunt to residents of the counties that make up the EMUs.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 35,000 to 60,000 people who apply to hunt elk in Kentucky each year. People who own or lease land over 5,000 acres can enter into an agreement with the Department for public hunting access and receive elk tags. Property owners sustaining damage from elk can benefit from the late season depredation hunt. Residents of the counties included in EMUs who applied for the regular season hunt are also eligible for the late season depredation hunt.

(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: Youths and seniors will not need to take additional actions to comply with this amendment, however eligible disabled hunters wishing to hunt with a crossbow during archery only seasons will need to fill out a method exemption application as described in 301 KAR 3:027. Hunters within the counties that comprise the EMUs must apply for the regular quota hunt to be included in the pool from which late season hunters will be drawn each year. Hunters drawn for the late season hunt may only hunt within the boundaries of the EMUs defined in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change any costs to the entities identified in 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth, seniors, and eligible disabled hunters will be allowed to hunt with a crossbow during all of the regular elk season except during firearms hunts. Landowners just outside the previous boundaries of the Knott Co. EMU will now be included in the EMU and thus able to allow hunters drawn for the late season to remove elk from their property. Hunters not drawn for the regular elk quota hunt will be eligible to be drawn for the late season hunt.

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

(a) Initially: Other than a minor administrative cost, there will be

no additional cost to the agency to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Residents of the counties within the EMUs who are not drawn for the regular quota hunt shall be eligible for a late season depredation hunt. The purpose of this hunt is to allow residents to assist landowners in removing elk causing property damage in two (2) areas with chronic nuisance elk problems. Fewer than fifty (50) tags for antlerless and spike bulls will be drawn. These tags can only be used on private land within one of the two (2) Elk Management Units (EMUs). The number of tags to be issued will be determined by the level of nuisance elk cases or property damage caused by elk documented within the EMUs prior to January each year.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.177, KRS 150.178, KRS 150.390.

(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? For the 2012 elk season, approximately 61,000 applications were purchased at ten (10) dollars per application (\$610,000 of revenue to the department). Approximately 850 of the 900 drawn hunters paid for elk permits, generating \$50,000 in additional revenue to the department. Total revenue directly generated by the elk hunts for the department was \$660,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Each year has brought increases in the number of applications and thus the direct revenue to KDFWR. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone, but the specific dollar amount is unknown.

(c) How much will it cost to administer this program for the first year? There will be no additional costs for the first year. The department already has mechanisms in place for quota hunt application procedures, random drawings and other aspects of the elk hunts.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**301 KAR 2:300. Black bear seasons and require-  
ments~~[bears]~~.**

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1) 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of ~~take~~, to regulate any method of taking, and to make ~~these~~~~[such]~~ requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations. This administrative regulation establishes bear hunting and chasing seasons, bear hunting areas, legal methods of ~~take~~~~[taking]~~, and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Bear" means the species *Ursus americanus*.

(7) "Bear chase area" means a designated area within the Bear Zone where hunters may use dogs to chase bears.

(8) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(9) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) black bear of either sex.

(10) "Bear zone" means the following Kentucky counties: Bell, Clay, Floyd, Harlan, Knott, Knox, Laurel, Leslie, Letcher, Martin, McCreary, Perry, ~~[and]~~ Pike, Pulaski, Wayne, and Whitley.

(11) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(12) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14) "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull from the trigger.

(15) "Junior bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

(16) "License year" means the period from March 1 through the following last day of February.

(17) "Modern gun" means a rifle, handgun, or shotgun which is loaded from the rear of the barrel.

(18) "Muzzle-loading gun" means a rifle, shotgun, or handgun which is loaded from the discharging end of the barrel or discharging end of the receiver.

(19) "Shotshell" means ammunition discharged from a shotgun.

(20) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) A person shall:

~~(a) Only use dogs to chase bears during:~~

~~1. A bear chase season; or~~

~~2. The bear quota hunt with dogs season;~~

~~(b) first obtain the appropriate bear chase permit from the department before chasing bears; and~~

~~(2) A bear chase permit or junior bear chase permit may only be purchased by a resident of Kentucky.~~

~~(3) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid bear chase permit while using dogs to chase bears.~~

~~(4) Bear chase permits may be purchased on the department's Web site at fw.ky.gov from:~~

~~(a) The effective date of this regulation through August 31 in 2012; and~~

~~(b) July 1 through August 31 in subsequent years.~~

~~(5) A person shall not:~~

~~(a) Kill or intentionally injure a bear during a chase-only season;~~

~~(b) Chase a bear except during daylight hours when a chase season is open;~~

~~(c) Chase a bear from a baited area:~~

~~1. While bait is present; or~~

~~2. For thirty (30) days after the bait has been removed; or~~

~~(d) Disturb a bear in a den.~~

~~(6) Individual hunt groups shall include no more than five (5) people and eight (8) dogs, except:~~

~~(a) A hunt party may total seven (7) people if two (2) additional youths accompany the party;~~

~~(b) The two (2) additional youths do not have to be drawn as part of a quota hunt party; and~~

~~(c) The two (2) additional youths shall not be allowed to harvest a bear.~~

~~(7) Any dog transported in a motorized vehicle by members of a hunt group shall be considered a member of that hunt group.~~

~~(8) The department shall supply a bear chase survey to each person purchasing a bear chase permit.~~

~~(9) A person who purchases a bear chase permit shall submit to the department a completed bear chase survey by the last day of January following each bear season.~~

~~(10) A person who fails to submit a bear chase survey shall be ineligible to purchase a bear chase permit for the following year's chase seasons.~~

~~(11) A person shall only use a dog to chase a bear in the following designated areas:~~

~~(a) Eastern bear chase area;~~

~~(b) Central bear chase area; and~~

~~(c) Western bear chase area.~~

Section 4. Chasing Bears with Dogs.~~[Chase-Only Season Dates.-(1)]~~ A person shall not use a dog to chase a bear except during the following seasons:

~~(1) The chase-only season, which shall be from August 1 through August 31; and~~

~~(2) The bear quota hunt with dogs season pursuant to Section 8 of this administrative regulation.(a) The early chase-only season shall be from:~~

~~1. The effective date of this regulation through August 31 in 2012; and~~

~~2. August 1 through August 31 for all subsequent years;~~

~~(b) The late chase-only season shall be from the Monday following the bear quota hunt with dogs season established in Section 8 of this administrative regulation for five (5) consecutive days.~~

~~(2) The bear quota hunt season pursuant to Section 8 of this administrative regulation shall be open as a chase-only season if the annual bear harvest quota specified in Section 9(1) of this administrative regulation is met during the regular bear hunt season.]~~

Section 5. Bear Permit Requirements. (1) Only a resident of Kentucky shall be allowed to purchase a bear permit.

(2) Unless exempted by KRS 150.170, a person hunting a bear shall possess proof of purchase of a valid Kentucky hunting license and valid bear permit while hunting.

Section 6. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use dogs during the regular bear hunting season, except



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leashed tracking dogs may be used to recover wounded bears;

(c) Hunt bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming; ~~and~~

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den; or

(h) Disturb a bear in a den for the purpose of taking the bear when it exits the ~~den~~~~[dens]~~.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm. ~~[(3) A person shall use dogs to chase bears with the intent to harvest only during the quota hunt with dogs season.]~~

Section 7. Weapon Restrictions. (1) A person shall not use the following to take a bear:

(a) A device capable of taking a bear other than a firearm, crossbow, or archery equipment;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty (20) gauge;

(e) Rimfire ammunition;

(f) A fully automatic weapon;

(g) A firearm with a magazine capacity greater than ten (10) rounds;

(h) Steel-jacketed ammunition;

(i) Tracer bullet ammunition;

(j) A shotshell containing more than one (1) projectile;

(k) A broadhead smaller than seven-eighths (7/8) inch wide;

(l) A barbed broadhead;

(m) A crossbow without a working safety device;

(n) A chemically treated arrow; or

(o) An arrow with a chemical attachment.

(2) A person shall not take a bear with a handgun that:

(a) Does not have a barrel length of at least six (6) inches;

(b) Does not have a bore diameter of at least 0.270 inches; or

(c) Does not fire a bullet that produces at least 550 ft/lbs of energy at 100 yards.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the bear zone during the following seasons:

(a) The archery/crossbow season, which shall be for nine (9) consecutive days beginning on the Saturday before Thanksgiving;

(b) The regular bear season, which shall be for three (3) consecutive days beginning on the second Saturday in December; and ~~[(b)]~~ The quota hunt with dogs season, which shall be for five (5) consecutive days beginning on the Monday following the regular bear season.

~~[(2)] A person shall only hunt bears in the bear zone during the regular bear season.~~

~~[(3)] A person shall only use dogs to hunt bears in the bear chase areas during the quota hunt with dogs season.~~

~~[(4)] A person shall not take more than one (1) bear in a license year.~~

~~[(3)]~~~~[(5)]~~ A hunt party drawn for the quota hunt with dogs season shall not take more than one (1) bear in a license year.

Section 9. Bear Season Closure. (1) The archery/crossbow~~Any open hunting~~ season for bears shall close after daylight hours on the day when the following ~~[annual]~~ quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(2) The regular bear season shall close after daylight hours on the day when the following quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(3) The bear quota hunt with dogs season shall close after daylight hours on the day when the quota of five (5) bears has been reached.

~~[(4)]~~ A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the annual quota has been reached.

Section 10. Quota Hunt with Dogs Requirements. (1) A person shall apply for the quota hunt on the department's Web site at fw.ky.gov from September 1 through September 30.

(2) An applicant shall possess a bear chase permit before applying.

(3) A person shall not:

(a) Apply more than one (1) time;

(b) Apply as a party of more than five (5) people; or

(c) Be eligible to take a bear~~[participate]~~ unless drawn by the department in the bear quota hunt lottery.

~~[(4)] A person shall only harvest a bear~~~~[If the annual bear quota specified in Section 9(1) of this administrative regulation is not met during the regular bear season, the following shall apply:~~

~~[(a)] A person or party drawn for the quota hunt shall be allowed to use dogs to hunt for bears;~~

~~[(b)] A bear shall only be harvested]~~ with the use of unleashed dogs.

~~[(5)]~~~~[(c)]~~ A person or each member of a hunt party selected for the quota hunt shall possess a bear permit in order to kill a bear.

(6) The quota hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit~~[(d) The season shall close after daylight hours on the day when the annual quota has been reached pursuant to Section 9(1) of this administrative regulation].~~

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

(a) Waterfowl; or

(b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12. Bear Reserves~~[Sanctuaries]~~. (1) The following areas within the Bear Zone shall be closed to bear hunting:

(a) Cumberland Gap National Historical Park;

(b) Hensley-Pine Mountain Wildlife Management Area; ~~and~~

(c) Big South Fork National River and Recreation Area; ~~and~~

(d) The area surrounding Hensley-Pine Mountain Wildlife Management Area: starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds northeast along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds west along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 463 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.

(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area referenced in subsection (1)~~[(d)]~~~~[(e)]~~ of this section.

Section 13. Harvest Recording and Check-in Requirements.

(1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

(a) Species taken;

- (b) Date taken;
- (c) County where taken; and
- (d) Sex of the bear.
- (2) A person who has harvested a bear during the regular bear season shall:
  - (a) Retain a completed hunter's log;
  - (b) Check a harvested bear at a department-operated check station immediately after leaving the field;
  - (c) Telecheck the bear before leaving the check station by:
    - 1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and
    - 2. Recording the confirmation number on the hunter's log; and
    - (d) Attach to the carcass a department issued tag prior to leaving the check station.
  - (3) A person who has harvested a bear during the archery/crossbow season or the bear quota hunt with dogs season shall:
    - (a) Retain a completed hunter's log;
    - (b) Telecheck the bear by midnight the day the bear was harvested~~[before upon leaving the field]~~ by:
      - 1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and
      - 2. Recording the confirmation number on the hunter's log;
      - (c) Arrange for department personnel to inspect the bear by:
        - 1. Calling the department at 800-858-1549 or 800-252-5378 within twenty-four (24) hours of harvest; and
        - 2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex; and
        - (d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

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

- (a) "Eastern Bear Chase Area" map, 2013~~[East and Central Bear Chase Areas~~ map, 2012] edition;~~and]~~
- (b) "Central Bear Chase Area" map, 2013 edition; and
- (c) "Western Bear Chase Area" map, 2013~~[West Bear Chase Area~~ map, 2012] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: June 7, 2013

FILED WITH LRC: July 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business, September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes black bear chase and hunt seasons, chase and hunt requirements, bag limits, and legal methods of take.

(b) The necessity of this administrative regulation: To establish bear hunting season requirements and methods of take to provide reasonable hunting and chasing opportunity, while properly managing bear populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining the seasons, bag limits, and methods of chase and take used to manage black bears in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will expand the existing 4-county Bear Zone to a 16-county area and establishes a 9-day archery/crossbow season in November that encompasses the week of Thanksgiving. It also establishes an independent quota of 10 bears or 5 females for the archery/crossbow season, whichever is reached first. This amendment also sets a 5-bear quota for the December bear quota hunt with dogs season that is independent of all other bear seasons. The late chase season for bears is permanently removed, but any person with a valid Bear Chase Permit may now chase bears during the December quota hunt with dogs season. Fortner Davis WMA has been added to the Western Chase Area, the Central Chase Area has been expanded, and a Western Chase Area has been established in Pike County. This amendment also allows the maximum hunt party size for the quota hunt with dogs to be increased from 5 to 7 people, if a hunt party consists of at least 2 youth.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve bear hunting opportunity and to meet the harvest goals by establishing independent annual quotas for each bear season, thereby increasing the potential maximum harvest from 10 to 25 bears. The increase in the maximum hunt party size from 5 to 7 will allow houndsmen to include 2 youth in their pursuits, thereby passing on valuable knowledge to future houndsmen.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hunters that pursue black bears will be affected by this regulatory amendment. In 2012, there were 525 Bear Permits and 14 Bear Chase Permits sold in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt bear must comply with the individual requirements and restrictions for respective hunt or chase-only seasons for bears, as listed in the fall hunting guide published by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not modify the costs of bear hunt and chase permits.

ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(Amendment)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 61.870-61.884, 146.200-146.360, 322.010(3), 322.340, 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 350.500-350.521, 424.110-424.120, 27 C.F.R. 555.206, 555.218, 555.219, 555.220, 30 C.F.R. 77.1301(c), 730-733, 735, 775, 777, 778.17, 870, 917, 16 U.S.C. 470aa-mm, 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation provides for permits to conduct these operations. The administrative regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to impropvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to applications, actions regarding permits, and surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. A person shall not engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit that shall comply fully with applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted.

2. The actual transfer, sale, or assignment of permit rights shall not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may apply for an amendment to a permit under Section 23 of this administrative regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Harvest opportunity and success for bear hunters will improve with establishment of a nine (9) day season for archery and crossbow hunters. Hunter opportunity will also be significantly increased by the expansion of the Bear Zone from four (4) to sixteen (16) counties. Additionally, independent quotas will be established for the archery/crossbow season, gun/muzzleloader/archery season, and bear quota hunt with dogs. Allowing the inclusion of two (2) youth to accompany chase parties will promote recruitment for this outdoor pursuit. While the late chase season has been abolished, all persons in possession of a valid Bear Chase Permit can now chase bears without the intent to kill during the bear quota hunt with dogs season.

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

(a) Initially: There will be no administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt bear are required to abide by the same seasons, methods of take, bag limits, harvest recording procedures, and checking requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue generated by bear hunt and bear chase permits pursuant to 301 KAR 3:022 was approximately \$16,000 in 2012. It is unknown how the amendments to this administrative regulation will affect this number.

(b) How 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 amount of revenue generated by this administrative regulation for subsequent years is expected to be stable to slightly increasing.

(c) How much will it cost to administer this program for the first year? There will be a small administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small administrative cost incurred in subsequent years.

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

Revenues (+/-): None  
Expenditures (+/-): None  
Other Explanation:

unchanged by an amendment.

(3) Compliance with permits. A person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); and the Bald Eagle Protection Act of 1940, as amended (16 U.S.C. 668a), as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties may deem appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit shall submit to the cabinet a Preliminary Application, MPA-00.

(2) The Preliminary Application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, for example, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas delineated on the map shall be physically marked at the site; and

(b) In a manner prescribed by the cabinet pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. Personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection under Section 8(8) of this administrative regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation necessary for the cabinet to review the proposed surface coal mining and reclamation operations.

(c) The following forms are required to be submitted by an applicant:

1. Preliminary Application, MPA-00, August 2010;
2. Permittee Information for a Mining Permit, MPA-01, August 2010;
3. Operator Information for a Mining Permit, MPA-02, August 2010;
4. Technical Information for Mining Permit, MPA-03, June 2013[August 2010];
5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B., November 1991;
6. Disinterested Third Party Affidavit: Lands Historically Used

for Cropland, MPA-03.20.1.C., November 1991;

7. Update of Permittee or Operator Information, MPA-05, August 2010;

8. Change of Corporate Owners, Officers or Directors, MPA-06, August 2010;

9. Application to Transfer a Mining Permit, MPA-07, June 2013[August 2010];

10. Revision Application to Change Operator, MPA-08, August 2010;

11. Application for Renewal of a Mining Permit, MPA-09, August 2010;

12. Application for a Coal Marketing Deferment, MPA-10, June 2013[August 2010]; and

13. Minor Field Revision Application Form, SME 80, revised August 2010.

(d) The application shall be complete with respect to all information required by KAR Title 405 and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050.

(e) An application shall not be determined to be administrative-complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency that provided information that has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality; and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person to submit application modifications to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b)1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the cabinet determines the larger scaled map is needed to adequately show mine site details.

4. The map required by 405 KAR 8:030, Section 23(1)(a) or

405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified professional engineer, as defined by KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application shall be prepared by or under the direction of a qualified professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) An applicant shall submit an application fee of \$2,500 for an original application or \$1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. An acreage fee shall not be required for surface areas overlying underground or auger workings that will not be affected by surface operations and facilities.

(4) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after:

1. The date the application is submitted to the cabinet; or

2. The date the applicant receives the notification from the cabinet under Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices,

satisfactory to the cabinet in accordance with this section that shall consist of an affidavit from the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in subsection (5) of this section.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant;

(b) A map or description that shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except if public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice under 405 KAR 7:060, indicating that an experimental practice is requested that identifies the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(b) All federal and Kentucky governmental agencies that have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and that are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a) Make the application available for public inspection and copying during all normal working hours at the appropriate regional

office of the cabinet where the mining has been proposed; and

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting at the conference;

(b) State if the person requesting desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this administrative regulation.

(2) If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a person requesting the conference in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering informa-

tion relevant to the conference.

(d) The requirements of 405 KAR 7:091 and 7:092 shall not apply to the conduct of the conference.

1. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(5) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsection (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and soil samples in applications shall be made available for inspection and copying to any person with an interest that is or may be adversely affected.

(3) Confidentiality.

(a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.

(b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.

(c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:092, Section 9.

(d) Confidential information shall be limited to the following:

1. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that are potentially toxic in the environment; and

2. Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa - mm.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR

Chapters 7 through 24.

(2)(a) Administrative completeness determination.

1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.

2. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that render the application incomplete.

3. The applicant shall submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness.

4. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this administrative regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24, or any other state's laws or administrative regulations under SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if evidence to the contrary is set forth in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of

the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required under subparagraph 1 of this paragraph.

(d) Any permit that is issued on the basis of proof submitted under paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(e) If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and 405 KAR Chapters 7 - 24 of a nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, a permit shall not be issued. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:092, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application;

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5);

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported

in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary;

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA or KRS Chapter 350;

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18;

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use;

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit;

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20;

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040; or

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR

16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. An application for a permit, revision, or amendment that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation. Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this administrative regulation of a major revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation. Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application[submitted under Section 2(2)(c) of this administrative regulation] for a minor revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application.

a. The timeframes for review shall be as follows:

(i) Fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation; and

(ii) Thirty (30) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation for minor revisions that require full cost bonding calculations.

b. Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) or thirty (30) working day period available to the Department[within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation. Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) working-day period available to the cabinet].

(b) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county and the chief executive officer of any municipality in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of



the permit and shall include a description of the location of the permit area; and

(e) The regional[field] office manager[director] of the Division of Mine Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations if construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation, 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not been set forth in the permit.

(1) General. The following general conditions shall apply to a permit issued by the cabinet:

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(b) The permittee shall conduct all surface coal mining and reclamation operations as described in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection if the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including:

1. Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and that prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm that may affect the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3, for operations conducted under the permit, except if a stay of the order is granted and remains in effect, the permittee shall either notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee under 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit.

1. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

2. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or mod-

ification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:092, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit;

(b) If a revision is required by an order issued under Section 19(4) of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the proposed change is of such scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest that may be adversely affected by the proposed change. Major revisions shall include:

1. A change in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. A variance to approximate original contour requirements;

4. Construction or relocation of a road, if the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. A change that may adversely affect significant fish and wildlife habitats or endangered species;

6. A proposed experimental practice;

7. A change that may cause a major impact on the hydrologic balance;

8. An incidental boundary revision that affects a new watershed; and

9. An incidental boundary revision that includes a diversion of a perennial stream.

(b) A major revision shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms prescribed by the cabinet pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision under subsection (6) of this section, shall be a minor revision and shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons that the cabinet determines could have an interest or may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of

the date of the notification.

(d) A minor field revision shall be reviewed and processed in accordance with this section by the appropriate regional office of the department. The following shall be a minor field revision, unless the number of persons that potentially could have an interest or may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries if:

a. There are no structures or renewable resource lands (under paragraph (b) of the definition in 405 KAR 8:001(103) of "renewable resource lands") overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

2. A proposal for retention of a concrete platform or a small building if:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure;

3. A proposal to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040, Section 2, regardless of if a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;

5. A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;

6. A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which initially proposed, if:

a. The drainage area to the structure shall remain the same as the original design;

b. The proposed location shall not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary;

7. A proposal to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion; and

b. The diversions have previously been designed to the standards for permanent diversions;

8. A proposal for relocation of topsoil storage areas if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

9. A proposal to substitute a plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of

the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted;

10. A proposal to utilize hydroseeding for trees instead of planting trees or tree seedlings if:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph;

11. A proposal to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed;

12. A proposal to retain small depressions in the reclaimed area;

13. A proposal required by the cabinet to increase frequency of air blast monitoring;

14. A proposal required by the cabinet to increase frequency of air pollution monitoring;

15. A proposal to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;

16. A proposal to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment shall be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation shall not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment shall always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;

17. A proposal to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;

18. A proposal to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220, and 30 C.F.R. 77.1301(c);

19. Approval for minor relocation of a support facility such as a conveyor, hopper, and a coal stockpile if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. A proposal for a modification of a shared facility if that modification has already been approved in a revision for one (1) of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision;

21. A proposal to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond;

22. A proposal to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills;

23. A proposal to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 - 24;

24.a. A proposal for an incidental boundary revision for a minor off-permit disturbance if:

(i) The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;

(ii) The cumulative acreage limitation in subsection (5) of this section is not exceeded;

(iii) The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of

unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;

(iv) The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

(v) There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;

(vi) The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit; and

(vii) An additional performance bond in the amount of \$5,000 has been filed by the permittee.

b. The regional administrator may decline to review and process a proposal to permit an off-permit disturbance as a minor field revision and instead requires that an application be submitted to the Division of Mine Permits.

25. Except as provided in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:

a. Structure has a hazard classification of B or C;

b. Impoundment is a developed water resource land use;

c. Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if no other nearby source of water is available to the livestock); or

e. Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;

26. A proposal to approve an exemption from the requirement to pass drainage through a sedimentation pond for a disturbed area that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a professional engineer showing the location of the disturbed area and the drainage area clearly; and

27. A proposal to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions that only seek to change the engineering design of impoundments and diversions of overland flow if no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.

1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.

2. The time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of this notice.

(f) An incidental boundary revision shall be deemed a minor revision if it:

1. Does not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;
2. Is contiguous to the current permit area;
3. Is within the same watershed as the current permit area;
4. Is required for an orderly continuation of the mining operation;
5. Involves mining of the same coal seam or seams as in the current permit;
6. Involves only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;
7. Does not involve a property on which mining is prohibited under KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has been designated as unsuitable for mining under 405 KAR 24:030, or is a property eligible for listing on the National Register of Historic Places;
8. Does not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;
9. Does not constitute a change in the current method of mining; and
10. Shall be reclaimed in conformity with the current reclamation plan.

(4) An extension to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change. The application shall be on forms provided by the cabinet.

(c) The application shall include:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405

KAR 8:030 and 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those administrative regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required under Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

- a. The permit number;
- b. The geographic location of the permit area;
- c. The name and business address of the permittee;
- d. A statement that the permittee proposes to change the operator approved in the permit;
- e. The names and business addresses of the currently approved operator and the proposed operator;
- f. The cabinet address to which written comments may be sent under paragraph (f) of this subsection; and
- g. The time available for submission of the comments.

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet shall approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this administrative regulation; and
2. Meets the other applicable requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h)1. The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period under paragraph (f) of this subsection.

2. A period of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period specified in this paragraph, then the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(7) Fees. An application for a revision shall include a basic fee except that a minor field revision and an operator change revision shall not have a basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes an incidental boundary revision that would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application. An acreage fee shall not be required for a surface area overlying underground workings that will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications.

[~~(a)~~] An application for renewal of a permit shall be submitted within the time prescribed by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, and in accordance

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with this section, and shall include:

(a)[4-] The name and address of the permittee, the term of the renewal requested and the permit number;

(b)[2-] A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this administrative regulation;

(c)[3-] Evidence that liability insurance under 405 KAR 10:030, Section 4, shall be provided by the applicant for the proposed period of renewal;

(d)[4-] A renewal fee of \$750;

(e)[5-] Evidence that the performance bond shall continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f)[6-] Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(3) An application for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations shall continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest that is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. A transfer, assignment, or sale of the rights granted under any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information

required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of \$750;

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section; and

(c) Obtain sufficient performance bond coverage that shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which shall ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred and that is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. A successor in interest seeking to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet shall release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale, or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability under KAR Title 405 for the reclamation of the areas affected by all prior permittees.

Section 23. Amendments. (1) Except for an incidental boundary revision, an extension to an area covered by a permit shall not be approved under Section 20 (permit revisions) or Section 21

(permit renewals) of this administrative regulation.

(a) An extension shall be made by application for another permit.

(b) If the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405 amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under KAR Title 405.

(2) A fee for an amendments to existing permits shall be submitted to the cabinet as indicated in Section 6(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest that may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:092, Section 8.

(2) Any applicant or any person with an interest that may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 350.0301 and 350.0305 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Under the violation review criteria of the cabinet upon permit issuance:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program upon permit issuance an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under subsection (4) of this section.

(4) Rescission procedures. If the cabinet, under subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the cabinet under subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically shall become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet under subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:092, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, August 2010;

(b) "Permittee Information for a Mining Permit", MPA-01, August 2010;

(c) "Operator Information for a Mining Permit", MPA-02, August 2010;

(d) "Technical Information for a Mining Permit", MPA-03, June 2013[August 2040];

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Update of Permittee or Operator Information", MPA-05, August 2010;

(h) "Change of Corporate Owners, Officers or Directors", MPA-06, August 2010;

(i) "Application to Transfer a Mining Permit", MPA-07, June 2013[August 2040];

(j) "Revision Application to Change Operator", MPA-08, August 2010;

(k) "Application for Renewal of a Mining Permit", MPA-09, August 2010;

(l) "Application for a Coal Marketing Deferment", MPA-10, August 2010;

(m) "Minor Field Revision Application Form", SME 80, revised August 2010; and

(n) "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

August 22, 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 August 15, 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 September 3, 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 details various aspects of the permit application, review, and approval process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to give regulated entities information on the permit application process that is necessary for accurate and timely review.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation pertains to permit application, review, and the approval process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation is necessary to provide the permit applicant with the information required for permit application and review.

(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 extends the review time on minor revisions given to the Department for Natural Resources (DNR) for applicants opting-out of the Kentucky Reclamation Guaranty Fund (KRGF) and providing full cost bonding. The current review time is fifteen (15) days. The Department is proposing to extend the review time to thirty (30) days.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide DNR with an extended review time on minor revisions that will provide full-cost bonding calculations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment extends the review time associated with review of minor revisions.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This amendment alters the review process established as part of the permanent regulatory program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact those permittees that decide to opt-out of the KRGF. There are currently 325 permittees in Kentucky that could take this option.

(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 extends DNR's review time for minor revisions that involve full-cost bonding calculations. This amendment will not place additional requirements on regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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): The regulated entity will not directly benefit from the amendments to this administrative regulation.

(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 agency additional funds to implement.

(b) On a continuing basis: This amendment will not cost the agency additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this 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: 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 minor revision applications submitted to provide full-cost bonding calculations will be afforded the same review time if necessary.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730
2. State Compliance Standards. KRS 350.060 and KRS 350.070.
3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 774.13
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.

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Division of Mine Permits**  
**(Amendment)**

**405 KAR 10:001. Definitions for 405 KAR Chapter 10.**

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291  
 STATUTORY AUTHORITY: KRS[Chapter 13A,] 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation defines[provides for the defining of] certain essential terms used in 405 KAR Chapter 10.

Section 1. Definitions. (1) "Acquisition" means the purchase, lease, or option on the land for the purpose of conducting or allowing through resale, lease, or option the action of conducting surface coal mining and reclamation operations.

(2) "Active Acre" means an acre of land or fraction thereof, permitted and bonded for surface disturbance under a surface coal mining permit as of July 1, 2013. Active acre shall not include:

(a) Acreage contained in a permit for which the entire permit has not been initially disturbed by the permittee after permit issuance;

(b) Acreage contained in a permit, or increment thereof, that has completed initial reclamation and received a minimum of a Phase 1 bond release;

(c) Undisturbed acreage completely released from liability as a result of a bond release or bond reduction; or

(d) Acreage of a permit that is permitted and bonded for underground acreage only.

(3) "Actuarial soundness" is defined by KRS 350.500(1).

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation, or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

~~(5)(2) "Administrator" or "bond pool administrator", as used in 405 KAR 10:200, means the cabinet employee named by the secretary to assist the commission and to perform certain administrative functions in connection with the bond pool, as required by KRS 350.745.~~(3) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments,

dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

~~(6)(4)~~ "Applicant" [as used in 405 KAR 10:040,] means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

~~(7)(5) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.~~(6) "Cabinet" is defined in KRS 350.010(10).

~~(8)(7)~~ "C.F.R." means Code of Federal Regulations.

~~(9)(8)~~ "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(10) "Coal mined and sold" means coal severed or removed as a result of surface coal mining operations and subsequently sold, transferred, or used by the permittee or operator.

~~(11)(9)~~ "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

~~(12)(10) "Commission" or "bond pool commission" means the body established at KRS 350.705.~~(11) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

~~(13)(12)~~ "Day" means calendar day unless otherwise specified to be a working day.

~~(14)(13)~~ "Department" means the Department for Natural Resources.

~~(15)(14)~~ "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(16) "Dormancy fee" means the annual fee established in KRS 350.518(2)(f).

~~(17)(15)~~ "FDIC" means Federal Deposit Insurance Corporation.

~~(18)(16)~~ "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(19) "Final disposition" means the status of an enforcement action taken by the cabinet pursuant to KRS Chapter 350 for which a final secretary's order has been entered and the time for appeal has expired or all appeals have been exhausted, or an agreed order has been entered.

~~(20)(17)~~ "FSLIC" means Federal Savings and Loan Insurance Corporation.

(21) "Full-cost bonding" means performance bonds that have been submitted by a permittee for its surface coal mining operation permits in lieu of participation and membership in the Kentucky



Reclamation Guaranty Fund.

(22) "Historically used for cropland" means land that:

(a) Has been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting surface coal mining and reclamation operations;

(b) Would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; or

(c) The cabinet determines, on the basis of additional cropland history of the surrounding land and the land under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion[(18) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations[.

(23)[(19)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(24) "KRGF" means the Kentucky Reclamation Guaranty Fund.

(25)[(20)] "KAR" means Kentucky administrative regulations.

(21) "KRS" means Kentucky Revised Statutes. (22)] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(26) "Member" means a permittee in the Kentucky Reclamation Guaranty Fund.

(27) "Non-production fee" means the annual fee established in KRS 350.518(2)(e).

(28)[(23)] "Month of operation," as used in 405 KAR 10:200, Section 7, means a calendar month in which a duty exists to reclaim a disturbed area for which a permit was issued under KRS Chapter 350. It is not necessary that coal extraction occur during the month. (24)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(29)[(25)] "Operations" is defined in KRS 350.010(6).

(30)[(26)] "Operator" is defined in KRS 350.010(7).

(31) "Opt-out" means the decision by a permittee to not participate in the KRGF and to provide full-cost bonding pursuant to 405 KAR 10:080, Section 2(1)(a)1.

(32)[(27)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of non-compliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(33) "ORGF" means the Office of the Reclamation Guaranty Fund.

(34)[(28)] "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(35)[(29)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund (405 KAR 10:070[Kentucky Bond Pool Program (405 KAR 10:200], KRS 350.595, and 350.500 – 350.521[KRS 350.700 through 350.755]), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(36)[(30)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(37)[(31)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(38)[(32)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(39)[(33)] "Person" is defined in KRS 350.010(9).

(40)[(34)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal

exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(41) [(35)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(42) [(36)] "Reclamation" is defined in KRS 350.010(12).

(43) [(37)] "Secretary" is defined in KRS 350.010(11).

(44) [(38)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(45) [(39)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(46) [(40)] "Surface coal mining and reclamation operations" is defined in KRS 350.010(3).

(47) [(41)] "Surface coal mining operations" is defined in KRS 350.010(1).

(48) [(42)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(49) [(43)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(50) [(44)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(51) [(45)] "U.S. EPA" means United States Environmental Protection Agency.

(52) "Voluntary Bond Pool" is defined in KRS 350.500(5).

(53) [(46)] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 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 September 3, 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 necessary to correctly interpret the requirements of 405 KAR Chapter 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to correctly interpret the require-

ments of 405 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation provides definitions for 405 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation is necessary to provide definitions for regulated entities to fully understand the requirements of 405 KAR Chapter 10.

(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 amends definitions to comply with KRS 13A and also adds definitions that are related to the promulgations of two new administrative regulations in 405 KAR Chapter 10, 405 KAR 070 and 405 KAR 080.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary define terms that are related to administrative regulations promulgated in response to the passage of HB 66.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment defines terms used in 405 KAR Chapter 10. 405 KAR Chapter 10 is necessary to maintain the permanent regulatory program authorized by KRS 350.465.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to a permanent regulatory program. This amendment defines terms related to administrative regulations promulgated in response to the passage of HB 66 which will help the Cabinet maintain the permanent regulatory program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require the entities listed above to use the new definitions to correctly interpret the requirements of the new administrative regulations.

(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 directly 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 the amendments to this administrative regulation by having terms that will enable the regulated entity to correctly interpret the new administrative regulations and amendments to existing administrative regulations.

(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 agency additional funds to implement.

(b) On a continuing basis: This amendment will not cost the agency additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this 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: 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 estab-

lished 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 new definitions will apply to the regulated entities in the same manner.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 730

2. State Compliance Standards. KRS 350.064 and 350.500.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation defines terms that are not part of the corresponding federal regulatory program.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional terms are Kentucky specific terms related to the passage of House Bill 66 from the 2013 Legislative Session.

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

##### 405 KAR 10:015. General bonding provisions.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.515, 350.518

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to establish procedures for determining amounts for performance

bonds for surface coal mining operations. This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds shall remain in effect. This administrative regulation establishes requirements for filing and maintaining performance bonds and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work is performed by the cabinet, taking into consideration such things as topography, geology, future land use, and the difficulty of reclamation.

Section 1. Bonding Requirements. (1) An applicant shall not disturb surface acreage or extend an underground shaft, tunnel, or operation prior to receipt of approval from the cabinet of a performance bond covering an area to be affected by surface operations and facilities.

(2) After an application for a new, amended, revised, or renewed permit to conduct surface coal mining and reclamation operations has been approved pursuant to 405 KAR Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on a form prescribed and furnished by the cabinet, a performance bond payable to the cabinet.

(a) The applicant shall file the Performance Bond, Form SME-42, for an operation on land other than federal lands, or the Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, for an operation on federal land.

(b) The performance bond shall be conditioned upon compliance with all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of 405 KAR Chapters 7 through 24 have been met.

(c) The amount, duration, type, conditions, and terms of the performance bond shall conform to the requirements of this administrative regulation.

(3) A permit shall not be revised or amended to include additional area unless the liability of the current bond is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond, the additional area shall be permitted as a separate increment of the current permit area or pursuant to a new permit.

(4) A rider to the applicable performance bond, confirming coverage of the revision, shall be submitted by the applicant if a revision to a permit does not change the acreage of the permit area or increment but:

(a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit; or

(b) Alters the boundary of a permit area or increment.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet as established in Sections 6, 7, and 8 of this administrative regulation.

(2) The performance bond shall be payable to the cabinet.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the conditions of the permit and shall cover the entire permit area or the incremental area as the cabinet has approved pursuant to Section 4(2) of this administrative regulation.

(4) The duration of the bond shall be for a time period established in Section 9 of this administrative regulation.

(5) Surety bonds shall be subject to the following conditions:

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason.

1. Surety bond coverage for permitted lands not disturbed shall be cancelled only with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation.

a. A cancellation notice shall be by certified mail.  
b. Cancellation shall not be effective for lands subject to bond coverage that are affected after receipt of notice, but prior to approval by the cabinet.

c. The cabinet shall approve a cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section 10 of this administrative regulation.

2. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, if the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c)1. The surety shall give prompt notice to the permittee and the cabinet of a notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging violations of regulatory requirements that could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations pursuant to the bond, the surety shall promptly provide written notice to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant to the permit or the surety of liability on its bond.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted.

e. If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall suspend the permit until acceptable bond is posted.

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, or letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as established in 405 KAR Chapter 10.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, through the submittal of Escrow Agreement Form SME-64, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a FDIC or FSLIC insured financial institution, and the cabinet shall not in any circumstance accept a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens that it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet upon an offering of collateral.

(f) The cabinet shall require the applicant to deposit sufficient

amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) A letter of credit shall be subject to the following conditions:

(a)1. The letter shall only be issued by a bank organized or authorized to do business in the United States.

2. A letter of credit issued by a non-Kentucky lending institution shall be confirmed by an approved Kentucky lending institution.

(b) A letter of credit shall be irrevocable.

(c) The letter shall be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand. The Irrevocable Standby Letter of Credit, Form SME-72, and the Confirmation of Irrevocable Letter of Standby Credit, form SME-72-A, shall be submitted to the cabinet, as necessary.

(d)1. The issuer shall give prompt notice to the permittee and the cabinet of notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging violations of regulatory requirements that could result in suspension or revocation of the issuer's charter or license to do business.

2. In the event the issuer becomes unable to fulfill its obligations pursuant to the letter of credit, notice shall be given immediately to the permittee and the cabinet.

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant to the permit or the issuer of liability on the letter of credit.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted.

e. If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall suspend the permit until acceptable bond is posted.

(8) If a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to by all parties, which sets forth the agreed distribution of bond amounts to be released or reduced pursuant to 405 KAR 10:040 and Section 10 of this administrative regulation, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

(9) Permit specific bonds posted by members of the Voluntary Bond Pool on existing permits prior to the establishment of the Kentucky Reclamation Guaranty Fund shall be released in their entirety upon successfully achieving reclamation Phase I bond release in accordance with 405 KAR 10:040, Section 2(4)(a). Permit specific bonds posted by members of the Voluntary Bond Pool on new permits after the establishment of the Kentucky Reclamation Guaranty Fund shall be released in equal percentages at each reclamation phase with the Kentucky Reclamation Guaranty Bond.

Section 3. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types established in this section.

(2) The performance bond shall be a:

(a) Surety bond;

(b) Collateral bond;

(c) Bond filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund, KRS 350.518;

(d) Bond filed by the Voluntary Bond Pool; or

(e) Combination of the above bond types.

(3) Bonds filed by the Voluntary Bond Pool prior to its repeal in 2013 Ky. Acts ch. 78, Section 12, shall be deemed valid and convey the same legal right as bonds issued by the KRGF. The amount, duration, conditions, and terms of bonds issued by the Voluntary Bond Pool shall be deemed in compliance with the requirements of this administrative regulation[Combination of the above bonding types; or

(d) Bond filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595 and 350.700 through 350.755)].

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S" - single area bonding. A single area bond shall be a bond that covers the entire permit area as a single undivided area, for which the applicant shall file the entire bond amount required by the cabinet prior to issuance of the permit.

(a) Liability pursuant to the bond shall extend to every part of the permit area at all times.

(b) Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall not be a release of all or part of the bond amount for completion of a particular phase of reclamation on a part of the permit area pursuant to 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "I" - incremental bonding. Incremental bonding shall be a method of bonding in which the permit area shall be divided into individual increments, each of which is bonded separately and independently, and for which bond shall be filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments subject to approval by the cabinet.

1. Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary.

2. If the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area shall be contained within a single increment.

3. These increments shall be clearly identified on maps submitted in the permit application pursuant to 405 KAR Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall be not less than the minimum bond required for the permit area required pursuant to Section 7 of this administrative regulation.

(c) The permittee shall not engage in surface coal mining and reclamation operations on an increment of the permit area unless the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. Credit shall not be given for reclamation on other increments.

(d) The boundaries of each increment shall be physically marked at the site in a manner approved by the cabinet pursuant to 405 KAR 16:030.

(e) The bond amount for an increment shall be released or forfeited independently of another increment of the permit area, and liability pursuant to the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall not be a release of bond for completion of a phase of reclamation on part of an increment until that phase of reclamation has been successfully

completed on the entire increment.

(g) If the bond for an increment is completely released pursuant to 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 5. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, in which case the liability that has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond pursuant to 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 6. Determination of Bond Amounts. (1) In determining the bond amount, the cabinet shall estimate the cost to the cabinet if the cabinet had to perform the reclamation, restoration, and abatement work required of a person who conducts surface coal mining and reclamation operations pursuant to KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, except as provided in subsection (4) of this section. This amount shall be based on:

(a) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030, Section 24(4), and 405 KAR 8:040, Section 24(4);

(b) The additional estimated costs to the cabinet that may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(c) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this section;

(d) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(e) Other cost information required or available to the cabinet.

(2) If the reclamation cost calculated submitted in a permit application is higher than the minimum bond or bond calculated by the cabinet, the higher calculation shall be used in any issued permit.

(3) The cabinet shall review the bonding amounts identified in Sections 7 and 8 of this administrative regulation at a minimum of every two (2) years to determine if the amounts are adequate due to inflation and increases in reclamation costs.

(4) Full cost bonding participants shall provide the cabinet a cost estimate that reflects the costs of reclamation to the cabinet in accordance with the requirements of 405 KAR 10:080, Section 3.

Section 7. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be:

(1) \$75,000 for the entire surface area under one (1) permit;

(2) \$75,000 per increment for incrementally bonded permits, subject to Section 4(2) of this administrative regulation;

(3) \$50,000 for a permit or increment operating on previously mined areas, as defined in of 405 KAR 8:001, Section 1(86), to be evaluated by the cabinet; or

(4) \$10,000 for underground mines that have only underground operations.

Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and reclamation operation shall be bonded at the following rates for a permit issued by the Division of Mine Permits:

(1) Coal haul roads, other mine access roads, and mine management areas shall be bonded at \$2,500 per acre and each fraction thereof.

(2) Refuse disposal areas shall be bonded at a minimum rate

of \$7,500 per acre and each fraction thereof.

(3)(a) An embankment sediment control pond shall be bonded at a rate of \$10,000 per acre and each fraction thereof, with each pond being measured separately, if the pond is located off-bench and located downstream and outside the proposed mining or spoil storage area.

(b) This rate may be applied to partial embankment structures as necessary to meet the requirements of Section 6(1) of this administrative regulation.

(4) Coal preparation plants shall be bonded at the base acreage rate, in accordance with subsection (6) of this section, in addition to the costs associated with demolition and disposal costs relating to concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.

(5) Operations on previously mined areas, as defined in 405 KAR 8:001, Section 1(86), shall be bonded at rate of \$2,000 per acre and each fraction thereof.

(6) All areas of surface coal mining and reclamation operations not otherwise addressed in subsections (1) through (5) of this section shall be bonded at the rate of \$3,500 per acre and each fraction thereof.

(7)(a) For permits that have been identified as a producer of long-term treatment drainage, the cabinet shall calculate an additional bond amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by twenty years.

(b) The cost estimate shall be subject to verification and acceptance by the cabinet. The department shall use its own estimate for annual treatment costs if the department cannot verify the accuracy of the permittee's estimate.

(c) In lieu of this calculation, the permittee may submit a remediation plan to be approved by the cabinet for the areas deemed to be producing substandard drainage.

1. The remediation plan shall demonstrate that substandard discharge shall be permanently abated by land reclamation techniques prior to phase II bond release.

2. If the department rejects the plan, the permittee shall submit the additional acid mine drainage bond previously established in this section.

Section 9. Period of Liability. (1) Liability pursuant to performance bond applicable to an entire permit area or increment thereof shall continue until all reclamation, restoration, and abatement work required of persons who conduct surface coal mining and reclamation operations pursuant to requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the permit have been completed, and the permit or increment terminated by release of the permittee from further liability in accordance with 405 KAR 10:040.

(2) In addition to the period necessary to achieve compliance with all requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, including the standards for the success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of liability pursuant to a performance bond shall continue for a period of five (5) years beginning with the last year of augmented seeding, fertilizing, irrigation, or other work.

(a) The period of liability shall begin again upon augmented seeding, fertilizing, irrigation, or other work required or conducted on the site prior to bond release.

(b) Isolated and clearly defined portions of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the cabinet.

(c) These areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure.

(d) Access to the separated areas for remedial work may be included in the area pursuant to extended liability if necessary.

(3) If the cabinet approves a long-term intensive agricultural postmining land use in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation, or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions that the permittee is required to take pursuant to the permit,

including completion of the reclamation plan in a manner that the land will be capable of supporting a postmining land use approved pursuant to 405 KAR 16:210. Actions of third parties beyond the control and influence of the permittee and for which the permittee is not responsible pursuant to the permit shall not be covered by the bond.

Section 10. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit or increment shall be adjusted by the cabinet if the:

(a) Acreage in the permit area or increment is either increased or decreased; or

(b) Cabinet determines that the cost of future reclamation, restoration, or abatement work has changed. If it is determined that an adjustment pursuant to this paragraph is necessary, the cabinet shall:

1. Notify the permittee, the surety, and any person with a property interest in collateral who has previously requested such a notification in writing; and

2. Provide the permittee an opportunity for an informal conference on the adjustment. The requirements of 405 KAR 7:091 and 7:092 shall not apply to the conduct of the conference.

(2) The amount of the performance bond liability applicable to a permit or increment may be adjusted by the cabinet upon application by the permittee under 405 KAR 8:010, Section 20, to delete acreage from the permit area or increment thereof if the acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section 2(3), shall apply. A reduction due to such a deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

(3) The cabinet may grant reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall not be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

(4) The cabinet shall refuse to approve a reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, if there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of 405 KAR Chapters 7 through 24 on that permit or increment.

Section 11. Supplemental Assurance. (1) If alternative distance limits or additional pits are approved pursuant to 405 KAR 16:020, Section 2, the applicant shall submit to the cabinet supplemental assurance in the amount established in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required pursuant to 405 KAR Chapter 10. The applicant shall submit supplemental assurance on the cabinet form, Supplemental Assurance, SME-42 (SA). This form shall be accompanied by the Escrow Agreement form (for use with Supplemental Assurance form only), SME-64 (SA).

(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.

(b) The requirements of Sections 2, 3, and 5 of this administrative regulation and 405 KAR 10:035 and 10:050 shall apply to supplemental assurance.

(2) Single seam contour mining. For single seam contour operations subject to 405 KAR 16:020, Section 2(3), the amount required shall be \$150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first pit pursuant to 405 KAR 16:020, Section 2(3). If an additional pit or pits are approved, the amount shall be \$150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional pit.

(3) Multiple seam contour mining. For multiple seam contour mining operations subject to of 405 KAR 16:020, Section 2(4), the amount required shall be \$150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first multiple seam operation pursuant to of 405 KAR 16:020, Section 2(4). If addition-

al multiple seam operations are approved, the amount shall be \$150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional multiple seam operation.

(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance established in subsection (2) of this section.

(5) Area mining. The amount required shall be \$150,000 for any four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit pursuant to 405 KAR 16:020, Section 2(1). If an additional pit or pits are approved, the amount shall be \$150,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.

(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:

(a) Application to the cabinet for the return; and

(b) Inspection and written documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).

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

(a) "Performance Bond, Form SME-42", June 2013[1999];

(b) "Irrevocable Standby Letter of Credit, Form SME-72", July 1994;

(c) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", July 1994;

(d) "Supplemental Assurance, SME-42 (SA)", July 1994;

(e) "Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA)", July 1994;

(f) "Escrow Agreement, Form SME-64", October 2008;

(g) "Remining Issues and Procedures, Reclamation Advisory Memorandum No. 154", May 2012; and

(h) "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", June 2013[1999].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 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 September 3, 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, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the

bonds shall remain in effect. This administrative regulation also establishes requirements for filing and maintaining performance bonds, and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work must be performed by the Cabinet, taking into consideration such things as topography, geology, future land use and the difficulty of reclamation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide essential information on bonding mine sites in the event work must be performed by the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.064 requires an applicant to file with the cabinet a reclamation bond for performance payable, as appropriate, to the state, and conditional upon faithful performance of all the requirements of this chapter and the permit. This administrative regulation provides essential details for this process.

(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 establishing the procedures for bonding and supplemental assurance.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation adds bonds from the Kentucky Reclamation Guaranty Fund (KRGF) to the list of types of performance bonds approved by the Cabinet and also details how bonds on future permits subsidized by the KRGF for former Voluntary Bond Pool members will be released. The amendments also include the option of providing full-cost bonds to the section on determination of bond amount.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the types of performance bonds approved by the Cabinet and also details how bonds on future permits subsidized by the KRGF for former Voluntary Bond Pool members will be released. The amendments are also necessary to clarify that the regulated entity should provide the calculations for the cabinets cost of reclamation in accordance with 405 KAR 10:080 in the event a full-cost option if chosen.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides information related to the passage of HB 66 in the 2013 Legislative Session related to the establishment of the KRGF and also conforms to the requirements of KRS 350.064 which requires the regulated entity to submit a bond prior to issuance of a permit.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.064 and 350.500 – 350.521 are related to providing sufficient bond, prior to permit issuance, to perform reclamation in the event the Cabinet needs to perform reclamation in the event of forfeiture.

(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 the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will allow the 325 permittees to use their participation in the KRGF as a type of performance bond accepted by the Cabinet. It also clarifies that permittees who opt-out of the KRGF shall use full-cost bonding calculations when determining their bond amount.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments in this administrative regulation will not result in additional costs to the regulated entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity will benefit from the amendments to this administrative regulation by allowing

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their membership in the KRGF to be a type of acceptable performance bond.

(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 agency additional funds to implement.

(b) On a continuing basis: This amendment will not cost the agency additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this 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: 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 permittees in Kentucky will be mandatory participants in the KRGF. Participation in the KRGF will be a sufficient type of performance bond for all those participants.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.500 – 350.521.

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 amendment 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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 730

2. State Compliance Standards. KRS 350.064 and 350.500 – 350.521.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes. This administrative regulation introduces options and procedures that are different

from federal counterparts.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional options/requirements are related to the passage of HB 66 from the 2013 legislative session.

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver License (Amendment)

#### 601 KAR 13:025. Point system.

RELATES TO: KRS Chapter 13B, 186.450(6), 186.570, 186.572, 189.990(5)

STATUTORY AUTHORITY: KRS 186.400(1), 189.292, 189.294

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.400(1) authorizes the Transportation Cabinet to promulgate administrative regulations for the enforcement of motor vehicle laws and driver licensing. KRS 189.292 and 189.294 authorize the cabinet to promulgate administrative regulations related to the use of a personal communication device while operating a moving motor vehicle. This administrative regulation ~~establishes~~is necessary to establish an equitable driver license point system for ~~the~~the punishment of] a driver who violates a traffic law. This administrative regulation also establishes those offenses for which a license shall be suspended rather than points accumulated.

Section 1. Definitions. (1) "Conviction" means an adjudication of guilt, forfeiture of bail, a plea of guilty, a plea of nolo contendere, an Alford plea, or the payment of a fine or court cost, with or without a court appearance.

(2) "Probation" means~~[that]~~ a pending driving privilege suspension period ~~that~~ is held in abeyance~~if~~:

~~(1) The person attends an approved driver improvement clinic; and~~

~~(2) His driving privilege has not been withdrawn in any other jurisdiction].~~

(3) "Suspension" means a temporary denial, interruption, withdrawal, or revocation of a driver's license. The terms suspension, withdrawal, and revocation are used interchangeably within this administrative regulation.

Section 2. Application of Penalty Points. (1) A schedule of penalty points shall be applied to determine if a person is a habitually reckless or negligent driver.~~[The following penalties may be imposed on the driving privilege:~~

~~(a) Denial;~~

~~(b) Withdrawal;~~

~~(c) Suspension; or~~

~~(d) Revocation of a driving license.]~~

(2) Penalty~~[(a)]~~ points shall be assessed or a driving privilege suspended for conviction of a~~[any of the following relating to the]~~ traffic law~~[laws]~~ of any state for which penalty points are assigned under Section 4 of this administrative regulation, except~~[:~~

1. Conviction;

2. Forfeiture of bail; or

3. Payment of a fine, with or without a court appearance.

~~(b)] a speeding violation in another state shall not be assessed~~[considered by the cabinet for assessment of] penalty points.

~~[(3) Information regarding a conviction may be secured from an official source or record available to public or cabinet inspection.~~

~~(4) A complete record of a driving privilege suspension and point system assessment shall be maintained in the Transportation Cabinet for a period of:~~

~~(a) Five (5) years for a noncommercial vehicle operator; and~~

~~(b) Ten (10) years for a commercial vehicle operator.]~~

Section 3. Serious Violations. (1) Conviction for one (1) of the following serious violations of the motor vehicle laws may ~~[be]~~ cause ~~[for]~~ suspension of the driving privilege~~[for the period of time~~



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indicated]:

- (a)[(4)] Racing - ninety (90) days;
  - (b)[(2)] Speeding twenty-six (26) MPH or more over limit - ninety (90) days; or
  - (c)[(3)] Attempting to elude law enforcement officer by use of motor vehicle - ninety (90) days.
- (2) A person convicted of a violation referenced in subsection (1) of this section shall appear for an informal hearing at the established time and place pursuant to Section 9 of this administrative regulation.

Section 4. Penalty Points. Conviction for[any] one (1) of the following moving traffic offenses, except for a speeding violation in another state, shall be cause for assessment of the penalty points indicated:

- (1) Speeding fifteen (15) MPH or less over the limit - three (3) penalty points[3-(4)except as provided in KRS 186.572(1)];
- (2) Speeding sixteen (16) MPH or more, but less than twenty-six (26) MPH, over the limit - six (6) penalty points[6];
- (3) Failure to stop for church or school bus - six (6) penalty points[6];
- (4) Improper passing - five (5) penalty points[5];
- (5) Reckless driving - four (4) penalty points[4];
- (6) Driving on the wrong side of road - four (4) penalty points[4];
- (7) Following too closely - four (4) penalty points[4];
- (8) Failure to yield to an emergency vehicle - four (4) penalty points[4];
- (9) Changing drivers in a moving vehicle - four (4) penalty points[4];
- (10) Vehicle not under control - four (4) penalty points[4];
- (11) Failure to stop violation (electric signal, railroad crossing, stop sign) - three (3) penalty points[3];
- (12) Failure to yield - three (3) penalty points[3];
- (13) Driving the wrong way on one-way street - three (3) penalty points[3];
- (14) Driving too fast for conditions - three (3) penalty points[3];
- (15) Driving too slow for conditions - three (3) penalty points[3];
- (16) Improper start - three (3) penalty points[3];
- (17) Improper driving - three (3) penalty points[3];
- (18) Careless driving - three (3) penalty points[3];
- (19) Failure to yield left lane - three (3) penalty points[3];
- (20) Improper lane usage - three (3) penalty points[3];
- (21) Failure to illuminate headlights - three (3) penalty points[3];
- (22) Failure to dim headlights - three (3) penalty points[3];
- (23) Texting while driving - 3 penalty points[Any other moving hazardous violation - 3]; or
- (24) A[Commission of a moving hazardous violation which involves an accident - 6; or
- (25)combination of two (2) or more moving traffic of-fenses[hazardous violations] in one (1) occurrence - six (6) penalty points[6].

Section 5. Warning Letter. (1)(a) If a person of eighteen (18)[or more] years of age or older accumulates six (6) or more penalty points within a two (2) year period, the Transportation Cabinet shall[may] send a letter to the address shown on the[his] driving history record advising the person[that shall advise him] of the number of penalty points on his or her driving history record.

(b) The letter shall inform the person of the penalties that[which] may be imposed if he or she accumulates twelve (12) or more penalty points within two (2) years.

(2)(a) If a person under the age of[less than] eighteen (18) years accumulates four (4) or more penalty points within a two (2) year period, the Transportation Cabinet shall[may] send a letter to the address shown on the[his] driving history record advising[that shall advise him] of the number of penalty points on his or her driving history record.

(b) The letter shall inform the person of the penalties that[which] may be imposed if seven (7) or more penalty[he accumulates more than six (6)] points are accumulated prior to his or her 18th birthday.

Section 6. Suspension. (1) The cabinet may[:(a)] suspend the driving privilege of a person:

(a)[(4-)] Eighteen (18) years of age or older[above] who accumulates twelve (12) or more penalty points within a period of two (2) years; or

(b) Under the age of[2- Less than] eighteen (18) years[of age] who accumulates seven (7)[six (6)] or more penalty points within a period of two (2) years.

(2) The cabinet may suspend the driving privilege of a person[(b)] for a period of:

(a) No less than ninety (90) days but no more than[1-] six (6) months for the first accumulation;

(b)[(2-)] One (1) year for the second accumulation; and

(c)[(3-)] Two (2) years for any[a] subsequent accumulation within a two (2) year period.

(3)[(2)] If the penalty for conviction of a first offense is suspension of the driving privilege for six (6) or fewer months:

(a) A suspension for a subsequent conviction of a similar offense shall be for a period of at least one (1) year; and

(b) A suspension for a third or greater conviction of a similar offense shall be for a period of two (2) or more years.

Section 7. If the cabinet suspends the driving privilege of a person during the period that a prior suspension is in effect, the subsequent suspension period shall run consecutive to the prior.

Section 7. Probation[Section 8]. (1) If a person possesses a valid operator license or intermediate license not suspended in any state or jurisdiction and appears at an informal hearing at the established time and place pursuant to KRS 186.570 and Section 9 of this administrative regulation, a driver improvement hearing officer may place the following on probation in lieu of suspension[The following may be placed on probation instead of having his driving privilege withdrawn]:

(a) A person of eighteen (18) years of age or older[more years] who accumulates twelve (12) penalty points or more within a period of two (2) years;

(b) A person under the age of eighteen (18) years who accumulates seven (7) or more[than six (6)] points; or

(c) A person convicted of an offense that could result in a suspension of his or her driving privilege as established in Section 3[under the provisions] of this administrative regulation[may be placed on probation in lieu of suspension].

(2) The probation period used in lieu of suspension shall be double the length of the applicable suspension period[would have been].

(3) A person on probation shall have his or her driving privilege suspended, pursuant to[in accordance with] Section 6 of this administrative regulation if he or she:

(a) Receives an additional moving traffic conviction[with or without court appearance]; or

(b) Fails to enroll and successfully complete the driver improvement clinic.

(4) A person[is] placed on probation[;] shall not be eligible[for this consideration] again for probation prior to a two (2) year period from the expiration of the probationary period[; regardless if served].

(5)(a) The cabinet may waive the remainder of a driving privilege suspension where the suspended person becomes eligible for probation[If a person's driving privilege is suspended under the provisions of this administrative regulation and he becomes eligible for probation, the cabinet may waive the remainder of a driving privilege suspension period].

(b) If waived, the driver shall be placed on probation for double the amount of time remaining on the suspension period.

Section 8. Conviction Report. (1) The cabinet shall not consider[9- (1) A person who holds a valid operator's license from another jurisdiction and establishes residence in Kentucky may apply and be considered for an operator's license.

(2) The person's driving privilege shall not be suspended or revoked at the time of his application.

Section 10. If a conviction report[is] used[by the Transportation Cabinet] to impose a driving privilege suspension or proba-

tion[;it

(4) ~~Shall not be used~~ for the imposition of an unrelated suspension or probation.[;]

(2) ~~The cabinet may consider a conviction report used to impose a driving privilege suspension or probation~~[May be used] to show that the person's driving privilege has previously been suspended.

Section 9. Informal Hearing[44]. (1)(a) Pursuant to KRS 186.570(4)[(3)], a person may request an informal hearing[upon receiving notice of the cabinet's intent to suspend his driving privilege].

(b) A person convicted of a violation referenced in Section 3 of this administrative regulation shall appear for an informal hearing at the established time and place designated by the cabinet.

(2) ~~To be eligible for probation,[(a)]~~ the person shall appear for the informal hearing at the established time and place designated by the cabinet.

(3)[(b)] The informal hearing shall be conducted by a driver improvement hearing officer who is an appointed representative of the Transportation Cabinet.

(4)[(e)] The testimony given at the informal hearing shall be recorded and retained by the cabinet for a period of sixty (60) days after the deadline for requesting an administrative hearing.

(5)[(3)](a) The driver improvement hearing officer shall determine ~~if[whether]~~ the cabinet may withdraw a person's driving privilege based on the:

1. Evidence presented;
2. Testimony; and
- 3.~~[The person]~~ Driving history record.

(b) If the driver improvement hearing officer determines that the cabinet may withdraw the person's driving privilege, he ~~shall[may]~~ order a:

1. License suspension; or
2. Probationary period.

(6)[(4)] If probation is granted, the terms shall be carefully explained to the person. The person shall indicate ~~an[his]~~ understanding and acceptance of ~~the[those]~~ terms by signing a Probation Request, TC Form 94-51["Probation Request Form", TC 94-51, as effective January 1993].

(7)[(5)] If probation is not granted~~[the person]~~, the driver improvement hearing officer shall prepare the order suspending the person's driving privilege at the close of the informal hearing. The effective date of the suspension shall be included in the order.~~[The driver improvement officer shall hand the order to the person prior to his departure.]~~

Section 10. Formal Administrative Hearing. (1)[(6)](a) Within twenty (20) days, a party[person]-aggrieved by the order[decision] in an informal hearing may in writing request a formal[an] administrative hearing.

(2) A request for an administrative hearing shall state the reason or reasons the aggrieved party believes~~(b) The request shall state the reason he believes~~ the cabinet's action was erroneous.

(3) ~~A[(e)]~~The request for an administrative hearing shall be submitted to the Transportation Cabinet Building, Office of Legal Services, 200 Mero Street, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622.

Section 11[43]. Incorporation by Reference. (1) "Probation Request", TC form 94-15, July 2013[Transportation Cabinet Probation Request Form, TC 94-51, effective January 1993], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Division of Driver Licensing, 200 Mero~~[It may be inspected, copied, or obtained at Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

RICK TAYLOR, Acting Commissioner  
MIKE HANCOCK, Secretary  
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: July 15, 2013

FILED WITH LRC: July 15, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 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 the close of business, September 3, 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 an equitable driver license point system for those who violate traffic laws. It also establishes offenses for which a license can be suspended rather than points accumulated.

(b) The necessity of this administrative regulation: This regulation is necessary to inform the public of the number of penalty points that can be assessed for violating traffic laws, and the offenses for which a license can be suspended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 189.400(1) authorizes the cabinet to promulgate administrative regulations for the enforcement of motor vehicle laws and driver licensing. KRS 189.292 and 189.294 authorize the cabinet to promulgate administrative regulations related to the use of a personal communication device.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reflect current processes related to driver license suspension, probation, and the assessment of penalty points.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds definitions for "conviction" and "suspension"; updates and clarifies the language of the administrative regulation including the informal hearing process; and assesses three (3) penalty points for texting while driving.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the administrative regulation to reflect current procedures and processes within the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies and updates the standards required by KRS 186.400(1), 189.292, and 189.294.

(d) How the amendment will assist in the effective administration of the statutes: By amending the administrative regulation the public will have the latest information regarding penalties that may be assessed for driving infractions.

(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 licensed drivers living in Kentucky, and the cabinet's Division of Driver Li-

censing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take specific actions but will have the latest information regarding penalties that may be imposed against their driver license.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have the most updated list of regulatory requirements involving the penalty point system.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: \$50,000

(a) Initially:

(b) On a continuing basis:

(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 the cabinet to increase fees or funding.

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

(9) TIERING: Is tiering applied? Yes. Tiering is applied because penalty points are assessed based on the violation.

#### 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 Division of Driver Licensing within the Transportation Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.400, KRS 189.292, and KRS 189.294.

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. It is estimated that the cost to update the penalty point section of the administrative regulation will be \$50,000.

(a) How much 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 additional revenue.

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

(c) How much will it cost to administer this program for the first year? Only an initial cost of \$50,000 to update the penalty points provisions of the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected 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:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

##### 704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development[training,] with the purpose of the program being the improvement of instruction in the public schools. KRS 158.070(5) requires the state board to promulgate administrative regulations establishing guidelines and procedures to be followed for the approval of the professional development activities[four (4) days of the minimum school term which are mandated to be] utilized by each local school district for professional development activities for teachers[the professional staff]. This administrative regulation establishes the requirements for the annual professional development plan.

Section 1. Definitions. (1) "Comprehensive School Improvement Plan" is defined in 703 KAR 5:225. Section 1["High-quality professional development" means those experiences that systematically, over a sustained period of time, enable educators to facilitate the learning of students by acquiring and applying knowledge, understanding, skills, and abilities that address the instructional improvement goals of the school district, the individual school, or the individual professional growth needs of the educator.

(2) "Improvement plan" means a product that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished in the school or district relative to established standards, goals, or objectives for improvement].

(2) [(3)] "Needs assessment" means the gathering, sorting, and analysis of student, educator, and system data that lead to conclusions regarding the need for content and learning designs for professional development in identified areas related to educator performance and student achievement.

(3) "Professional development" means professional learning that is an individual and collective responsibility, that fosters shared accountability among the entire education workforce for student achievement, and:

(a) Aligns with Kentucky's Core Academic Standards in 704 KAR 3:303, educator effectiveness standards, individual professional growth goals, and school, school district, and state goals for student achievement;

(b) Focuses on content and pedagogy, as specified in certification requirements, and other related job-specific performance standards and expectations;

(c) Occurs among educators who share accountability for student growth;

(d) Is facilitated by school and district leaders, including curriculum specialists, principals, instructional coaches, mentors, teachers or teacher leaders;

(e) Focuses on individual improvement, school improvement, and program implementation; and

(f) Occurs several times per week.

(4) "Professional development program" means a sustained and coherent professional learning process[of professional development] that is measurable by indicators and includes professional learning and ongoing support to transfer that learning to practice[may be composed of several initiatives].

Section 2. Each local school and district shall develop a process to plan[for the development of] a professional development program that meets[-This process shall lead to a program of high-quality professional development experiences that the school and district will provide for its instructional and administrative staff within] the goals[as] established in KRS 158.6451 and in the local needs assessment. A school professional development program shall be incorporated into the school improvement plan and made

public prior to the implementation of the[school] program. The local district professional development program shall be incorporated into the district improvement plan and posted to the local district Web site prior to the implementation of the program.

Section 3. Each school and local district professional development program[improvement plan] shall contain[meet] the following six (6) elements[standards related to the professional development program]:

- (1) ~~[There is a]~~Clear statement of the school or district mission;
- (2) ~~[There is]~~Evidence of representation of all persons affected by the professional development program;
- (3) ~~[Application of]~~Needs assessment analysis[is evident];
- (4) Professional development objectives that are focused on the school or district mission and derived from needs assessment, and specify changes in educator practice needed to improve student achievement; and
- (5)~~[The professional development program and implementation strategies are designed to support school or district goals and objectives; and~~
- (6)~~] A process for evaluating~~[professional development experiences for their] impact on student learning and using evaluation results to improve[improving] professional learning[development initiatives is incorporated in the plan].

Section 4. (1) The school or district improvement plan shall, in compliance with KRS 158.6451, address professional learning required to improve instruction[for any instructional improvement or training needs that are in accordance with the goals as established in KRS 158.6451].

- (2)~~[High-quality]~~ Professional development[experiences] shall:
  - (a) Be related to the teachers' instructional assignments and the administrators' professional responsibilities[- Experiences shall support the local school's instructional improvement goals; and]
  - (b) Be aligned with the school or district improvement plan or the individual professional growth plans of teachers;
  - (c) Occur within learning communities committed to continuous improvement, collective responsibility, and goal alignment;
  - (d) Be facilitated by skillful leaders who develop capacity and advocate and create support systems for professional learning;
  - (e) Be prioritized and monitored by the district;
  - (f) Use a variety of sources and types of student, educator, and system data to plan, assess, and evaluate professional learning;
  - (g) Integrate theories, research, and models of human learning to achieve its intended outcomes;
  - (h) Apply current research on systems change and sustain support for implementation of professional learning for long-term instructional improvement as evidenced by student growth;
  - (i) Align its outcomes with educator performance and student curriculum standards; and
  - (j) Focus resources on areas of identified need.
- (3)~~[Experiences for]~~ Professional development[credit of classroom teachers] shall not supplant any of the six (6) hour instructional day.

(4) A district may report flexible professional development[experiences] on unpaid[;] noncontact[snow] days. This shall require a district calendar change and the change shall be reported to the Department of Education.

(5) Professional development[experiences] that relates[relate] to an individual professional growth plan may be used to satisfy the requirements for certification or renewal options as established by the Kentucky Education Professional Standards Board in Title 16 KAR.

(6)(a) Professional development grant dollars may reimburse college or graduate course tuition expended[be used for college or graduate course tuition reimbursement] for a teacher to deepen content knowledge and content-specific pedagogy in[specific academic subject content areas in] math, science, English/language arts, social studies, arts and humanities, and practical living and career studies, if[for which] the teacher is assigned to teach in those areas.

(b) The use of professional development funds for tuition reimbursement[this purpose] shall be specified in the district improvement plan approved by the school board or the school plan ap-

proved by the school council as to funds under its control.

(c) Particular content areas and grade levels, which qualify for reimbursement, may be specified based upon information about the level of academic preparation of the teacher employed, local student performance data, and student learning needs[instructional need].

(7) Professional development credit shall not be awarded for those experiences that provide remuneration beyond travel, food, lodging or tuition.

(8) A school district implementing a flexible professional development schedule shall award professional development credit for any experience that addresses the goals of the school or district improvement plan or the individual professional growth plans of teachers.

(9) Parent-teacher conferencing skill development shall be permissible as a professional development experience.

Section 5. The Qualifications and Duties of the District Professional Development Coordinator. (1) Qualifications for the position of district professional development coordinator shall include:

(a) A staff member meeting the certification requirement for a professional development coordinator as established by the Education Professional Standards Board in 16 KAR 4:010;

(b) A demonstrated ability to work with schools to plan, design, implement, and evaluate professional development that aligns with the requirements of this administrative regulation[Experience in professional development planning]; and

(c) A demonstrated ability to work with schools to connect professional development with effective instructional practices and student achievement data.

(2) Duties of the district professional development coordinator shall include:

(a) Facilitating analysis of student, educator, and system data to conduct[Conducting] the district professional development needs assessment;

(b) Coordinating the intradistrict alignment of professional learning to achieve identified goals[-] and objectives[- and experiences] for professional development;

(c) Building capacity of school leaders, school council members, and other school and district leaders to plan, access resources, implement, and evaluate professional learning[Providing technical assistance to school councils, staff and professional development committees in the alignment of professional development experiences with school goals as identified through the local school improvement planning process];

(d) Disseminating professional development information to school councils, staff members, and professional development committees;

(e) Providing technical assistance to school councils on scheduling to allow for job-embedded professional learning opportunities during the school day;

(f) Coordinating the planning, implementation, and evaluation of the district professional development program that is aligned, supportive of, and developed in conjunction with[local] school improvement plans;[(f) Upon request by a school council or school staff, providing technical assistance on the evaluation and coordination of school-based professional development experiences;]

(g) Coordinating the establishment of local policies, procedures, timetables,[preparation of] necessary forms and letters, assignment of workshop sites and all other practical elements of professional development[training], including fiscal management;

(h) Maintaining, verifying, and, if appropriate, submitting district and school professional development records, documentation, and other pertinent information to the Department of Education;

(i) Explaining the district's professional development programs' objectives, results, and needs to school professionals, district staff, [the] board members, civic and parent groups, teacher training institutions and others as requested;[and]

(j) Maintaining[a professional] contact with the Department of Education and other agencies involved in providing professional development; and

(k) Identifying, selecting, coordinating and evaluating the services of third-party professional development providers[experiences].

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Section 6. A maximum of fifteen (15) percent of the district's professional development grant may be used for administrative purposes.

Section 7. When implementing professional development programs under KRS 158.070, a local school or district shall adhere to its school or district improvement plan.

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  
DAVID KAREM, Chairperson

APPROVED BY AGENCY: July 15, 2013

FILED WITH LRC: July 15, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 30, 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 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 close of business September 3, 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, 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 C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the public schools.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements for the district annual professional development plan. The professional development outlined in the district plan along with what teachers receive related to their individual growth plan is crucial in improving student performance.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the public schools. This regulation amends that statewide program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order to enable the Kentucky Board of Education to properly review and approve the activities districts are providing for teachers, an annual professional development plan, from school districts, is necessary.

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

(a) How the amendment will change this existing administrative regulation: The definition of professional development has been replaced with the definition recommended by the Professional Learning Task Force. Kentucky's current professional development standards are replaced with new research-based standards. Terminology was updated to bolster consistency.

(b) The necessity of the amendment to this administrative regulation: A comprehensive, sustained, and intensive approach to professional learning is necessary to support the state's College and Career Readiness agenda for students, teachers, and leaders.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the public schools. The amendment clarifies the kinds of experiences that should be provided in a professional development plan in order to increase student achievement.

(d) How the amendment will assist in the effective administration of the statutes: Districts will be provided with the most up-to-date and research-based standards to ensure that professional learning is leading to instructional change and, in turn, to increased student performance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 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: Each entity will discover the difference between the former professional development standards and the new professional development standards. Free modules are posted online, for access by each entity, to provide information about the standards and instruct how they may be translated into practice. The expectation is that professional learning education providers and consumers will ensure that all professional learning conforms to the new professional development standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A comprehensive, sustained, and intensive approach to professional learning will be possible guided by the new standards. This is necessary to support the state's College and Career Readiness agenda for students, teachers, and leaders

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

(a) Initially: what are the costs? The work to develop tools and guidance to support for implementation of the new professional development standards is supported by private foundations through our work with Learning Forward. Therefore, no additional cost will be incurred by the agency at this time.

(b) On a continuing basis: The provision of high quality professional learning resources to support schools and districts will cost the agency approximately \$4,000,000 per year. These resources will be provided through the Continuous Improvement Technology System.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: To support district access to high quality professional development resources Title II, and Race to the Top 3 monies will be used. Private foundation monies are being used to development guidance and tools for districts to support the implementation of the new professional learning standards.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KDE will include, in its budget request, a call for more money to implement this regulation for the purpose of providing high quality professional development resources.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes no fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate because the administrative regulation applies equally to all schools and 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? 173 schools districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development with the purpose of the program being the improvement of instruction in the public schools. KRS 158.070(5) requires the Kentucky Board of Education to promulgate administrative regulations to establish guidelines and procedures to be followed for the approval of the professional development activities utilized by each local school district.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? The provision of high quality professional learning resources to support schools and districts will cost the agency approximately \$4,000,000 per year. These resources will be provided through the Continuous Improvement Technology System.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Workforce Investment

Office of Employment and Training

(Amendment)

**787 KAR 1:090. Unemployed worker's reporting requirements.**

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115(1), 341.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone, and mail claims, and the requirement for random audits.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he shall be eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12)

weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete the Initial Claim Application, Form 401, by using:

(a) An internet claim registration through the Web site provided by the agency for that purpose at <https://uicclaims.des.ky.gov/ebenefit/>;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall be responsible for:

(a) Providing picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Presenting all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

(5) An unemployed worker whose unemployment insurance benefit check has been lost or stolen shall file a UI-480, Lost or Stolen Check Statement, in order to initiate the process to issue a new check.

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis by one (1) of the methods and within the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

(b) Except as provided in paragraph (c) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period.

(c) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that pur-

pose at <https://uicclaims.des.ky.gov/ebenefit/>, with the claim completed before 7 p.m. Eastern Time on the Friday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of 10 a.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the division that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the division's personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year in-

volved.

Section 7. The secretary shall conduct random audits of claims. Each random audit shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

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

(a) The initial claim application "Form 401", revised 8/10;

(b) UI-480, "Lost or Stolen Check Statement", 06/13;

(c) The "Continued Claim Form", revised 10/95; and

(d)[(e)] "Mass Electronic Filing Cell Data and Formatting Guide", revised 03/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 East Main Street, 2 CD, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: July 15, 2013

FILED WITH LRC: July 15, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013 at 10:00 a.m. at the offices of the Office of Employment and Training, 275 E. Main Street, 2nd floor, Executive Director's Office, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2013, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, September 3, 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: Buddy Hoskinson, Executive Director; Office of Employment and Training; 275 East Main, 2C; Frankfort, Kentucky 40602, phone (502) 564-5331; fax (502) 564-7452.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to receive benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone and mail claims, and random audits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for unemployed workers while receiving unemployment insurance benefits as well as the authorization of random audits of claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will require the Office of Employment and Training, Division of Unemployment Insurance to require Form UI-480 when requesting the Kentucky State Treasury to reissue a lost or stolen unemployment insurance benefit check.

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

(a) How the amendment will change this existing administrative regulation: This amendment will establish the process unemployment insurance recipients must follow in order to request a replacement for a lost or stolen unemployment insurance benefit



check.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require a standardized form to be utilized when the Division of Unemployment Insurance requests the State Treasury to reissue a lost or stolen benefit check.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a service to the unemployed workers. The amendment allows for the establishment of a process utilized by the unemployed worker when an unemployment insurance benefit check is lost or stolen.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During CY 2012 the Division of Unemployment Insurance requested 1,575 benefit checks be reissued due to reports of them being lost or stolen. Allowing the use of a request form will better align the formality of the Division's process to that of the State Treasury.

(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: Unemployed workers who have their benefit checks lost or stolen will have to fill out the form to request a new check be issued.

(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 unemployed worker. The Office of Employment and Training will incur negligible costs for printing the form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The unemployed worker will benefit from the establishment of a uniform process. The Division of Unemployment Insurance will be responsible for distributing to its customers the documents necessary to request a replacement check for unemployment insurance benefits. While the Division of Unemployment Insurance is not responsible for the issuance of said benefit check it is necessary for the process of the Division to match that of the State Treasurer.

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

(a) Initially: Initially, the cost to implement this amendment will be negligible. The Division of Unemployment Insurance will distribute an electronic copy of the required UI-480 to be printed by local career center staff, as needed by customers.

(b) On a continuing basis: The cost will be negligible on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Unemployment Insurance is entirely federally funded. Unemployment insurance administrative funds will be used to cover the negligible costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There will be no fees necessary for this change. Unemployment Insurance is entirely federally funded. Unemployment Insurance administrative funds will be used to cover the negligible costs.

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

(9) TIERING: Is tiering applied? No. The same form will be filled out by all claimants who have a lost or stolen check.

## 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? Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training, Division of Unemployment Insurance, and Kentucky State Treasurer (indirectly)

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 341.350, 341.380, 341.360, 341.370

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

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

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

(c) How much will it cost to administer this program for the first full year? The cost for implementation of this amendment will be negligible for the first year as there is not programming required, only printing copies of the form as necessary.

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

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

Revenues (+/-): None

Expenditures (+/-): Negligible

Other Explanation: A negligible amount will be expended for printing costs.

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

**804 KAR 4:400. ABC basic application form incorporated by reference.**

RELATES TO: KRS 164.772, 241.060(1), 243.380, 243.390  
STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390[; EO-2008-507]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the board[office] to promulgate an administrative regulation to establish the license application form.[~~Executive Order 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 Alcohol Beverage Control as the Department of Alcohol Beverage Control.~~] This administrative regulation prescribes the basic form to be used to apply for an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete, have notarized, and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage Licenses, with the exception of an applicant for:

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state producer/supplier of malt beverage license[~~An agent's, solicitor's, out-of-state brewer, out-of-state microbrewer, or beer importer license~~];

(2) A[~~special~~] temporary license[~~or~~]

(3) An extended hours, supplemental bar, special Sunday, or sampling license; or



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(4) A secondary malt beverage license[A transporter's license].

Section 2. In addition to the Basic Application for Alcoholic Beverage Licenses ~~required~~[require] by Section 1 of this administrative regulation, an applicant[~~applying for an alcoholic beverage license~~] shall complete and submit to the Department of Alcoholic Beverage Control the special application[~~schedule or~~] form required by 804 KAR 4:410[~~for the specific license type for which the applicant is applying~~].

Section 3. Incorporation by Reference. (1) "[The] Basic Application ~~for~~[for] Alcoholic Beverage Licenses", June 2013[~~January 2009~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's[~~authority's~~] Web site, <http://www.abc.ky.gov/>.

FREDERICK A. HIGDON, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 24, 2013

FILED WITH LRC: June 25, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2013, at 9 a.m., EST, 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 August 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 September 3, 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, 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 regulation incorporates the forms required when applying for an alcoholic beverage license created under 2013 SB 13.

(b) The necessity of this administrative regulation: 2013 SB 13 changed the number of licenses and requirements for various licenses. This regulation is needed to establish the forms required when applying for an alcoholic beverage license.

(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. 2013 SB 13 combined, repealed, and created licenses to streamline the licensing process for alcoholic beverage licenses. This regulation incorporates the forms needed for issuing alcoholic beverage licenses as established under 2013 SB 13.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the form required for alcoholic beverage licenses.

(b) The necessity of the amendment to this administrative regulation: 2013 SB 13 changed the number of licenses and requirements for various licenses. This regulation is needed to estab-

lish the forms required when applying for an alcoholic beverage license.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(d) How the amendment will assist in the effective administration of the statutes: 2013 SB 13 combined, repealed and created licenses to streamline the licensing process for alcoholic beverage licenses. This regulation incorporates the forms needed for issuing alcoholic beverage licenses as established under 2013 SB 13.

(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 applicants for alcoholic beverage licenses will have to complete the new application form for an alcoholic beverage license.

(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: No funding is used for the implementation of the 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not 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 or 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.

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 4:410. Special applications[~~ABC schedules~~] and registration forms incorporated by reference.**

RELATES TO: KRS 241.060(1)

STATUTORY AUTHORITY: KRS 241.060, 243.380, 243.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms[~~the schedules and forms to be used to apply for specific license types~~].

Section 1. Special application forms. [In addition to the "ABC Basic" application form incorporated by reference in 804 KAR 4:400,] An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the Department[~~Office~~] of Alcoholic Beverage Control the applicable special application[~~schedule or~~] form for the specific license type for which the application is made[~~he is applying~~]. The special application[~~schedules and~~] forms are listed below:

(1) Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application[~~Schedule "A" A-Special Agent's, Solicitor's, Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License~~];

(2) Special Temporary License Application[~~Schedule "B" Beer Retail Only License~~];

(3) Secondary Malt Beverage License Application Addendum[~~Schedule "F" Food Related License~~];

(4) Supplemental License Application[~~Schedule "I" Industrial Alcohol and Nonbeverage Alcohol Vendor License~~];

(5) Schedule "L" Limited 70% Food Restaurant and Golf Course Voted Wet by Special Election License;

(6) Schedule "M" Manufacturer and Producer License;

(7) Schedule "R" Retail License;

(8) Schedule "S" Storage and Warehouse License;

(9) Schedule "S/R" Special Retail Sales; Motel, Private Club, Riverboat, and Rail & Airliner License;

(10) Schedule "T" Transporter License;

(11) Schedule "Temporary" License;

(12) Schedule "Transitional" License;

(13) Schedule "W" Liquor and Wine Wholesaler and Beer Distributor License;

(14) Schedule "X" Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License;

(15) "ABC Form 714" Beer Brand Registration; and

(16) "ABC Form 715" Distilled Spirits and Wine Brand Registration].

Section 2. Registration Forms. An applicable licensee shall complete and submit the following registration forms:

(1) Microbrewer's Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue;

(2) ABC Form 714 to be submitted to the Department of Alcoholic Beverage Control; or

(3) ABC Form 715 to be submitted to the Department of Alco-

holic Beverage Control.

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

(a) "Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application", June 2013[~~"Schedule A Agent's, Solicitor's Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License", 01/01/07~~];

(b) "Special Temporary License Application", June 2013[~~"Schedule B Beer Retail Only License", 01/01/07~~];

(c) "Secondary Malt Beverage License Application Addendum", June 2013[~~"Schedule F Food Related License", 01/01/07~~];

(d) "Supplemental License Application", June 2013[~~"Schedule I Industrial Alcohol and Nonbeverage Alcohol Vendor License", 01/01/07~~];

(e) "Microbrewer's Retail Gross Receipts Report to Distributor", June 2013;

(f) "ABC Form 714", June 2013; and

(g) "ABC Form 715", June 2013[~~"Schedule L Limited 70% Food Restaurants and Golf Courses Voted Wet by Special Elections", 6/26/07~~];

(f) "Schedule M Manufacturer and Producer License", 01/01/07;

(g) "Schedule R Retail License", 01/01/07;

(h) "Schedule S Storage and Warehouse License", 01/01/07;

(i) "Schedule S/R Special Retail Sale; Motel, Private Club, Riverboat, and Rail & Airliner License", 01/01/07;

(j) "Schedule T Transporter License", 01/01/07;

(k) "Schedule Temporary License", 01/01/07;

(l) "Schedule Transitional License", 01/01/07;

(m) "Schedule W Liquor and Wine Wholesaler and Beer Distributor License", 01/01/07;

(n) "Schedule X Airport, Automobile Race Track, Convention Center, Convention Hotel Complex, Entertainment, Qualified Historic Site Destination Center, Horse Race Track, and License";

(o) "ABC Form 714 Beer Brand Registration", 01/01/07; and

(p) "ABC Form 715 Distilled Spirits and Wine Brand Registration", 01/01/07].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[~~Office~~] of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's[~~office's~~] Web site, <http://www.abc.ky.gov>.

FREDERICK A. HIGDON, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 24, 2013

FILED WITH LRC: June 25, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 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 August 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 September 3, 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.

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hieneman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the forms to be used to apply for various license types.

(b) The necessity of this administrative regulation: KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(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. 2013 SB 13 combined, repealed, and created licenses to streamline the licensing process for alcoholic beverage licenses. This regulation incorporates the forms needed for issuing alcoholic beverage licenses as established under 2013 SB 13.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the form required for alcoholic beverage licenses. It also includes the additional documentation required to be filed with the licensing form.

(b) The necessity of the amendment to this administrative regulation: 2013 SB 13 changed the number of licenses and requirements for those various licenses. This regulation is needed to establish the forms and documentation required when applying for an alcoholic beverage license.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(d) How the amendment will assist in the effective administration of the statutes: 2013 SB 13 combined, repealed and created licenses to streamline the licensing process for alcoholic beverage licenses. This regulation incorporates the forms needed for issuing alcoholic beverage licenses as established under 2013 SB 13.

(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: An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 will be required to complete the applications included in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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: Agency funding is used for the implementation of the 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.

(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 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:

### ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amendment)

#### 807 KAR 5:011. Tariffs.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.170, 278.180, 278.185, 278.190[~~369.102(8)~~]

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires the commission to promulgate an administrative regulation to establish requirements for each utility to file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

#### Section 1. Definitions.

(1) "Commission" is defined by KRS 278.010(15).

(2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.

(3) "Electronic signature" is defined by KRS 369.102(8).

(4) "Nonrecurring charge" means a charge or fee assessed to customers to recover the specific cost of an activity, which:

(a) Is due to a specific request for a ~~[certain type of]~~ service activity for which, once the activity is completed, additional charges are not incurred; and

(b) Is limited to recovery of~~[only recover]~~ the~~[specific]~~ cost of the specific service.

(5)~~[(4)]~~ "Person" is defined by KRS 278.010(2).

(6)~~[(5)]~~ "Rate" is defined by KRS 278.010(12).

(7)~~[(6)]~~ "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(8)~~[(7)]~~ "Signature" means any manual, facsimile, conformed or electronic signatures~~[an original signature or an electronic signature]~~

ture" as defined by KRS 369.102(8)].

(9)[(8)] "Statutory notice" means notice made in accordance with KRS 278.180.

(10)[(9)] "Tariff" means the schedules of a utility's[schedule of each of its] rates, charges, regulations, rules, tolls, [maps,] terms, and conditions of service over which the commission has jurisdiction.

(11) "Tariff filing" means the revised or new tariff sheets and all supporting documents that a utility submits to revise its rate schedules.

(12)[(40)] "Utility" is defined by KRS 278.010(3).

(13)[(41)] "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.

(14) "Water district" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

(15) "Web site" means an identifiable site on the internet, including social media, which is accessible by the public.

Section 2. General. (1)[Beginning January 1, 2013,] Each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at [https://psc.ky.gov/psc\\_portal/](https://psc.ky.gov/psc_portal/).

(2) Each utility shall maintain a complete tariff with the commission.

(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.

(4) A utility shall make available a paper or electronic copy of the utility's current tariff for public inspection in the utility's office or place of business.

(5) A utility that maintains[operates] a [public] Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of the utility's current tariff for each type of service that it provides; or

(b) Place on that[its] Web site a hyperlink to the location on the commission's Web site where the tariff has been posted.

Section 3. Format. (1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:

(a) Printed or typewritten;

(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and

(c) In type no smaller than nine (9) point font, except headers and footers, which shall be in type no smaller than eight (8) point font.

(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1 or reasonable facsimile, shall be used as the tariff's cover page, and shall contain:

(a) The utility's name, mailing address, street address of the utility's principal office if different from the mailing address, and Web site if applicable;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number[;] (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) A statement of the[each] type of service offered;

(d) A statement of the area served;

(e) The date of issue and date on which the tariff is to become effective;

(f) The signature of the representative of the utility authorized to issue tariffs; and

(g) The signatory's title or position.

(3) Tariff Form-2. With the exception of the first sheet of the tariff which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 or reasonable facsimile and shall contain:

(a) The utility's name and territory served;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number[;] (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number[;] (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);

(d) The date of issue and date on which the tariff is to become

effective;

(e) The signature of the utility representative authorized to issue tariffs;

(f) The signatory's title or position; and

(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_\_\_".

(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix the commission's stamp.

Section 4. Contents of Schedules. (1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village, or district in which rates are applicable.

(a) If a schedule is applicable in a large number of communities, the schedule shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) If a utility indicates the applicability of a schedule by reference to the index sheet, the utility shall use language indicating "Applicable within the corporate limits of the City of \_\_\_\_\_," or "see Tariff Sheet No. \_\_\_\_ for applicability."

(2) The following information shall be shown in each rate schedule, if applicable, under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classification[classes] of customers affected[, including residential, commercial, and other groups of customers];

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the minimum charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount or reference the tariff section containing the amount;

(f) Term: if a tariff provision or a contract will be effective for a limited period, state the term[contracts are made for certain periods, give the length of the term]; and

(g) Special rules: list special rules or requirements[, if applicable,] that are in effect covering this tariff.

(3) Each rate schedule shall state the type or classification[class] of service available pursuant to the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. \_\_\_\_"; or

(b) A group of letters, with a[the] designation indicating[indicative of] the type or classification[class] of service for which the rate schedule is available. (Example: Tariff R.S. for residential service rates.)[The format for use of a group of letters shall be in the format "Tariff R.S." indicating that the rate schedule states residential service rates.]

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements. (1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) With the exception of supporting documents, which may be submitted in an Excel spreadsheet in .xls format, each document shall be submitted in portable document format ("PDF")[and be] capable of being viewed[viewing] with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements specified in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) A tariff, tariff sheet, or tariff provision shall not be changed, cancelled, or withdrawn except as provided by this section and Section 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect:

(a) By order of the commission; or

(b) By issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public in accordance with Section 8 of this administrative regulation and statutory notice to the commission.

(3) The following symbols shall be placed in the margin to indicate a change~~Each revised tariff sheet shall contain one (1) of the following symbols in the margin indicating the change made:~~

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff establishing:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notice~~Notices~~. A utility shall provide~~give~~ notice ~~[to the public as required by this section]~~ if a charge, ~~[or]~~ fee, ~~[is changed, revised, or initiated or a]~~ condition of service, ~~[or]~~ a rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the ~~[required]~~ notice no later than the date the tariff filing is submitted ~~[to made with]~~ the commission. ~~[The notice shall not be removed until the filing has become effective.]~~

(b) A utility that maintains a ~~[public]~~ Web site shall, within five (5)~~two (2)~~ business days of the date the tariff filing is submitted to the commission~~[filing]~~, post on its Web sites:

1. A copy of the public notice; and

2. ~~[as well as]~~ A hyperlink to the location~~[its filing]~~ on the commission's Web site where the tariff filing is available.

(c) The information required in subsection (1)(a) and (b) of this section ~~[notice]~~ shall not be removed until the tariff filing has become effective or the commission issues a final decision on the tariff filing.

(2) Customer Notice~~Manner of notification~~.

(a) If a~~the~~ utility has twenty (20) or fewer customers or is a sewage utility, it shall mail a written notice ~~[in accordance with subsection (3) of this section]~~ to each customer no later than the date ~~[on which]~~ the tariff filing is submitted to the commission.

(b) If a~~the~~ utility has more than twenty (20) customers and is not a sewage utility, it shall provide notice by:

1. Including~~[include]~~ notice with customer bills mailed no later than~~[by]~~ the date the tariff filing is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the tariff filing is submitted to the commission~~[Publish notice in a trade publication or newsletter going to all customers by the date the filing is submitted; or]~~

3. Publishing~~[Publish]~~ notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than~~[by]~~ the date the tariff filing is submitted to the commission~~; or~~

4. Publishing notice in a trade publication or newsletter deli-

vered to all customers no later than the date the tariff filing is submitted to the commission.

(c) A utility that provides service in more than one (1) county and is not a sewage utility may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the tariff filing was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content~~requirements~~. Each notice issued in accordance with this section shall contain ~~[the following information]~~:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification~~[class]~~ to which the proposed rates will apply;

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

(d) ~~[(e)]~~ The amount of the average usage and the effect upon the average bill for each customer classification~~[class]~~ to which the proposed rates~~[rate change]~~ will apply;

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

(f) A statement that a person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that establishes the grounds for the request including the status and interest of the party;

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

(f) ~~[(g)]~~ A statement that a person may examine this tariff filing and any related documents at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the ~~[are available on the Public Service]~~ commission's Web site at http://psc.ky.gov~~[and]~~

(g) ~~[(h)]~~ A statement that ~~[written]~~ comments regarding this tariff filing ~~[the proposed rate]~~ may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

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

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of the initial publication or mailing of the notice, the commission may take final action on the tariff filing ~~[by mail or through the Public Service Commission's Web site]~~.

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

(a) If its notice is published in a newspaper of general circula-

tion in the utility's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

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

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

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer.

(6) Periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is performed in accordance with provisions of an effective rate schedule, special contract, or administrative regulation does not require notice in accordance with this section.

Section 9. Statutory Notice to the Commission. (1) The proposed rates on a new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:

(a) Proper notice was provided[given] to the public in accordance with Section 8 of this administrative regulation; ~~and the commission; and]~~

(b) Statutory notice was provided; and

(c) The commission does not suspend the proposed rates[The tariff is not suspended by an order of the commission] pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission at the time of the filing of the proposed rate[revision]. ~~If[there is]~~ a substantial omission occurs, which is prejudicial to full consideration by the commission or to the public[an intervenor], the statutory notice period to the commission shall not commence~~to run and shall not be computed]~~ until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. Notwithstanding 807 KAR 5:001, a utility may revise a nonrecurring charge pursuant to this section and Sections 6 and 9 of this administrative regulation.

(1) Each request to revise a current nonrecurring charge or to implement a new nonrecurring charge[requested rate revision] shall be accompanied by:

(a) A specific cost justification for the proposed nonrecurring charge, including all supporting documentation necessary to determine the reasonableness of the proposed non-recurring charge[rates];

(b) A copy of the public notice of each requested nonrecurring charge[rate revision] and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed revisions[changes] were not included in the utility's most recent general rate case and why current conditions prevent deferring the proposed revisions[changes] until the next general rate case;

(d) A statement identifying each classification[the group] of potential or existing customers affected by the rate revision;~~and]~~

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an authorized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission; and

(f) If the applicant is a water district, a statement from an authorized utility official indicating the date the proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body.

(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3)(a) If the~~additional~~ revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent period of twelve

(12) consecutive calendar months ending within ninety (90) days of submitting the tariff filing[month period], the utility shall, in addition to the information established in subsection (1) of this section, file an absorption test.

(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation method) to a level greater than that allowed in the most recent general rate case.

(c) As part of the absorption test, a general rate increase received during the twelve (12) month period shall be annualized.

(4) Upon a utility[utility's] submitting the tariff filing to the commission, the utility shall transmit by electronic mail at[an electronic] copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice. (1) A utility shall file an adoption notice on Tariff Form-3 if:

(a) A change of ownership or control of a utility occurs;

(b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;

(c) A utility's name is changed; or

(d) A receiver or trustee assumes possession and operation of a utility.

(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make as its own the predecessor's[former operating utility's] rates, classifications, and requirements on file with the commission and effective at the time of the change of ownership or control.

(3) An adoption notice may be filed and made effective without previous notice.

(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.

(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to place[put] into effect in lieu thereof, in the form established in Sections 2 through 4 of this administrative regulation with proper identifying designation.

(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:

(a) A complete reissue of its existing tariff that establishes the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or

2. The utility proposes to place into effect for the customers served by the predecessor utility; or

(b) New or revised tariff sheets[additional pages or revised current pages of its existing tariffs] that establish the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or

2. The utility proposes to place into effect for the customers served by the predecessor utility.

(7)(a) If a new tariff or a revised sheet of an existing tariff sheet states the rates and requirements of the predecessor utility without change, the successor utility shall not be required to provide notice of the filing[tariff or revised sheet of an existing tariff may be filed without notice].

(b) If a new tariff or a revised tariff sheet of an existing tariff changes or amends[states a change in the effect of] the rates or requirements of the predecessor utility, the successor utility shall provide notice pursuant to KRS 278.180 and Section 8[the new tariff or revised sheet of an existing tariff shall be subject to Sections 9 and 10] of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations, and Statutes. (1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.

(2) Each utility shall provide a suitable table or desk in its office

or place of business on which it shall make available for public viewing:

(a) A copy of all effective tariffs and supplements establishing its rates, classifications, charges, rules, and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;

(b) A copy of all proposed tariff revisions that the utility has filed and are pending before the commission and all documents filed in a commission proceeding initiated to review the proposed tariff revisions;

(c) A copy of KRS Chapter 278; and

(d) A copy of 807 KAR Chapter 5.

(3) The information required in subsection (2) of this section shall be made available in an electronic or nonelectronic format.

Section 13. Special Contracts. Each utility shall file a copy of ~~each~~[all] special ~~contract~~[contracts entered into governing utility service] that ~~establishes~~[establish] rates, charges, or conditions of service not ~~contained~~[included] in its[general] tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation. ~~Requests for confidential treatment~~[material] shall be ~~made and reviewed~~[treated] in accordance with~~the procedures established in~~ 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown~~and upon application to and approval by the commission~~, ~~the commission shall permit~~ deviations from~~the rules in~~ this administrative regulation~~may be permitted~~.

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

(a) "Tariff Form-1", July 2013[2042];

(b) "Tariff Form-2", July 2013[2042]; and

(c) "Tariff Form-3", ~~Adoption Notice~~[,] July 2013[2042].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 12, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for a utility to file its tariff or to file revisions to its existing tariff.

(b) The necessity of this administrative regulation: This regulation provides the structural framework for using electronic filing procedures that should reduce filing expenses for a utility as well as allow a utility to submit and receive documents in a timelier manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.160 provides that the commission shall prescribe rules under which a utility shall file schedules showing all rates and conditions of service it has established and that it collects or enforces.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and timely means for a utility to submit required documents to the Public Service Commission.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes technical changes to revisions made in 2012.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct issues that were discovered after the regulation was revised in 2012.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. The proposed amendment clarifies the procedures used to file a tariff.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit both utilities and the Public Service Commission by clarifying the procedures for filing tariffs with the commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all jurisdictional utilities that are required to file tariffs with the Public Service Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require additional actions by the utilities.

(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 to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment will provide clarity regarding tariff filings made with the commission.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is 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 or will be required.

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

(9) TIERING: Is tiering applied? 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? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

2. Identify each state or federal statute or federal regulation



that requires or authorizes the action taken by the administrative regulation. KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How 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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing new tariffs or revisions to existing tariffs is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing new tariffs or revisions to existing tariffs is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

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  
Public Service Commission  
(Amendment)**

**807 KAR 5:067. Purchased water adjustment for investor-owned[privately-owned] utilities.**

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) provides that all rates charged by a[water] utility subject to the jurisdiction of the Public Service Commission shall be fair, just and reasonable. This administrative regulation prescribes the requirements under which a privately-owned water utility may im-

plement a purchased water adjustment[designed] to recover the cost[actual-costs] of water purchased.

**Section 1. Definitions. (1) "Application" means:**

(a) A completed Purchased Water Adjustment Form 2;

(b) A schedule listing current and proposed rates;

(c) A copy of the supplier's notice showing a change in supplier's base rate;

(d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation; and

(e) If the utility is not a sole proprietorship or partnership, a copy of the resolution or other document of the utility's governing body authorizing the proposed rates.

(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.

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

(4) "Person" is defined by KRS 278.010(2).

(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Unaccounted for water" means the volumetric sum of all water purchased and produced by the utility less the volume of water:

(a) Sold;

(b) Provided to customers without charge as authorized by the utility's tariff; and

(c) Used by the utility to conduct the daily operation and maintenance of its treatment, transmission, and distribution systems.

(8) "Utility" means a privately-owned utility that meets the requirements of KRS 278.010(3)(d).

(9) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

**Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.**

**(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.**

**Section 3. Purchased Water Adjustment Factor. (1) If unaccounted for water does not exceed fifteen (15) percent, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:**

PWA Adjustment Factor Equals:

$$\frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic foot depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective

date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(2) If unaccounted for water exceeds fifteen (15) percent and no reasonable percentage has been determined in the utility's last rate case, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:



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### PWA Adjustment Factor Equals:

$$\frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales} \div 85\%}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic foot depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective

date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(3) If unaccounted for water exceeds fifteen (15) percent and a reasonable percentage has been determined in the utility's last rate case, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

### PWA Adjustment Factor Equals:

$$\frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales} \div (100\% - \text{Determined Reasonable Unaccounted for Water Percentage})}$$

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic foot depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

Section 4. Submitting the Purchased Water Adjustment. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted in accordance with 807 KAR 5:001, Sections 7 and 8.

Section 5. Notice. When filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

#### (1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

#### (2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission; or

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later

than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of mailing; or

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

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

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

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application and any related documents the utility has filed with the Public Service Commission at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application and any related documents at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and

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

Section 6. Orders of the Commission. (1) A utility shall not implement its proposed rates until the commission issues an order authorizing the water utility to adjust its rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance

with 807 KAR 5:011 establishing the rates approved by the commission.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

- (a) A description of the circumstances surrounding the refund;
- (b) A schedule showing the calculation of the refund factor;
- (c) A copy of the supplier's notice of the refund; and
- (d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic foot depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor when calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 2", Purchased Water Adjustment for Privately-Owned Utilities, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/Water-Utility-Base-Rate>. The supplier's rate in effect immediately prior to the most recent increase shall be considered the base rate.

Section 2. Application for Change in Base Rate. (1) For purposes of a purchased water adjustment, the supplier's rate as defined in Section 1 of this administrative regulation shall be considered as the base rate for purchased water and any increase or decrease in the base rate shall be considered the changed rate.

(2) In the event there is an increase in the supplier's base rate, and the utility determines that it is necessary to adjust its rates so as to pass the increase on to its customers, the utility shall file with the commission the original and eight (8) copies of a completed application for purchased water adjustment in the form set forth in Section 6 of this administrative regulation. All exhibits designated therein must be filed with the application and shall be considered a part of the application.

(3) An applicant shall not implement its proposed rates until the commission issues an order authorizing the applicant to adjust its rates. The maximum amount of the adjustment so ordered shall not produce revenue adjustments greater than the difference between the purchased water billed at the base rate and the purchased

water billed at the changed rate. Where the applicant's unaccounted for water loss is determined to be greater than either fifteen (15) percent or the percent expressly allowed in the applicant's last rate case, water purchases as defined in subsection (1)(b) of this section shall be adjusted to allow only the unaccounted for water loss found reasonable.

(4) In the event of an increase only, the applicant shall notify its customers of the proposed rate increase. The notice may be accomplished by a bill insert or by publication once a week for three (3) consecutive weeks in a newspaper of general circulation. Such notice shall set out the rates proposed to be charged by the applicant to its customers and shall contain the following language: "The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice."

Section 3. Calculation of the Purchased Water Adjustment. If a change is made in a base rate charged to a water utility by its supplier(s), the unit charges of the utility's tariff shall be increased or decreased by a purchased water adjustment calculated as follows:

(1) Water purchases shall be computed at the supplier's base rate and the supplier's changed rate using a period of twelve (12) calendar months ending within ninety (90) days of the filing date of the application. The difference between these amounts shows the total change in the applicant's purchased water costs.

(2) The total change in purchased water costs shall be divided by the actual number of cubic feet or gallons sold, yielding the purchased water adjustment expressed in cents per cubic foot or gallons, unless the applicant's unaccounted for water loss exceeds either fifteen (15) percent or the percent allowed in the applicant's last rate case.

(3) In instances where the water loss exceeds fifteen (15) percent and no reasonable percentage has been determined in its last rate case, the actual water sales shall be divided by eighty-five (85) percent yielding the maximum allowable water purchases. Where a reasonable percentage of unaccounted for water loss was expressly determined in the applicant's last rate case, the actual water sales shall be divided by (100 percent minus the percentage found reasonable) yielding the maximum allowable water purchases. The maximum allowable water purchases shall then be multiplied by the supplier's base rate and the changed rate. The difference between these amounts will be the total allowable change in the applicant's purchased water costs. The total allowable change shall then be divided by the actual number of cubic feet or gallons sold, yielding the purchased water adjustment expressed in cents per cubic foot or gallons.

Section 4. Procedure for Distribution of Refunds from Suppliers. In the event a water utility receives a refund from its supplier for amounts previously paid, the water utility shall immediately apply to the commission for authority to make adjustments on the amounts charged customers' bills under this administrative regulation as follows:

(1) The total refund received by the water utility shall be divided by the number of cubic feet or gallons of water the water utility estimates it will sell to its customers during the two (2) month period beginning with the first day of the month following receipt of the refund, yielding the refund factor to be applied against each cubic foot or gallon of water sold thereafter.

(2) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the water utility will reduce by the refund factor any purchased water adjustment that would otherwise be applicable during the period. The period of reduced purchased water adjustment shall be adjusted, if necessary, in order to most nearly approximate the total amount to be refunded. The water utility shall make full distribution of the refund within two (2) months.

(3) In the event a water utility receives a large or unusual refund, the water utility may apply to the commission for a deviation from the procedure for distribution of refunds specified herein.

Section 5. Procedure for Decrease in Purchased Water Costs.

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In the event a water utility receives a decrease in the rates charged it by its supplier, the purchased water adjustment shall be determined by the same procedure as set out in Section 3 of this administrative regulation and the utility's rates to its customers reduced accordingly.

Section 6. Form of Application for Purchased Water Adjustment. Applications for purchased water adjustments shall be in substantially the following form, shall contain all information requested and shall be accompanied by all exhibits designated therein. Copies of forms for use in making such applications may be obtained from the commission upon request.

## APPLICATION FOR RATE ADJUSTMENT BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY For Purchased Water Adjustment

Pursuant to 807 KAR 5:067

Name of Utility:

Business Mailing Address:

Telephone Number: (Area Code, Number)

NAME, TITLE, ADDRESS and TELEPHONE NUMBER of the person to whom correspondence or communications concerning this application should be directed:

NAME:

TITLE:

ADDRESS:

TELEPHONE NUMBER: (Area Code, Number)

Signature:

### I. Basic Information

NOTICE: (1) This application must be completed in its entirety and will not be considered until all required information has been filed with the Commission.

(2) The purchased water adjustment is designed for the purpose of providing a mechanism whereby a utility may recover the actual costs of water purchased only. No other increases in costs will be considered within this application nor is any change in rate design permissible under this administrative regulation.

(3) Eight (8) copies of the application and exhibits must be filed. The application and any additional information that may be requested shall be addressed and/or submitted to: Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40601.

1. Has this application been filed for purposes of an increase in rates, decrease in rates or a refund?

Increase        Decrease        Refund       

2. What is the amount of the increase, decrease, or refund?

Total revenue change \$

Purchased water adjustment       ¢ per cubic foot or gallon as determined in Item 10(c).

3.(a) Names of all wholesale suppliers and the base rate and changed rate of each. In the event the water purchased is billed by the supplier on other than a flat rate schedule, the entire rate schedule must be shown. Attach additional sheets if needed.

Supplier	Base Rates	Changed Rates
-	-	-
-	-	-
-	-	-

(b) A copy of the wholesale supplier's tariffs, ordinances, or other documents establishing both the base supplier rate and the changed supplier rate are attached as Exhibit        to this application.

(c) A copy of the supplier's statement to the utility showing the effective date of the changed rate is attached as Exhibit        to this application.

4.(a) Has the utility provided appropriate notice to its customers by either a bill insert or by publication in accordance with the provisions of 807 KAR 5:067, Section 2(4). Yes U No U

(b) A copy of the utility's notice to its customers is attached as Exhibit        to this application.

5. Revised tariff sheet(s) showing the rates proposed to be charged by the utility to its customers is attached as Exhibit        to this application.

Note: The revised tariff sheet(s) must show the rates proposed to be charged by the utility for each customer class in the form

shown in Item 12. The issue date should be the date the application is filed with the commission. The effective date will be the date of the commission's order in this case. In the event the proposed tariff is correct and approved as filed, no further tariff forms will be required. The effective date, case number and order date will be completed by commission staff and a stamped copy of the approved tariff sheet will be returned to the utility for its files. Each sheet must be signed by the officer authorized to issue tariffs.

6. The twelve (12) month period used to calculate the purchased water adjustment ends                                  (month and year). This test period must end within ninety (90) days of the date this application is filed.

7. Water purchases. Where water is purchased from more than one (1) supplier, purchases from each supplier must be shown separately. Where water is purchased from a supplier through more than one (1) meter and bills are computed individually for each meter, purchases should also be shown separately for each meter. Attach additional sheets if necessary.

SUPPLIER'S NAME	TOTAL GALLONS PURCHASED		
	Meter No. 1	Meter No. 2	Meter No. 3
-	-	-	-
-	-	-	-
TOTAL	-	-	-

8. Water sales. Total gallons sold during twelve (12) month test period:

9. Maximum allowable gallons. The maximum allowable gallons upon which the purchased water adjustment may be based shall be determined in one of the following ways:

(a) Where a reasonable unaccounted-for water loss was expressly determined in the utility's last general rate case and actual unaccounted-for water loss exceeds the percent found reasonable, the water sales shall be divided by (100 percent minus the percent found reasonable) yielding the maximum allowable gallons to be entered in Item 10(a) or (b).

(b) Where no reasonable unaccounted-for water loss was expressly determined in the utility's last general rate case and the actual water loss exceeds fifteen (15) percent, the water sales shall be divided by eighty-five (85) percent and the resulting gallons entered in Item 10(a) or (b).

(c) Where no reasonable water loss was expressly determined in the utility's last general rate case and the actual unaccounted for water loss is less than fifteen (15) percent, the actual gallons of water purchased shall be entered in Item 10(a) or (b).

10. Allowable change in purchased water costs.

(a) Where supplier bills on a flat rate schedule

                                 X                                  = \$                                 

Allowable gallons changed rate                                  cost at changed rate minus

                                 X                                  = \$                                 

Allowable gallons base rate                                  cost at base rate

(b) Where supplier bills on a declining block rate schedule\*

Changed Rates Usage Blocks		Rate	Cost
1st <u>      </u>	gal. x 12 mo. = <u>      </u>	gal.(12 x Min.) = <u>      </u>	-
Next <u>      </u>	gal. x 12 mo. = <u>      </u>	gal. x <u>      </u> = <u>      </u>	-
Next <u>      </u>	gal. x 12 mo. = <u>      </u>	gal. x <u>      </u> = <u>      </u>	-
Next <u>      </u>	gal. x 12 mo. = <u>      </u>	gal. x <u>      </u> = <u>      </u>	-
Over <u>      </u>	gal. x 12 mo. = <u>      </u>	gal. x <u>      </u> = <u>      </u>	-
Total allowable gal. <u>                                </u>			
Cost at changed rate \$ <u>                                </u>			

Base Rates Usage Blocks		Rate	Cost
1st <u>      </u>	gal. x 12 mo. = <u>      </u>	gal.(12 x Min.) = <u>      </u>	-
Next <u>      </u>	gal. x 12 mo. = <u>      </u>	gal. x <u>      </u> = <u>      </u>	-
Next <u>      </u>	gal. x 12 mo. = <u>      </u>	gal. x <u>      </u> = <u>      </u>	-

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Next _____	gal. x 12 mo. = _____	gal. x _____ = _____	-
Over _____	gal. x 12 mo. = _____	gal. x _____ = _____	-
Total allowable gal. _____			
Cost at changed rate \$ _____			
Cost at changed rate: \$ _____ minus Cost at base rate: \$ _____			
ALLOWABLE CHANGE: \$ _____			

\*Where the utility receives purchased water through two (2) or more meters and the supplier computes bills individually for each meter, the costs should be calculated separately for each meter at the base rate and the changed rate, then combined to arrive at the total allowable change in costs. Attach additional sheets if necessary.

(c) Purchased water adjustment.

\_\_\_\_\_/\_\_\_\_\_ = \_\_\_\_\_¢ per gal. or c.f.  
Allowable Change Gallons Sold

NOTE: In the event the utility receives a decrease in the rates from its wholesale supplier, the purchased water adjustment shall be calculated in the same manner as set out in Items 9 and 10, and its rates reduced accordingly.

11. Refund. In the event a refund is received from the supplier for amounts previously paid, the following tabulations will be made:

(a) Total refund received: \$ \_\_\_\_\_

(b) Total amount of water estimated to be sold during 2-month period beginning with the first day of the month following receipt of the refund: \_\_\_\_\_ M. Gal.

(c) Refund factor unit of water sold (Item (a) divided by Item (b)): \_\_\_\_\_¢

(d) The refund factor may be adjusted in the final month to more accurately reflect the amount to be refunded.

12. Form for filing Rate Schedules:

For: (Community, Town or City)

P.S.C. No.:

\_\_\_\_\_  
SHEET NO. \_\_\_\_\_

\_\_\_\_\_  
CANCELLING P.S.C. NO. \_\_\_\_\_

Name of Issuing Corp. \_\_\_\_\_

\_\_\_\_\_  
SHEET NO. \_\_\_\_\_

CLASSIFICATION OF SERVICE \_\_\_\_\_

RATE PER UNIT \_\_\_\_\_

DATE OF ISSUE \_\_\_\_\_ DATE EFFECTIVE \_\_\_\_\_

ISSUED BY (Name of Officer): \_\_\_\_\_

TITLE: \_\_\_\_\_

Issued by authority of an Order of the Public Service Commission of Kentucky in Case No. \_\_\_\_\_ dated \_\_\_\_\_. (7 Ky.R. 793; eff. 9-2-81; Am. 1895; eff. 7-2-86.)]

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 12, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher, Executive Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for investor owned water utilities to pass its purchased water costs through to its customers.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a timely and simplified method for an investor owned water utility to adjust its rates in accordance with a rate adjustment from its wholesale water supplier.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a cost effective and timely method for an investor owned water utility to pass through changes in costs of the water it purchases.

(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 gives an investor owned water utility the option of filing the information required for a purchased water adjustment in an electronic format. It also revises the notice requirements for a rate revision to enhance the information provided to its customers. And finally, the amendment requires the utility to post notice of proposed rate changes at its website and to advise the public of where electronic copies of rate filings can be obtained at no cost.

(b) The necessity of the amendment to this administrative regulation: This regulation has not been amended in 27 years and currently makes no provision for the use of electronic filing procedures. This amendment will incorporate Public Service Commission practices developed since the regulations last amendment in 1986.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030(1) provides that all rates charged by a water utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This amendment prescribes the requirements under which an investor owned water utility may implement a purchased water adjustment designed to recover the actual costs of purchased water, thus providing rates that are fair, just, and reasonable.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit investor owned water utilities by giving them the option of filing a purchased water adjustment electronically, thus reducing the expenses for paper, printing, and postage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect water utilities that purchase water from a wholesale provider.

(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 does not require any additional action by the investor owned water utility but rather provides the option of a more efficient method to file a purchased water adjustment application.

(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 to comply because there are no new requirements, just an additional option that water utilities may choose to utilize.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For a utility that chooses the option to electronically file its purchased water adjustment application, this amendment will reduce the number of documents that must be filed. Filing the application electronically in lieu of filing paper documents should result in reduced paper, printing, and

postage costs for the utility.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is 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 or will be required.

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

(9) TIERING: Is tiering applied? 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? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How 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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing purchased water adjustment applications is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed amendment is adopted a utility may experience lower expenses when filing purchased water adjustment applications if the choice is made to electronically file the application. The exact amount of any savings is too difficult to quantify.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing purchased water adjustment applications is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed amendment is adopted a utility may experience lower expenses when filing purchased water adjustment applications if the choice is made to electronically file the application. The exact amount of any savings is too difficult to quantify.

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 Public Service Commission (Amendment)

#### 807 KAR 5:068. Purchased water adjustment for water districts and water associations.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) provides that all rates charged by a [water] utility subject to the jurisdiction of the Public Service Commission shall be fair, just and reasonable. This administrative regulation prescribes the requirements under which a water district or a water association may implement a purchased water adjustment [designed] to recover the cost [actual costs] of water purchased.

##### Section 1. Definitions. (1) "Application" means:

(a) A completed Purchased Water Adjustment Form 1;

(b) A schedule listing current and proposed rates;

(c) A copy of the supplier's notice showing a change in supplier's base rate;

(d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation;

(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and

(f) If the applicant is a water district and proposes to increase any of its rates for water service, a statement from an authorized utility official indicating the date its proposed rate increase was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body.

(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.

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

(4) "Person" is defined by KRS 278.010(2).

(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply; or

(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) The purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

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$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(2) The purchased water adjustment factor shall be expressed in cents per gallons or cubic foot depending upon the unit of measure that the utility bases its customers' bills.

(3) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total utility water purchases and total water utility sales.

Section 4. Submitting the Purchased Water Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the supplier's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its purchased water costs due to the supplier's changed rate.

Section 5. Notice. When filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate; or

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing; or

(b) If notice is published in a newspaper of general circulation

in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

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

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

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application and any related documents the utility has filed with the Public Service Commission at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application and any related documents at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner prescribed in Section 5(2) of this administrative regulation.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic foot depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor when calculating customer bills for the next two (2) billing periods.

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(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 1", Purchased Water Adjustment for Water Districts and Associations, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/Water-Utility-Base-Rate>. The supplier's base rate in effect immediately prior to the most recent increase shall be considered the base rate.

Section 2. Applications for Change in Base Rate. (1) For purposes of a purchased water adjustment, the supplier's rate as defined in Section 1 of this administrative regulation shall be considered as the base rate for purchased water and any increase or decrease in the base rate shall be considered the changed rate.

(2) In the event there is an increase in the supplier's base rate, the water district or water association shall determine the increased cost of water purchased based on the twelve (12) month period ending within ninety (90) days immediately prior to the effective date of its rate adjustment to its customers. The cost of purchased water shall be calculated at the supplier's base rate and changed rate, as defined in Sections 1 and 2 of this administrative regulation. The difference in costs shall then be divided by the actual number of cubic feet or gallons sold during the same twelve (12) month period, yielding the purchased water adjustment in cents per cubic foot or gallon unit. This adjustment amount shall be added to all the utility's rate schedules on a per unit basis regardless of the customer class.

(3) In the event there is a decrease in the supplier's rate, the purchased water adjustment shall be calculated in the same manner as set out in subsection (2) of this section and its rates reduced accordingly.

(4) In the event a water district or water association receives a refund from its supplier for amounts previously paid, the water district or water association shall immediately apply to the commission for authority to make adjustments on the amounts charged customer's bills under this administrative regulation as follows:

(a) The total refund received by the utility shall be divided by the number of cubic feet or gallons of water the utility estimates it will sell to its customers during the two (2) month period beginning with the first day of the month following receipt of the refund, yielding the refund factor to be applied against each cubic foot or gallon of water sold thereafter.

(b) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility will reduce by the refund factor any purchased water adjustment that would otherwise be applicable during the period. The period of reduced purchased water adjustments shall be adjusted, if necessary, in order to most nearly approximate the total amount to be refunded. The water utility shall make full distribution of the refund within two (2) months.

(c) In the event a water utility receives a large or unusual refund, the utility may apply to the commission for a deviation from the procedure for distribution of refunds specified herein.

Section 3. Filings with the Commission. (1) Within twenty (20) days after any such purchased water rate adjustment, the water district or water association shall file with the commission its revised tariff sheets setting forth the adjusted rates and information concerning the water purchases and sales upon which the adjustment was based sufficient to determine the accurateness of the calculations and application of the purchased water adjustment to its rates. Such tariffs and information shall be in substantially the form set forth in subsection (2) of this section. Copies of these forms may be obtained from the commission upon request.

(2) Form of purchased water adjustment filing:  
PURCHASED WATER RATE ADJUSTMENT  
Pursuant to KRS 278.012 and 278.015

(Name of Utility):

(Date):

(Business Mailing Address):

(Telephone Number):

1. (a) Names of all wholesale suppliers and the base rate and changed rate of each. In the event the water purchased is billed by the supplier on other than a flat rate schedule, the entire rate schedule must be shown. Attach additional sheets if necessary.

Supplier(s)	Base Rate	Changed Rate
(1)	-	-
(2)	-	-
(3)	-	-

(b) A copy of the supplier's notice of the changed rate showing the effective date of the increase is attached as Exhibit \_\_\_\_\_.

2. Twelve-month period upon which purchased water adjustment is based:

From: (Month & Year)	Through: (Month & Year)
-------------------------	----------------------------

3. Statement of Water Purchases (Where water is purchased from more than one (1) supplier, purchases from each supplier must be shown separately. Where water is purchased from a supplier through more than one (1) meter and bills are computed individually for each meter, purchases should also be shown separately for each meter.)

Supplier's Name	Gallons Purchased Meter No. 1	Gallons Purchased Meter No. 2
(1)	-	-
(2)	-	-
(3)	-	-
TOTAL	-	-

4. Total Sales for the twelve (12) Months \_\_\_\_\_

5. Purchased Water Adjustment Factor \_\_\_\_\_¢ per gallon or cubic foot.

NOTE: Revised tariff sheets must be attached showing rates to be charged by the utility and the effective date of such increased rates.

Signature of Utility Officer:

Title:

Form for filing Rate Schedules

For: (Community, Town or City)

P.S.C. No.:

\_\_\_\_\_ SHEET NO. \_\_\_\_\_

\_\_\_\_\_ CANCELLING P.S.C. NO. \_\_\_\_\_

Name of Issuing Corp.:

\_\_\_\_\_ SHEET NO. \_\_\_\_\_

CLASSIFICATION OF SERVICE

RATE PER UNIT

DATE OF ISSUE \_\_\_\_\_ DATE EFFECTIVE \_\_\_\_\_

ISSUED BY (Name of Office):

TITLE:

Issued by authority of an Order of the Public Service Commission of Kentucky in Case No. \_\_\_\_\_ dated \_\_\_\_\_.

Section 4. Orders of the Commission. (1) Within thirty (30) days after the documents required by Section 3 of this administrative regulation are filed, the commission shall enter its order either approving the rates or establishing revised rates.

(2) If the rates contained in the tariff are correct and approved as filed, no further tariff forms will be required to be filed and a stamped copy of the approved tariff sheet(s) shall be returned to the utility for its files. If the rates are incorrect and corrected rates are established by the commission, within thirty (30) days of the date of the commission's order, the utility shall file revised tariff sheet(s) setting out the rates so ordered.

Section 5. Notice to Customers. The water district shall notify



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its customers of any increase in rates resulting from a supplier increase no later than the rendering of the first bill at the increased rate].

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 12, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for water districts and water associations to pass its purchased water costs through to its customers.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a timely and simplified method for a water district or water association to adjust its rates in accordance with a rate adjustment from its wholesale water supplier.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a cost effective and timely method for a water district or water association to pass through changes in costs of the water it purchases.

(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 gives a water district or water association the option of filing the information required for a purchased water adjustment in an electronic format. It also revises the notice requirements for a rate revision to enhance the information provided to its customers. And finally, the amendment requires the utility to post notice of proposed rate changes at its website and to advise the public of where electronic copies of rate filings can be obtained at no cost.

(b) The necessity of the amendment to this administrative regulation: This regulation has not been amended in 27 years and currently makes no provision for the use of electronic filing procedures. This amendment will incorporate Public Service Commission practices developed since the regulations last amendment in 1986.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030(1) provides that all rates charged by a water utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This amendment prescribes the requirements under which a water district or a water association may implement a purchased water adjustment designed to recover the actual costs of purchased water, thus providing rates that are fair, just, and reasonable.

(d) How the amendment will assist in the effective administration

of the statutes: The amendment will benefit water districts and water associations by giving them the option of filing a purchased water adjustment electronically, thus reducing the expenses for paper, printing, and postage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect water districts and water associations that purchase water from a wholesale provider.

(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 does not require any additional action by the water district or water association but rather provides the option of a more efficient method to file a purchased water adjustment application.

(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 to comply because there are no new requirements, just an additional option that water districts and water associations may choose to utilize.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For a utility that chooses the option to electronically file its purchased water adjustment application, this amendment will reduce the number of documents that must be filed. Filing the application electronically in lieu of filing paper documents should result in reduced paper, printing, and postage costs for the utility.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is 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 or will be required.

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

(9) TIERING: Is tiering applied? 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? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How 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 direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed



amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing purchased water adjustment applications is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed amendment is adopted a utility may experience lower expenses when filing purchased water adjustment applications if the choice is made to electronically file the application. The exact amount of any savings is too difficult to quantify.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing purchased water adjustment applications is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed amendment is adopted a utility may experience lower expenses when filing purchased water adjustment applications if the choice is made to electronically file the application. The exact amount of any savings is too difficult to quantify.

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:

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

**815 KAR 4:030. Elevator contractor licensing requirements.**

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4023, 198B.4025, 198B.4027, 198B.4033

STATUTORY AUTHORITY: KRS 198B.4009, 198B.4011, 198B.4023, 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator contractors to be licensed, and KRS 198B.4011 provides the eligibility requirements to be met for issuance of an elevator contractor's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education[educations] requirements for elevator licensee renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. KRS 198B.4009(3) authorizes fees for the elevator licensure program to implement KRS 198B.400 through 198B.540. This administrative regulation establishes the licensure requirements for elevator contractors.

Section 1. General Requirements. (1) Supervision. The elevator contractor shall supervise generally, and be primarily responsible for, all elevator work performed by the mechanics, employees, and subcontractors of the licensee.

(2) Company license. A licensee who is an employee of a company and whose license represents the company shall notify the department, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on that license and paying the change of information fee established in Section 6[5](5) of this administrative regulation.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator contractor license shall

submit to the department:

1. A completed, signed, and notarized Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license.

a. The initial license fee may be prorated.

b. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;

3. Proof of applicant's experience as required by KRS 198B.4011;

4. A[recent] passport-sized color photograph of the applicant taken within the past six (6) months; and

5. Proof of insurance as required by KRS 198B.4027.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is received by the department[submitted].

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the elevator contractor license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 4. Experience requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have:

(a) A minimum of three (3) years of verifiable experience as an elevator mechanic; or

(b) A current license, certification, or registration as an elevator contractor in another state whose standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4.

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by W-2s.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.

Section 5. Renewal and Reactivation Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator contractor shall submit to the department:

(a) A completed, signed and notarized Elevator License Renewal Application on Form EV-7;

(b) A renewal fee of \$240 made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) Each application for license renewal shall be submitted[filed] by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal application submitted[filed] late, but with a United

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States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section ~~6(6)~~(1) of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section 6(2) of this administrative regulation, shall be added to the annual renewal fee.

(5) Inactive elevator contractor status and renewal requirements.

(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of \$120.

(b) An inactive elevator contractor shall not:

1. Secure an elevator permit;

2. Advertise; or

3. Represent himself as an elevator contractor currently authorized to contract elevator work in the commonwealth.

~~(6) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro-rata basis.~~  
(7) Continuing education requirements shall not be required for renewal, if the initial license was issued within twelve (12) months of renewal.

~~(7)(8)~~ The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;

(b) Comply with elevator contractor continuing education requirements;

(c) Provide the current insurance certificates required by KRS 198B.4027; or

(d) Submit~~File~~ the renewal application as required by this section.

~~(8)(9)~~ To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, an additional \$120, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 6. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be \$100.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be \$120.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee.

(a) The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars.

(b) If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 7. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons established in KRS 198B.4033.

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

(a) "Elevator Contractor License Application", Form EV-3, October 2011; and

(b) "Elevator License Renewal Application" Form EV-7, June 2013~~August 2012~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412~~[5405]~~, Monday through Friday, 8 a.m. to

4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 25, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, August 23, 2013 at 10:00 am, local time, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, August 16, 2013 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, September 3, 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 40601-5412, 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 licensure requirements and fees for elevator contractors.

(b) The necessity of this administrative regulation: This amendment is necessary to administer the elevator licensure program including renewals of licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application and maintenance of an elevator contractor license and renewals.

(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 the form to be used for renewals of elevator contractors' licenses in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: To provide a standardized renewal form for renewals of elevator contractors' licenses in the Commonwealth in accordance with statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.4023 provides that a licensee shall renew his/her contractor's license annually on or before the final day of the licensee's birth month.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a standardized form for renewal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Code Enforcement, Elevator Section, and elevator 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:

(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: Elevator contractors will be required to comply with all requirements of this regulation in order to obtain or maintain licensure (including annual renewals).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and offset the expenditures to the Department, Division, and Section. These fees were previously enacted and have not been amended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: As renewal rates mirror initial application fees, the agency anticipates no significant changes in revenues from the initial year which totaled \$8,160 for FY 11-12.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds of the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an 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 (restricted funds) have been established and are sufficient to offset expenditures for this program. The agency has no anticipated need for an increase in fees or funding to continue the administration of this program through this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation established fees for the program in 2011. There are no new fees established nor increases in existing fees as a result of this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevator contractors are treated equally under the provisions of this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Codes Enforcement and Elevator section will be impacted by this amended administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.4009, 198B.4011, 198B.4023, and 198B.4025.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes revenues for elevator contractor licensing which are estimated to offset expenditures for implementing and enforcement of the contractor licensing program. These fees were established at the onset of the elevator licensure program and went into effect following legislative review November 30, 2011.

(a) How much 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. As the fees are to remain constant, revenues are anticipated to remain consistent with the initial year's revenues which totaled \$8,160 for

FY 11-12.

(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? The cost of administering the elevator contractor licensure program are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for the program.

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:

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Amendment)

#### 815 KAR 4:040. Elevator mechanic licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: KRS 198B.4009, 198B.4013, 198B.4023, 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator mechanics to be licensed and KRS 198B.4013 provides the eligibility requirements to be met for issuance of an elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator licensee renewals. This administrative regulation establishes the licensure requirements for elevator mechanics and establishes procedures for license renewal.

Section 1. Initial Application Requirements. (1) Filing the application. An applicant seeking an elevator mechanic license or an accessibility and residential elevator mechanic license shall submit to the department:

(a) A completed, signed, and notarized Elevator Mechanic License Application on Form EV-4;

(b) An initial license application fee of ninety-six (96) dollars for a twelve (12) month license~~[-1-]. The initial license fee may be prorated:~~

~~2. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months];~~

(c) Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

(d) A~~recent~~ passport-sized, color photograph of the applicant taken within the past six (6) months.

(2) Proration of fees.

(a) The initial license fee may be prorated.

(b) If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months.

(3) Termination of application.

(a) The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is received~~submitted~~.

(b) At the end of one (1) year, the application shall be void.

Section 2. Examination Requirements. (1)~~[(f)]~~ An applicant who applies for licensure under the provisions of KRS 198B.4013(2)(a)~~[- the applicant]~~ shall take and pass the examination known as the Kentucky Elevator Mechanic Examination administered in compliance with this section. ~~[(4)]~~The Kentucky Elevator Mechanic Examination shall test the applicant's basic knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, re-

pair, remodeling, or alteration of elevators and elevator systems.

(2) An applicant who applies for licensure under the provisions of KRS 198B.4013(2)(b) shall take and pass the examination known as the Kentucky Accessibility and Residential Elevator Mechanic Examination. The Kentucky Accessibility and Residential Elevator Mechanic Examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of accessibility lifts and private residential elevators.

(3) The department or its designee shall develop, administer, and score the Kentucky Elevator Mechanic Examination and the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(4) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(5) [(3)] Except as provided by subsection (9) [(7)] of this section, an applicant shall successfully complete with a passing score of at least seventy (70) percent the Kentucky Elevator Mechanic Examination or Kentucky Accessibility and Residential Elevator Examination, as applicable [the examination known as the "Kentucky Elevator Mechanic Examination", which is developed, administered, and scored by the department or its designee].

(6) [(4)](a) A request to sit for the Kentucky Elevator Mechanic Examination or the Kentucky Accessibility and Residential Elevator Mechanic Examination shall be made directly to the department-approved testing facility.

(b) A list of facilities and contact information shall be provided to applicants following receipt of the [examination] application.

(7) [(5)] The cost shall not exceed \$100 for either the Kentucky Elevator Mechanic Examination or for the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(8) [(6)] A passing score on an approved elevator [the] examination shall be valid for a period of two (2) years.

(9) [(7)] Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department or department's designee if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations.

Section 3. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.4013(2).

(2) Records of experience.

(a) Proof of listed experience shall be provided by W-2s or an affidavit from a licensed elevator contractor or the equivalent.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department finds reason to believe that the experience shown is insufficient or nonexistent.

Section 4. Renewal Requirements and Procedures. (1) Filing for renewal. Each license shall be renewed annually [each year]. To renew an elevator mechanic or accessibility and residential elevator mechanic [a] license, the licensee [an elevator mechanic] shall submit to the department:

(a) A completed, signed, and notarized Elevator License Renewal Application on Form EV-7;

(b) A renewal fee of ninety-six (96) dollars made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing education provider evaluation forms for each continuing education class attended.

(2) Each application for license renewal shall be submitted to the department [filed] by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal fee of ninety-six (96) dollars shall be paid prior to renewal. The department shall send a renewal application to each licensee annually [each year] to be returned with the required fee.

(4) A renewal application submitted [filed] late, but with a United States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 5(1) of this administrative regulation, shall be added to the annual renewal fee.

(5) Failure to renew by sixty-one (61) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 1 of this administrative regulation for reinstatement and a reinstatement fee, in accordance with Section 5(2) of this administrative regulation, shall be added to the annual renewal fee.

(6) Inactive elevator mechanic or accessibility and residential elevator mechanic renewal.

(a) To place an elevator mechanic's or accessibility and residential [the] elevator mechanic's license in inactive status, the [an] elevator mechanic or accessibility and residential elevator mechanic shall pay annually an inactive fee of forty-eight (48) dollars.

(b) An inactive elevator mechanic or accessibility and residential elevator mechanic shall not perform work within the Commonwealth if the work requires an elevator mechanic's or accessibility and residential elevator [a] mechanic's license.

(7) [If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis. (8)] Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

(8) [(9)] The application for renewal or reactivation of a licensed elevator mechanic or accessibility and residential elevator mechanic shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal and restoration, if applicable;

(b) Comply with applicable [elevator mechanic] continuing education requirements; or

(c) Submit [File] the renewal application as required by this section.

(9) [(40)] Reactivation of Inactive Elevator Mechanic's or Accessibility and Residential Elevator Mechanic's License. To reactivate an elevator mechanic or accessibility and residential elevator mechanic license, the inactive elevator mechanic or accessibility and residential elevator mechanic shall pay the annual renewal fee, an additional forty-eight (48) dollars, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 5. Limitation on Applicability. A licensed elevator mechanic may perform work on accessibility and residential elevators without obtaining an accessibility and residential elevator license.

Section 6. Special Services and Fees. In addition to the other fees required by this administrative regulation, the following special fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be twenty-five (25) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be twenty-five (25) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be forty-eight (48) dollars.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

Section 7 [(6)]. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the commissioner for any of the reasons stated in KRS 198B.4033.

Section 8 [(7)]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Elevator Mechanic License Application", Form EV-4, June 2013 [September, 2014]; and

(b) "Elevator License Renewal Application", Form EV-7, June 2013 [August 2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement.

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

ment, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[5405], Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner  
ROBERT D VANCE, Secretary

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 25, 2013 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Friday, August 23, 2013 at 10:00 am, local time, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, August 16, 2013 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, September 3, 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 40601-5412, 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 licensure requirements and fees for elevator mechanics.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program including renewals of licenses for accessibility and residential elevator mechanics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application, renewal, and maintenance of an elevator mechanic license.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides the requirements and form to be used for initial licenses and renewals of accessibility and residential elevator mechanics' licenses in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: To provide initial application and renewal forms for accessibility and residential elevator mechanics' licenses in the Commonwealth in accordance with statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.4023 provides that a licensee shall renew his/her mechanic's license annually on or before the final day of the licensee's birth month.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the procedures and requirements for issuance of accessibility and residential elevator mechanic's licenses and provides standardized applications for licenses and renewals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This amendment to the existing administrative regulation will affect the Department of Housing, Buildings and Con-

struction, the Division of Building Code Enforcement, Elevator Section, and accessibility and residential elevator mechanics.

(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 Department, Division and Section will implement the elevator licensure program and ensure compliance with licensure requirements (including annual renewals) while carrying out inspection duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and are anticipated to offset the expenditures to the Department Division, and Section for ensuring compliance with licensure laws.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: There is no anticipated increase in cost for the administration and implementation of this regulation's amendments.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds of the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an 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 (restricted funds) have been established and are sufficient to offset expenditures for this program. The agency has no anticipated need for an increase in fees or funding to continue the administration of this program through this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation established fees for the program in 2011. The Administrative regulation establishes fees for licensing of accessibility and residential elevator mechanics.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevator licensees are treated equally under the provisions of this administrative regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Codes Enforcement and Elevator section will be impacted by this amended administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by 13 RS HB 162 GA, KRS 198B.4009, 198B.4013, and 198B.4023.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes revenues for elevator mechanic licensing which are estimated to offset expenditures for implementing and enforcement of the mechanic licensing program.

(a) How much 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 department does not anticipate an increase in revenues for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. As the fees are to remain constant, revenues are anticipated to remain consistent.

(c) How much will it cost to administer this program for the first year? The costs to administer the elevator licensure program are anticipated to remain consistent with costs from prior years to the Division of Building Codes Enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost of administering the elevator mechanic licensure program are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for the program.

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:

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

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

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

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

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

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

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

(b) 921 KAR 2:015 for SSP.

(2) A household shall not receive assistance until approval of the application for benefits.

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

(4) The applicant or recipient shall be the primary source of information and shall be required to:

(a) Furnish verification of:

1. Income;

2. Resources; and

3. Technical eligibility; and

(b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information when requested shall be considered a failure to present adequate proof of eligibility.

(6)(a) An application shall be considered filed if a PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), or a PA-

100, Application/Recertification for K-TAP, Kinship Care, and Family/AFDC Related MA, containing the name, address, and signature of the applicant is received by a DCBS office.

(b) An application shall be processed after the:

1. Applicant or representative is interviewed;

2. Required information and verification for the application is provided to the Department for Community Based Services (DCBS) office; and

3. Application and related documents are received by the DCBS office.

(c) If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for K-TAP by using form PA-100.

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

(2) Eligibility shall be redetermined:

(a) If a report is received or information is obtained about changes in circumstances;

(b) Every twenty-four (24) months for SSP cases; and

(c) Every twelve (12) months for K-TAP cases.

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

(a) "PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance)", [edition] 11/11; and

(b) "PA-100, Application/ Recertification for K-TAP, Kinship Care, and Family/AFDC Related MA", 11/13[edition 11/13].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 11, 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, if requested, be held on August 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Justin Dearing

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the process for eligibility determination and redetermination for individuals receiving K-TAP and SSP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200 requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619, governing the Temporary Assistance for Needy Families Block Grant (TANF). This administrative regulation establishes standards in conformity with the Title IV-A State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures used to determine initial and ongoing eligibility for K-TAP and SSP.

(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 revises the material incorporated by reference to provide TANF assistance applicants and recipients with notice of the prohibitions regarding the use of electronic benefit transfer (EBT) cards at point-of-sale (POS) terminals and automated teller machines (ATMs) in liquor stores, adult-oriented entertainment facilities, or any casino, gambling casino, or gaming establishment. In addition, the amendment includes other technical corrections and updates in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: 42 U.S.C. 608, as amended by Section 4004 of the Middle Class Relief and Job Creation Act of 2012 (Pub. L. 112-96), requires states receiving TANF grants to maintain policies and practices as necessary to prevent TANF-funded assistance from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. States must report compliance with Pub. L. 112-96 by February 22, 2014. Failure to implement and maintain the required policies and practices, or failure to comply with the reporting requirement, will result in a reduction of the TANF grant. Other changes are in accordance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by aligning eligibility procedures and notifications with federal laws governing TANF public assistance programs, as amended by Pub. L. 112-96.

(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 ensuring the procedures for initial and continuing eligibility conform to overarching federal laws.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving or are applying for assistance from K-TAP, the Kinship Care Program, and Medicaid. In April 2013, there were 4,193 K-TAP; 435 Kinship Care; and 20,202 Medicaid applications taken.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation should not require any additional action by the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation should create no new cost to the regulated entities. Public assistance recipients will be able to access benefits via EBT transactions in other locations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no new monetary benefits provided to the regulated entities. Applicants and recipients of TANF-funded public assistance will be informed of the federally mandated prohibitions regarding EBT transactions. The

rationale for the policy, per federal inputs, is to reduce the use of public assistance benefits for purchases commonly characterized as "sin purchases".

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

(a) Initially: The amendment to this administrative regulation is conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A (of the Social Security Act) and state general funds used to meet Maintenance of Effort requirements are the funding source for K-TAP and the Kinship Care Program. The State Supplementation Program is supported through state 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 are no increases in fees or funding required with this amendment.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619

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

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619.

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

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

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

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

(d) How much will it cost to administer this program for subse-

quent years? This amendment will not require any additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**921 KAR 2:046. Adverse action; conditions.**

RELATES TO: KRS 205.010, 205.200, 205.245, 605.120(5), 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050 (1), 205.200(2), 605.120(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer public assistance programs including the Kentucky Transitional Assistance Program or "K-TAP" and mandatory and optional supplementation of persons who are aged, blind, and have a disability. KRS 205.200(2) requires the cabinet to promulgate administrative regulations concerning the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619 and federal regulations. KRS 605.120(6) requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish uniform conditions and requirements for kinship care. This administrative regulation establishes the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for:

(a) State Supplementation Program benefits;

(b) K-TAP benefits; or

(c) Kinship Care Program benefits.

(2) "Application" means the process set forth in:

(a) 921 KAR 2:035 for K-TAP or State Supplementation Program; or

(b) 922 KAR 1:130 for Kinship Care Program.

(3) "Recipient" means a:

(a) Person who is aged, blind, or has a disability receiving State Supplementation Program benefits;

(b) Member of a K-TAP assistance group as defined in 921 KAR 2:016; or

(c) Member of a Kinship Care Program assistance group as defined in 922 KAR 1:130.

Section 2. Reasons for Adverse Action. (1) An application shall be denied if:

(a) Income or resources exceed the standards for the specific assistance program as set forth in 921 KAR 2:016, 921 KAR 2:015, or 922 KAR 1:130;

(b) The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 921 KAR 2:006, 921 KAR 2:015, 921 KAR 2:370, or 922 KAR 1:130;

(c) The applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility despite receipt of written notice detailing the additional information needed for a determination;

(d) The applicant fails to keep the appointment for an interview;

(e) The applicant requests in writing voluntary withdrawal of application;

(f) Department staff is unable to locate the applicant; or

(g) The applicant is no longer domiciled in Kentucky.

(2) Assistance shall be discontinued or decreased if:

(a) Income or resources of the recipient increase or deductions decrease resulting in reduced or discontinued benefits as set forth in 921 KAR 2:016, 921 KAR 2:015, or 922 KAR 1:130;

(b) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 921 KAR 2:006, 921 KAR 2:015, 921 KAR 2:370, or 922 KAR 1:130;

(c) The recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility despite receipt of written notice detailing the additional information needed for a redetermination;

(d) The recipient fails to keep the appointment for an interview;

(e) The cabinet is recovering K-TAP or Kinship Care Program overpayments through recoupment;

(f) Department staff is unable to locate recipient;

(g) The recipient is no longer domiciled in Kentucky; or

(h) Change in program policy adversely affects the recipient[; or

(i) ~~The grant amount is less than ten (10) dollars for K-TAP only].~~

Section 3. Notification of Denial of an Application. (1) If an application is denied, the applicant shall be given a form as follows:

(a) ["KIM-105-Adult"] MA["] for a State Supplementation Program recipient;

(b) ["KIM-105-KC"] for a Kinship Care applicant; or

(c) ["KIM-105-KTAP"] for a K-TAP applicant who does not currently apply for the Supplemental Nutrition Assistance Program (SNAP)~~[Food Stamp Program]~~.

(2) A form listed in subsection (1) of this section shall include:

(a) The reason for the denial;

(b) Citation~~[The cites]~~ of the applicable state administrative regulation; and

(c) Information regarding:

1. The opportunity to confer with the worker; and

2. The right to a fair hearing as provided by 921 KAR 2:055.

Section 4. Advance Notice of a Decrease or Discontinuance.

(1) The recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:

(a) A money payment shall be:

1. Reduced;

2. Suspended; or

3. Discontinued; or

(b) An individual shall be removed from the K-TAP or Kinship Care Program grant, even if the grant increases.

(2) The ten (10) days advance notice of the proposed action shall:

(a) Be given on a form listed in Section 3(1) of this administrative regulation;

(b) Explain the reason for the proposed action;

(c) Cite the applicable state administrative regulation; and

(d) Extend the opportunity to confer with the worker or to request a fair hearing pursuant to 921 KAR 2:055.

(3) A hearing request received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision, as provided in 921 KAR 2:055.

Section 5. Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given on a form listed in Section 3(1) of this administrative regulation, if:

(1) A decrease or discontinuance results from:

(a) Information reported by the recipient, if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;

(b) A clear written statement, signed by a recipient that the recipient no longer wishes to receive assistance from the department;

(c) Factual information received by the department that the:

1. State supplementation recipient has died;

2. K-TAP payee has died and a new payee is unavailable;

(d) Whereabouts of a recipient are unknown and mail ad-



addressed to the recipient is returned indicating no known forwarding address; however, a returned check shall be made available if whereabouts of the recipient becomes known during the payment period covered by the returned check;

(e) Establishment by the agency that assistance has been accepted in another state;

(f) Removal from the home of a K-TAP or Kinship Care Program child by judicial order or voluntary placement in foster care by his legal guardian;

(g) The person who is aged, blind or has a disability and is a State Supplementation Program recipient, enters a nursing facility resulting in vendor payment status;

(h) The recipient enters a:

1. Penal institution;
2. Tuberculosis hospital, if under sixty-five (65); or
3. Psychiatric hospital, if between twenty-one (21) and sixty-five (65); or

(2) A recipient is granted a special allowance, or time limited assistance, that is terminated at the end of a specified period.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KIM-105-Adult[?] MA", 11/13[~~edition 11/03~~];

(b) "KIM-105-KC", 11/13[~~edition 11/03~~]; and

(c) "KIM-105-KTAP", 11/13[~~edition 11/03~~].

(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: July 11, 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, if requested, be held on August 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which an application is denied or assistance is decreased or discontinued and the requirements for notification. It also includes the conditions for advance notice to an applicant or recipient of the Kentucky Transitional Assistance Program (K-TAP), Kinship Care program, and the State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for the conditions under which an application is denied or benefits decreased or discontinued for an applicant or recipient of K-TAP, Kinship Care, and SSP and to incorporate the forms used for the appropriate notification of these individuals.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 205.200 requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619. This administrative regulation establishes the requirements for adverse action and conditions for notification for K-TAP, Kinship Care, and SSP applicants and recipients. This administrative regulation establishes standards in conformity with the Title IV-A of the Social Security Act or Temporary Assistance for Needy Families Block Grant (TANF) State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes uniform conditions and requirements under which an application is denied or assistance is decreased or discontinued and the appropriate notification provided to the applicant or recipient.

(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 revises the material incorporated by reference to provide TANF assistance applicants and recipients with notice of the prohibitions regarding the use of electronic benefit transfer (EBT) cards at point-of-sale (POS) terminals and automated teller machines (ATMs) in liquor stores, adult-oriented entertainment facilities, or any casino, gambling casino, or gaming establishment. The amendment also removes a discontinuation provision governing K-TAP issuance that is no longer applicable due to the provisions of benefits through an EBT card, rather than paper check. In addition, the amendment includes other technical corrections and updates to reflect the department's business redesign efforts in advance of the anticipated Medicaid expansion and implementation of the Health Benefit Exchange. Other changes were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to revise material incorporated by reference to notify applicants and recipients of the new restrictions on TANF EBT transactions at POS and ATM machines. Section 4004 of the Middle Class Relief and Job Creation Act of 2012 (Pub. L. 112-96), effective February 22, 2012, requires states receiving TANF grants to maintain policies and practices as necessary to prevent TANF funded assistance from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. States must report compliance with Pub. L. 112-96 by February 22, 2014. Failure to implement and maintain the required policies and practices, or failure to comply with the reporting requirement, will result in a reduction of the TANF grant. The amendment is also necessary to remove language that K-TAP assistance is discontinued if the grant amount is less than ten (10) dollars. EBT is the primary method of distributing the K-TAP benefits and eliminated the cost prohibition associated with issuing the check below ten (10) dollars. The amendment also aligns the department's contact information with the business design efforts and makes technical corrections and updates in accordance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by aligning procedures and notifications with federal laws governing TANF public assistance programs, as amended by Pub. L. 112-96.

(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 aligning procedures and notifications with overarching federal laws governing TANF public assistance programs, enhanced business practices of the department, and KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving or are applying for assistance from K-TAP, SSP, and Kinship Care. In April 2013, there were 4,193 K-TAP; 435

Kinship Care; and 176 SSP applications taken.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require any additional action by individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation should create no new cost to the regulated entities. Public assistance recipients will be able to access benefits via EBT transactions in other locations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no new monetary benefits provided to the regulated entities. Applicants and recipients of TANF-funded public assistance will be informed of the federally mandated prohibitions regarding EBT transactions. The rationale for the policy, per federal inputs, is to reduce the use of public assistance benefits for purchases commonly characterized as "sin purchases".

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have an initial fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a continuing fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A (of the Social Security Act) and state general funds used to meet Maintenance of Effort requirements are the funding source for K-TAP and the Kinship Care Program. State funds support the State Supplementation 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: There are no increases in fees or funding required with this amendment.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619

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

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

The Department for Community Based Services will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205.010, 205.200, 205.245, 605.120(5) and (6), 42 U.S.C. 601-619

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 921 KAR 2:050. Time and manner of payments.

RELATES TO: KRS 205.220, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.220, 205.245, 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.220 prescribes who is eligible for public assistance and requires the cabinet to prescribe by administrative regulation the time and manner of payments of public assistance grants for eligible individuals. KRS 205.245 provides for a money payment to the needy aged, needy blind, and needy permanently and totally disabled. This administrative regulation establishes the time and manner of payments for the Kentucky Transitional Assistance Program (K-TAP) and the Kentucky Works Program (KWP) in conformity with the Social Security Act, 42 U.S.C. 601 - 619, and federal regulations. It also establishes the time and manner of State Supplementation Program (SSP) payments and Mental Illness or Mental Retardation (MIMR) Supplement Program payments.

Section 1. Authorization of K-TAP Payments. (1) Method of payment.

(a) A payment may be issued monthly by:

1. Check;

2. Electronic benefit transfer (EBT); or

3. Direct deposit into a recipient's checking account upon completion by the recipient of the Direct Deposit Authorization, Form PA-63,[- and]

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) A K-TAP approval shall not be made for a period prior to the date of application.

(b) The effective date of an initial payment for a K-TAP ap-

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proval shall be the date an application is filed if eligibility factors are met as of that date.

(c) If eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payment.

(a) Except in a situation pursuant to paragraph (b) of this subsection, a subsequent K-TAP payment shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.

(b) A special payment shall be issued:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payment.

(a) A K-TAP payment shall be unconditional and exempt from a remedy for the collection of a debt, lien or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services may initiate recoupment to recover overpayment of benefits pursuant to 921 KAR 2:016.

(c) The Cabinet for Health and Family Services shall make adjustments to an EBT account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(5) EBT Account Inactivity.

(a) If an EBT account has not been debited in 365 days, the cabinet shall:

1. Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is 365 days in the past; and

2. Notify the household in writing:

a. That the household's EBT account has not been debited in the last 365 days; and

b. Of the amount of EBT benefits that have been expunged.

(b) If a recipient debits the EBT account, the expungement process shall cease.

(6) Eligible payee.

(a) A money payment shall be issued in the name of the approved applicant.

(b) A K-TAP payment for the month of death may be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(c) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

(7) In accordance with 42 U.S.C. 608(a)(12), a K-TAP payment received on EBT shall not be accessed via an EBT transaction, such as a point-of-sale terminal or an automated teller machine, at a:

(a) Liquor store;

(b) Business that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment;

(c) Casino;

(d) Gambling casino; or

(e) Gaming establishment.

Section 2. Supportive Services for KWP Participants. A supportive services payment for a KWP participant shall be made according to the type of service provided, as follows:

(1) A child care payment shall be issued pursuant to 922 KAR 2:160.

(2) A transportation payment pursuant to 921 KAR 2:017 may be made directly to the K-TAP recipient.

(3) Other approved supportive services payments shall be made:

(a) Directly to the provider; and

(b) Within thirty (30) days of receipt of appropriate verification

of service delivery of billing, pursuant to 921 KAR 2:017.

Section 3. Authorization of a SSP payment. (1) Method of payment.

(a) A payment shall be issued monthly by:

1. Check; or

2. Direct deposit into a recipient's checking account upon completion by the recipient of the PA-63, Direct Deposit Authorization form; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for SSP approval shall be the first day of the month in which:

1. An application is filed; and

2. Eligibility factors are met.

(b) An[A] SSP payment shall be made for the entire month of which eligibility factors are met.

(3) Subsequent and special payment.

(a) A subsequent SSP payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) An[A] SSP money payment shall be unconditional and is exempt from a remedy for the collection of a debt, lien, or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall be issued in the name of the eligible applicant except as provided in paragraph (b) of the subsection.

(b) A money payment may be issued to the:

1. Legally appointed committee or guardian; or

2. Person serving as the representative payee for another statutory benefit such as Supplemental Security Income.

(c) An[A] SSP payment for the month of death may be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons With MIMR Supplement Program Payment. (1) Method of payment.

(a) The MIMR supplement payment shall be made:

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(b) The training reimbursement payment for the MIMR Supplement Program shall be made:

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(2) Initial payment.

(a) Following the notification to the Cabinet for Health and Family Services by the personal care home (PCH) of its intent to participate, the effective date of the MIMR supplement shall be the first day of a month that certification requirements pursuant to 921 KAR 2:015 are met.

(b) If a Type A citation issued from the Office of Inspector General occurs, payment shall be made only for eligible months

pursuant to 921 KAR 2:015.

(3) A subsequent payment shall be made for a month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, pursuant to 921 KAR 2:015.

(b) Payment for the MIMR training reimbursement shall be made to the participating PCH.

Section 5. Incorporation by Reference. (1) The "PA-63, Direct Deposit Authorization", [edition] 11/11, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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: July 11, 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, if requested, be held on August 21, 2013, at 9:00 a.m. in the Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2013, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the time and manner in which a payment is made to Kentucky Transitional Assistance Program (K-TAP) recipients, Kentucky Works Program (KWP) participants for supportive services, State Supplementation Program (SSP) recipients, and personal care homes eligible for the Mental Illness/Mental Retardation (MIMR) supplement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the time and manner in which payments are issued.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the time at which the K-TAP, KWP supportive services, and SSP payments are made, and the methods in which these payments are distributed. KWP is the work program under K-TAP, Kentucky's Temporary Assistance for Needy Families (TANF), funded by Title IV-A of the Social Security Act and authorized by 42 U.S.C. 601-619. This administrative regulation sets forth these standards in conformity with the Title IV-A or the Temporary Assistance for Needy Families Block Grant (TANF) State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing uniform time and manner requirements for supplementation and public assistance grant payments, including supportive services payments.

(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 add new restrictions on TANF electronic benefit transfer (EBT) transactions at point-of-sale (POS) terminals and automated teller machines (ATMs).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to formulate policies and implement the requirements in Section 4004 of Pub. L. 112-96 based on reasonable interpretation of the requirements. 42 U.S.C. 608, as amended by Section 4004 of the Middle Class Relief and Job Creation Act of 2012 (Pub. L. 112-96), requires states receiving TANF grants to maintain policies and practices as necessary to prevent TANF funded assistance from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. The state must report to the Administration for Children and Families (ACF) implemented policies and practices by February 22, 2014. Failure to implement and maintain the required policies and practices, or failure to comply with the reporting requirement, will result in a reduction of the state's federal TANF grant.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 608, as amended by Section 4004 of Pub. L. 112-96, by implementing policies to prevent TANF EBT transactions at POS and ATM machines in liquor stores, adult-oriented entertainment facilities, or any casino, gambling casino, or gaming establishments. The amendment conforms to 42 U.S.C. 601-619 and KRS 205.245 by clarifying the manner in which public assistance and supportive services payments may be used.

(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the authorizing statutes by aligning the time and manner of public assistance payments with federal laws governing TANF public assistance programs, as amended by Pub. L. 112-96.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect families who are receiving assistance from K-TAP, KWP participants, the Kinship Care Program recipients, and SSP beneficiaries. As of April 2013, there were 23,322 K-TAP families; 7,045 Kinship Care families; and 3,343 SSP recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require a new action on the part of affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact. The amendment to this administrative regulation should create no new cost to the regulated entities. Public assistance recipients will be able to access benefits via EBT transactions in other locations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no new monetary benefits provided to the regulated entities. Applicants and recipients of TANF-funded public assistance will be informed of the federally mandated prohibitions regarding EBT transactions. The rationale for the policy, per federal inputs, is to reduce the use of public assistance benefits for purchases commonly characterized as "sin purchases".

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

(a) Initially: The amendment to this administrative regulation will not result in an initial cost to the administrative body.

(b) On a continuing basis: The amendment to this administrative

tive regulation will not result in a cost to the administrative body on a continuous basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds support the State Supplementation Program and its MIMR supplement. Federal Title IV-A (of the Social Security Act) and state general funds used to meet Maintenance of Effort requirements support K-TAP, the Kentucky Works Program, and the Kinship Care 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: There are no increases in fees or funding required with this amendment.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619

2. State compliance standards. KRS 194A.050(1), 205.220, 205.245

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205.220, KRS 205.245, P.L. 112-96, 42 U.S.C. 601 to 619.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

#### 922 KAR 1:450. Eligibility confirmation for tuition waiver.

RELATES TO: KRS Chapter 13B, 164.001(12)(14), 164.2847(4), (3), 199.570, 620.050(5)(4)(e)]

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to adopt and administer administrative regulations necessary under state laws to protect, develop, and maintain the welfare and sufficiency of individual citizens of the Commonwealth. KRS 164.2847(3) requires the Cabinet for Health and Family Services~~[Families and Children]~~, upon the request of a public postsecondary education institution, to confirm the eligibility status under KRS 164.2847(1), of a student seeking to participate in the tuition waiver program. This administrative regulation establishes a procedure for administrative hearings and criteria pertaining to the release of foster or adoption status information.

Section 1. Definitions. (1) "Institution" is defined in KRS 164.001(12)(10).

(2) "Student" means an individual who meets the requirements of KRS 164.2847(1).

Section 2. Confirmation of Eligibility. (1) A student shall request a tuition waiver by:

(a) Completing a form, the ~~["DPP-333, Tuition Waiver for Foster and Adopted Children"]~~; and

(b) Presenting the DPP-333~~[form]~~ to a public postsecondary institution.

(2) Upon the request of a public postsecondary institution, designated cabinet staff shall return the completed ~~["DPP-333[Tuition Waiver for Foster and Adopted Children"]~~ to the requesting institution within thirty (30) working days from the date of receipt.

(3) The confidentiality of information shall be maintained in accordance with KRS 199.570 and 620.050 regarding release of information.

(4) The cabinet~~[staff]~~ shall maintain an active file of a student's completed~~[form-"]~~ DPP-333~~[Tuition Waiver for Foster and Adopted Children"]~~ for five (5) years from the date of the student's initial request.

(5) A student who transfers to another institution, or who has not been enrolled continuously at the same institution, shall complete a new ~~[form-"]~~ DPP-333~~["Tuition Waiver for Foster and Adopted Children"]~~.

Section 3. Service Appeal. An applicant who is determined ineligible for a tuition waiver by the cabinet shall have access to an administrative hearing in accordance with 922 KAR 1:320.

Section 4. Incorporation by Reference. (1) "DPP- 333, Tuition Waiver for Foster and Adopted Children", edition 6/13/4/03], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Division of Policy Development, 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: June 24, 2013

FILED WITH LRC: June 25, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on August 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a procedure for administrative hearings and criteria pertaining to the release of foster or adoption status information as eligibility confirmation for the tuition waiver program.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish procedure and criteria for tuition waiver eligibility confirmation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing procedure and criteria pertaining to the release of foster or adoption status information as confirmation of eligibility for tuition waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the statutes by establishing a procedure and criteria for eligibility confirmation of a student seeking to participate in the tuition waiver program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation modifies the incorporated material to recognize the extension to the eligibility period, consistent with active duty or service, as authorized by Senate Bill 95 (KY Acts Chapter 70) from the 2013 Regular Session of the Kentucky General Assembly. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to meet the effective date for enacted legislation from the 2013 Regular Session and to ensure the administrative regulation is congruent with the statute as amended. In addition, the amendment will offer the eligibility extension timely for students enrolled (or enrolling) in public post-secondary institutions for the upcoming fall semester or other class offerings.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by aligning the eligibility confirmation criteria for the tuition waiver program with recently enacted legislation that extended the eligibility period for students who meet certain active duty or service criteria.

(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 aligning the procedure and criteria pertaining to the release of foster or adoption status information, as confirmation of eligibility for tuition waiver, with statutes applicable to the tuition waiver program.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: In calendar year 2012, 752 requests for tuition waiver were completed and submitted to the Department for Community Based Services. The percentage of requests that may have included active duty or service is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Students who request tuition waiver will be required to utilize the revised incorporated material, which newly collects active duty or service information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the students requesting confirmation of eligibility for tuition waiver.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Students' eligibility for participation in the tuition waiver program will be extended per the amended statute if the students were engaged in active duty or service.

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

(a) Initially: There will be no new or additional costs to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no new or additional costs to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Funds are the source of funding used for the implementation and enforcement of this administrative regulation. Overall costs are minimal for this administrative agency.

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.2847, 194A.050(1)

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative costs associated with eligibility confirmation for a student seeking to participate in the tuition waiver program are minimal. There will be no new cost for the administrative

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agency in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs for the administrative agency in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Office of Sales and Excise Taxes

(New Administrative Regulation)

103 KAR 41:200 Manufacturers Report.

RELATES TO: KRS 138.135

STATUTORY AUTHORITY: KRS 131.130(1) and (3)

NECESSITY, FUNCTION AND CONFORMITY: This administrative regulation explains the reporting requirements of tobacco products manufacturers as provided in KRS 138.135.

Section 1. Definitions. (1) "Manufacturer" is defined in KRS 138.130(2).

(2) "Tobacco products" is defined in KRS 138.130(16).

Section 2. Each manufacturer selling or shipping tobacco products to distributors, retailers, or any other persons located in this state shall file a completed Manufacturer's Report of Tobacco Products Shipments, Form 73A424, with the Department of Revenue, at the address and in the manner specified in this form on or before the 20th day of each month. This report shall contain the following information concerning the manufacturer's operations during the preceding calendar month:

(1) The names and addresses of customers as required in KRS 138.135(1)(b)1;

(2) The detailed breakdown of quantities of tobacco products shipped as required in KRS 138.135(1)(b)2; and

(3) The other detail or information required by the Manufacturer's Report of Tobacco Products Shipments, Form 73A424.

Section 3. Incorporation by Reference. (1) Form 73A424, "Manufacturer's Report of Tobacco Products Shipments", July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 14, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2013, from 10:00 a.m. to 12:00 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 3, 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: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the rules for the filing of the monthly

Manufacturer's Report of Tobacco Products Shipments as required by 2013 Ky. Acts Ch. 97, sec 4 (1).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of 2013 Ky. Acts Ch. 97, sec 4 (1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is in conformity as the authorizing statute gives the Department the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist Tobacco Products Manufacturers in filing accurate information needed to verify receipts due to the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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: This regulation will affect approximately twenty (20) - twenty-five (25) tobacco manufacturers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will have to gather and submit business data to the Commonwealth related to the manufacturing of tobacco products.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For some, there will be no additional cost because they are already performing this task. For others, they will need to extract the data from their accounting systems and provide it to the Commonwealth. The information should be readily available and they may already be supplying to the Federal Government or other tax jurisdictions. The cost should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Review and related compliance of this data will assist in creating a level playing field as it pertains to state taxes.

(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 of enactment and dissemination to be covered under the general administrative expenses of the Department.

(b) On a continuing basis: The Department of Revenue will not incur additional costs on a continual basis as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The costs of implementation and enforcement will be minimal and are to be covered under the general administrative expenses of the Department.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All licensed manufacturers are required to submit the report per 2013



Ky. Acts Ch. 97, sec 4 (1).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Revenue, Office of Sales and Excise Taxes.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2013 Ky. Acts Ch. 97, sec 4 (1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation prescribes the rules for the reporting of monthly Manufacturer's Report of Tobacco Products Shipments. No additional revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? Only minimal expenses are expected to initially administer this regulation that will be absorbed in the normal operating budget of the Department.

(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 Hairdressers and Cosmetologists  
(Repealer)

**201 KAR 12:176. Repeal of 201 KAR 12:175, 201 KAR 12:200, and 201 KAR 12:210.**

RELATES TO: KRS 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: The statutory authority for continuing education was repealed in 2012, thus obviating the need for 201 KAR 12:200 and 201 KAR 12:210. As a matter of good policy, 201 KAR 12:175 should be repealed because paying your way out of a suspension does not serve as a deterrent for unlawful activity. This administrative regulation repeals 201 KAR 12:175, 201 KAR 12:200, and 201 KAR 12:210.

Section 1. The following administrative regulations are hereby repealed:

(1) 201 KAR 12:175, Fines in lieu of suspension;

(2) 201 KAR 12:200, Requirements for continuing education for renewal of license; and

(3) 201 KAR 12:210, Requirements for continuing education; active and inactive license and temporary waiver of requirements.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 201 KAR 12:175, 201 KAR 12:200 and 201 KAR 12:210.

(b) The necessity of this administrative regulation: To eliminate bad policy and unlawful regulations since there is no statutory authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes no longer exist for 201 KAR 12:200 and 201 KAR 12:201. The board is permitted to promulgate regulations pursuant to its authority to protect the public under KRS 317A.060 and may also discipline pursuant to KRS 317A.140 and KRS 317A.145.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: 201 KAR 12:200 and 201 KAR 12:201 will be eliminated because the statutory authority for them has been repealed. 201 KAR 12:175 will be repealed because it does not protect the public when a licensee can simply pay his or her way out of a suspension.

(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 this administrative regulation 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. Approximately 25,000 cosmetologists, nail technicians and estheticians will be impacted by no requirement for continuing education. Approximately 250 licensees are disciplined annually by the board. Any of those individuals could be impacted by the repeal of 201 KAR 12:175 if their cases did not resolve informally and instead went to a formal hearing. Some individuals should be suspended from practice and not be permitted to pay their way out of part or all of their suspension (e.g., a salon owner who has used unlicensed persons to provide nail technology services is only fined for a first and second offense, but a 3rd offense is a combination of fine and suspension).

(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. n/a

(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: \$0

(a) Initially: \$0

(b) On a continuing basis: \$0

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(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees.

(9) TIERING: Is tiering applied? No, this is a repealer regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 317A.060.

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. \$0

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-):\$0

Expenditures (+/-):\$0

Other Explanation:

### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Hairdressers and Cosmetologists (New Administrative Regulation)

#### 201 KAR 12:270. Threading Practice.

RELATES TO: KRS 317A.010 and 317A.050

STATUTORY AUTHORITY: KRS 317A.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050 authorizes the board to promulgate administrative regulations regarding the practice of threading, the facilities in which the practice of threading may be performed, and applicable sanitation standards. This administrative regulation establishes the requirements for a threader permit, threading facility permit, and sanitation standards.

Section 1. (1) Each person who engages in the practice of threading shall obtain a threader permit from the board that shall be renewed annually between July 1 and July 31 of each year.

(2) An applicant for a threader permit shall pay the requisite fee and complete an application that includes the name, address, phone number, and email of the applicant.

(3) Each threader shall practice in a licensed salon or threading facility.

Section 2. (1) Each owner or operator of a kiosk or other stand-alone facility in which a person engages in the practice of threading shall obtain a threading facility permit from the board that shall be renewed annually between July 1 and July 31 of each year.

(2) An applicant for a threading facility permit shall pay the requisite fee and complete an application that includes the name, address, phone number, and email of the applicant.

(3) Each threading facility shall use permitted threaders in the facility.

(4) A threading facility that is not owned by a Kentucky licensed cosmetologist, esthetician, or threader shall appoint a manager who is licensed as a cosmetologist, esthetician, or threader.

Section 3. The board shall inspect any threading facility or salon in this state where threading is conducted.

Section 4. Threaders and threading facilities shall comply with the sanitation requirements of KRS 317A.130, 201 KAR 12:100, and 201 KAR 12:101.

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

(a) "Threading Permit Application", February, 2013; and

(b) "Threading Establishment", November 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chair

APPROVED BY AGENCY: July 9, 2013

FILED WITH LRC: July 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2013 at 11:00 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on August 20, 2013, five workdays prior to this 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 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 4:30 p.m. on September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Charles Lykins, Executive Director, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets the standard for threaders and the facilities they practice in.

(b) The necessity of this administrative regulation: To meet the requirements set forth in 317A.050(14).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the requirements for threaders and facilities, pursuant to the authority of KRS 317A.050(14).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes criteria for threaders and the facilities they practice in.

(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 this administrative regulation conforms to the content of the authorizing statutes:

n/a

(d) How the amendment will assist in the effective administration:

tion 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. Approximately 100 applicants are expected.

(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: Threaders will apply for a permit to thread (hair removal). Anyone can apply to permit a threading facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): twenty (20) dollars for a threader permit and twenty-five (25) dollars for a threading facility permit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be permitted and may legally engage in threading without obtaining a cosmetology or esthetician license.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: n/a

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does establish a nominal fee.

(9) TIERING: Is tiering applied? No, all applicants must meet the same requirement.

#### 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 Board of Hairdressers and Cosmetologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 317A.050(14)

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 fiscal effect because any revenue would be offset by the cost of inspections.

(a) How much 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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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: Any revenue generated will be offset by the cost of inspections so no net revenue is expected.

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of the Reclamation Guaranty Fund (New Administrative Regulation)

#### 405 KAR 10:070. Kentucky reclamation guaranty fund.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.500 – 350.521

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.500 – 350.521

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. This administrative regulation provides information related to the operation of the Kentucky Reclamation Guaranty Fund, classification of permits, reporting and payment of fees, and penalties.

Section 1. Classification of Mine Permit Types. (1) The commission shall review and assign classification of mine types pursuant to KRS 350.509(1)(e) for the purposes of assessing the fees in accordance with KRS 350.518. Permits shall be assigned to one (1) of the following classifications:

(a) Surface coal mining operations containing activities defined in 405 KAR 8:001, Section 1(125), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(b) Underground coal mining operations containing activities defined in 405 KAR 8:001, Section 1(135), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(c) Combined surface and underground mining operations containing activities defined in both 405 KAR 8:001, Section 1(125) and 1(135), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(d) Non-production permits include operations approved for mining support, maintenance and other facilities, or operations or activities pursuant to KRS 350.010(1), but do not include permitted coal removal operations, as described in paragraphs (a), (b), and (c) of this subsection; or

(e) Dormant permits, including expired permits, which shall include the following:

1. Permits for which all coal removal operations are complete, but an initial release of performance bond has not been granted, pursuant to 405 KAR 10:040, Section 2;

2. Permits in temporary cessation, pursuant to 405 KAR 16:010, Section 7, and 405 KAR 18:010, Section 5;

3. Permits for which a deferment has been granted, pursuant to 405 KAR 16:020, Section 5(1); and

4. Permits in paragraphs (a), (b), and (c) of this subsection that report no production in a quarter.

(f) Permits subject to KRS 350.518(2)(e) and (f) shall be exempt from the requirements of 405 KAR 10:090.

(2) Upon initial disturbance of an issued permit or resumption of coal production operations following a period of temporary cessation or deferment, pursuant to 405 KAR 16:020, Section 5(1), the permittee shall notify the ORGF within ten (10) days of the initial disturbance or resumption on Kentucky Reclamation Guaranty Fund Notification of Permit Activity, Form RGF -3. The suspension provisions of Section 4(2) of this administrative regulation shall apply for failure to provide notification to the ORGF.

(3) The commission shall assign classifications, pursuant to KRS 350.509(1)(e), utilizing the following information:

(a) Member production records submitted pursuant to Section 2 of this administrative regulation;

(b) Issued permits;

(c) Cabinet inspection records;

(d) Permit, license, and other records on file with the Kentucky Office of Mine Safety and Licensing, and the U.S. Mine Safety and Health Administration; and

(e) Any other permittee documents and records as deemed necessary by the Commission, pursuant to KRS 350.509(7).

Section 2. Member Production Records, Fee Reporting, and Payments. (1) Each permittee in the Kentucky Reclamation Guaranty Fund shall:

(a) Report coal production from each permitted surface coal mining operation on a quarterly basis for coal mined and sold, beginning January 1, 2014;

(b) Maintain records on a quarterly basis that report the tonnage of coal mined and sold for each permit. Coal producing permits shall be assigned a classification by the commission in accordance with Section 1 of this administrative regulation. Tonnage shall be reported based on the weight of coal at the time of sale. Coal mined and sold from permits that combine surface and underground operations shall report both underground and surface production separately;

(c) Retain records of coal mined and sold for a period of six (6) years from the end of the quarter in which a report was due; and

(d) Provide records necessary to substantiate the accuracy of reports and payments upon the request of the ORGF.

(2) Reporting of tonnage and payment of fees shall be recorded on the Kentucky Reclamation Guaranty Fund Quarterly Fee Report, RGF-1, for each permit for which coal was mined and sold during the previous quarter or has coal reserves available to be mined. The reporting of tonnage shall be accompanied by the fee required in 405 KAR 10:090.

(a) The reporting and payment period shall be quarterly with the first quarterly reporting period being January 1st through March 31st. The report shall be submitted, and fees shall be received, no later than the 30th day of the month following the end of a reporting period. A permittee shall submit all reports and payments for permits issued with the same permittee name on one (1) form. The report shall be submitted even if the member has no coal mined and sold during the reporting period. Reports are not required to be submitted for permits that have expired and a permit renewal is not being pursued, or for permits that have achieved at least a phase I bond release for the entire permit area.

(b) Payments received by the fund after the 30th day of the month following the reporting quarter, non-payment of fees, or underpayment of fees shall be subject to the penalty provisions of Section 4(1) of this administrative regulation.

Section 3. Non-production and Dormancy Fees and Payments. (1) Beginning January 1, 2014 permittees in the KRGF are required to pay non-production and dormancy fees to the KRGF for surface coal mining permits not subject to the tonnage fees in 405 KAR 10:090.

(a) Non-production and dormancy fees shall not apply to permits or increments that have been granted phase I bond release, have not been initially disturbed by the permittee after permit issuance, or contain underground acreage only. Payment of the non-production and dormancy fees shall be in four (4) quarterly installments. For non-production permits issued and not initially disturbed, the non-production annual fee shall be assessed for the calendar quarter after initial disturbance and be pro-rated for the remaining quarters of the calendar year.

(b) Permits that are used exclusively for coal preparation and processing operations, loading activities, disposal of refuse operations, coal haulage and access roads, mine maintenance and other support facilities, and other permits not subject to the tonnage fees in 405 KAR 10:090, Section 1, as determined by the commission shall pay the non-production fee of ten (10) dollars per acre.

(c) Any permits, or expired permits, not subject to the ten (10) dollar non-production fee in paragraph (b) of this subsection, and the tonnage fees in 405 KAR 10:090, Section 1, shall pay a dormancy fee of six (6) dollars per acre.

(d) The commission shall evaluate a permit that may meet multiple classifications and assign the permit a classification for assessment of fees.

(e) Members which provided written notice to the ORGF that they will opt-out of the fund and subsequently post full cost performance bonds prior to April 30, 2014 on all permits held by the member, shall not be subject to the fees listed in paragraphs (b) and (c) of this subsection.

(2) Non-production and dormancy fees shall be assessed to each eligible permit based on the total bonded acreage, or fraction

thereof, on record with the DNR as of January 1st of each calendar year. Permits that have coal production and pay tonnage fees in accordance with Section 2 of this administrative regulation in each calendar quarter shall not be subject to the payment of dormancy fees assessed under this section. A permittee that receives an assessment notification for dormancy fees in accordance with subsection (1)(d) of this section, and does not report coal mined and sold in a calendar quarter, shall pay the dormancy fee for that quarter.

(a) Payment of the non-production and dormancy fees shall be made in four (4) separate equal quarterly installments beginning with the January 1st through March 31st, 2014 quarter. Members shall be allowed to prepay the entire annual dormancy and non-production fees in a lump sum prior to April 30th of each calendar year. Fees received from prepayments shall not be refundable to the member.

(b) The ORGF shall notify each member on or before January 31 of each calendar year those permits that are classified and subject to dormancy or non-production fees. The notification shall include the permit classification, total bonded acreage subject to assessment for each permit, and the quarterly payment amount due by permit.

(c) A permittee shall be allowed thirty (30) calendar days after receipt of the initial assessment each year to provide written notice to the ORGF to contest the assessed dormancy or non-production fees. The written notice shall include an explanation of the nature of the contest, the documentation relied upon by the permittee, and the specific permit and increments where the alleged error exists. The ORGF shall review the information provided by the permittee and provide a response in writing of its decision to retain or modify the assessment. The permittee shall not be subject to penalties for late payment should a decision not be issued by the ORGF prior to the payment due date.

(d) Quarterly installment payments shall be received in the ORGF no later than the 30th day of the month following the previous calendar quarter on the Kentucky Reclamation Guaranty Fund Quarterly Fee Report, RGF-1.

(e) Late payment or non-payment of fees shall subject members to penalties in Section 4(1) of this administrative regulation.

(f) All payments shall be in the form of a check, cashier's check, certified check, money order, or electronic funds transfer, and be made payable to the Kentucky State Treasurer.

Section 4. Penalties. (1) Late Payment or Non-Payment of Fees and Initial Assessments.

(a) Permittees shall be subject to penalties of five (5) percent of the original fee for each month or fraction thereof elapsing between the due date and the date on which the payment is submitted for the failure to submit the following records and fees:

1. Quarterly production records within thirty (30) days of the end of the reporting quarter;

2. Payment of required tonnage fees within thirty (30) days of the end of the reporting quarter;

3. Non-production fees within thirty (30) days of the end of the reporting quarter;

4. Dormancy fees within thirty (30) days of the end of the reporting quarter; or

5. Initial capitalization assessments within thirty (30) days of the date of receipt of notice.

(b) Upon a determination by the ORGF that a permittee has underreported production or underpaid the amount due in any reporting quarter, the permittee shall submit the corrected information or payment within ten (10) days of notification that the report or payment is deficient or insufficient.

(c) A penalty of five (5) percent of the fee shall be assessed for the underpayment of tonnage fees if the payment is not received within ten (10) days of notification.

(d) Penalties for late payment, underpayment, or non-payment of fees or initial assessments shall be at a minimum of \$100.

(e) Payments of fees, penalties, or initial assessments that are more than thirty (30) days in arrears shall render the permittee subject to permit suspension pursuant to 405 KAR 12:020.

(2) Defrauding the commission. Any permittee submitting fraudulent production reports, misidentifying the method of coal pro-

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duction to obtain a lower fee payment, withholding documentation requested by the commission, or otherwise attempting to defraud the fund or commission shall be subject to permit suspension by the cabinet upon receipt of notification by the commission.

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

(a) "Kentucky Reclamation Guaranty Fund Quarterly Fee Report", RGF-1, June 2013; and

(b) "Kentucky Reclamation Guaranty Fund Notification of Permit Activity", Form RGF -3, June 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 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 September 3, 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 provides information related to the operation of the Kentucky Reclamation Guaranty Fund, classification of permits, reporting and payment of fees, and penalties.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of HB 66.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.515 requires participation in the newly established Kentucky Reclamation Guaranty Fund. This administrative regulation sets up the provisions of the Kentucky reclamation guaranty fund and how those impacted entities shall comply with its requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary detail for regulated entities to comply with the requirements of KRS 350.500 – 350.521.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: This administrative regulation will impact the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question 3 will be mandatory participants in the KRGF unless they choose to opt-out. The requirements in this administrative regulation will impact those participants. The actions range from complying with reporting requirements, maintain production records, provide initial assessments, pay fees, comply with penalty provisions, and complete and submit required forms.

(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 each permittee will vary depending the number of permits, number of acres, and the tons of coal produced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KRGF members will benefit by participating in the KRGF. The KRGF will provide members with coverage for reclamation costs that are over the amount required by 405 KAR 10:015.

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

(a) Initially: The total expenditures of the Office of Reclamation Guaranty Fund (ORGF) will initially be \$718,100. The ORGF will be responsible for proving support to the KRGF commission.

(b) On a continuing basis: Future costs would remain essentially unchanged for operation of the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(7) Provide an assessment of whether an 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 were established in HB 66. These fees will be used to fund the KRGF and for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation implements fees established in KRS 350.518.

(9) TIERING: Is tiering applied? No. All members of the KRGF will be required to meet the same requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.500 – 350.521.

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 proposal should generate approximately \$2,662,000 by the initial capitalization, active acre fees and the startup assessment fees.

(b) How 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 Department is uncertain how much revenue will be generated by this proposal in subsequent years. However, based upon the 2012 tonnages and dormant and nonproducing permits the proposal would generate \$5,225,000.

(c) How much will it cost to administer this program for the first

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year? The total expenditure for the ORGF is estimated at \$718,100.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 730

2. State Compliance Standards. KRS 350.064 and KRS 350.500 – 350.521.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation will not impose additional or stricter standards on permittees. The federal Office of Surface Mining, Reclamation and Enforcement (OSM) requires permittees to provide full cost bonding. By participating in the KRGF members will be meeting OSM standards for reclamation bonding in the Commonwealth of Kentucky.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of the Kentucky Reclamation Guaranty Fund (New Administrative Regulation)

#### 405 KAR 10:080. Full-cost bonding.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.515(5)

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.515(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. KRS 350.515(5) creates a provision that allows members the option to provide full-cost bonds in lieu of maintaining membership in the fund. This administrative regulation provides information to members that elect to provide full-cost bonds rather than remain in the Kentucky Reclamation Guaranty Fund.

Section 1. Applicability. This administrative regulation applies to permittees electing to provide full-cost bonds to the cabinet in lieu of participation in the Kentucky Reclamation Guaranty Fund.

Section 2. Decision to Opt-out. (1) Pursuant to KRS 350.515(5), a member may elect to opt-out of the Kentucky Reclamation Guaranty Fund and provide a full cost bond.

(2) A member joining the KRGF after July 1, 2013, shall declare the decision to opt-out on the Technical Information for a Mining Permit, Form MPA-03, incorporated by reference in 405 KAR 8:010, Section 26. This subsection shall not apply to those permits issued pursuant to 405 KAR 8:010, Section 22.

Section 3. Full-Cost Reclamation Bonding Estimate. (1) The requirements of 405 KAR 10:015, Section 7 and Section 8(7); 405 KAR 16:060, Section 8; 405 KAR 18:060, Section 12; and 405 KAR 18:210, Section 3, shall apply to the calculation of the estimate. The provisions of 405 KAR 10:015, Section 11, shall not apply when calculating a full-cost bonding reclamation estimate.

(2) Full-cost reclamation bonding estimates shall be calculated

pursuant to the Kentucky Department for Natural Resources Full-cost Reclamation Bond Calculation Manual.

(3) The calculations shall be submitted on one (1) of the following forms:

(a) Technical Information for a Mining Permit, Form MPA-03, incorporated by reference in 405 KAR 8:010, Section 26;

(b) Application to Transfer a Mining Permit, MPA-07, incorporated by reference in 405 KAR 8:010, Section 26; or

(c) Application for a Coal Marketing Deferment, MPA-10, incorporated by reference in 405 KAR 8:010, Section 26.

(4) The reclamation bonding estimate shall be certified by a registered professional engineer, as defined in KRS 322.010, in good standing.

(5) A member shall provide the full-cost reclamation bond upon notification that the full-cost reclamation estimate has been accepted by the department.

(6) A member with permits issued prior to July 1, 2013 shall post full cost reclamation bonds with the department before April 30, 2014 on all permits held by the member.

Section 4. Incorporation by Reference. (1) "Kentucky Department for Natural Resources Full-cost Reclamation Bond Calculation Manual", July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 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 September 3, 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 provides information to members that elect to provide full-cost bonds rather than remain in the Kentucky Reclamation Guaranty Fund.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify members of the KRGF of the requirements associated with opting-out and providing full-cost bonds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.515(5) provides members of the KRGF the option of opting-out of the fund and providing full-cost bonds. This administrative regulation provides the necessary information for taking this option.

(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 establishing the requirements and information on how a permittee

can opt-out of the KRGF and calculates full-cost bonds.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Members of the KRGF that choose to opt-out of the KRGF will be required to provide a full-cost bond. This administrative regulation provides the information permittees will use to calculate their full cost bond. This amount will differ depending on site conditions.

(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 each permittee will vary depending on the site conditions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By choosing to take this option permittees will be exempt from the other fees that are required of KRGF members.

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

(a) Initially: The total expenditures of the Office of Reclamation Guaranty Fund (ORGF) will initially be \$718,100.

(b) On a continuing basis: Future costs would remain essentially unchanged for operation of the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(7) Provide an assessment of whether an 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 were established in HB 66. These fees will be used to fund the KRGF. These funds will be used for implementation.

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

(9) TIERING: Is tiering applied? No. All members of the KRGF that elect to opt-out will meet the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.515.

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 new administrative regulation does not generate any 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 new administrative regulation does not generate any revenue.

(c) How much will it cost to administer this program for the first year? The total expenditures for the ORGF is estimated at \$718,100.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.064 and 350.515(5).

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation will not impose additional or more strict standards on permittees. The federal Office of Surface Mining, Reclamation and Enforcement (OSM) require permittees to provide full cost bonding. By opting-out of the KRGF permittees will be required to meet those same standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of the Reclamation Guaranty Fund (New Administrative Regulation)

##### 405 KAR 10:090. Production Fees.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.515, 350.518

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, KRS 350.518(2)(a) and (b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. KRS 350.503 created the Kentucky Reclamation Guaranty Fund which will receive production fees established in KRS 350.518(2)(a) and (b). This administrative regulation provides information on production fees established in KRS 350.518(2)(a) and (b), and the schedule payments are to be remitted.

Section 1. (1) Each member with surface or underground coal mining operations shall remit to the ORGF a fee based on the tons of coal mined and sold from each permit. This production fee shall be paid by the 30th day of the month immediately following the end of the quarter.

(2) Production fees shall be assessed in the following manner:

(a) Surface coal mining operations shall pay seven and fifty-seven hundredths (7.57) cents per ton of coal.

(b) Underground coal mining operations shall pay three and fifty-seven hundredths (3.57) cents per ton of coal.

(c) Permits consisting of surface and underground coal mining operations shall be assessed the tonnage fees in accordance with the predominant method of coal extraction during the quarterly reporting period.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 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 September 3, 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 sets the rates for the production fees established in KRS 350.518(2)(a) and (b).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the rates for the production fees established in KRS 350.518(2)(a) and (b). These rates may change as a result of an actuarial analysis required by KRS 350.509(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.518(2) requires the Kentucky Reclamation Guaranty Fund Commission (KRGFC) to set rates that each member of the Kentucky Reclamation Guaranty Fund (KRGF) shall pay based on the tonnage of coal produced. Those permittees are classified by underground or surface and pay different rates accordingly. This administrative regulation sets those rates.

(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 establishing the rates required by KRS 350.518(2). These rates can be increased or decreased depending on the results of an actuarial study.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 325 permittees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require the 325 permittees that are participating in the KRGF to make quarterly payments to the fund based on the tons of coal produced

and the type of mine they operate.

(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 each permittee will vary depending on the amount of coal produced in a quarter and the type of mine they operate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By paying the production fees set by this administrative regulation a permittee will maintain good standing in the KRGF and not be subject to permit suspension.

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

(a) Initially: the total expenditures of the Office of Reclamation Guaranty Fund (ORGF) will initially be \$718,100.

(b) On a continuing basis: Future costs would remain essentially unchanged for operation of the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(7) Provide an assessment of whether an 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 establishes the rates for the production fees that were established in KRS 350.518(2).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes the rates for the production fees that were established in KRS 350.518(2).

(9) TIERING: Is tiering applied? Yes. These fees were tiered in KRS 350.518(2). Different rates were applied to mines depending on the predominant mining type.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Office of the Reclamation Guaranty Fund.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.518(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will generate funds that will be deposited into the KRGF. The ORGF will utilize these funds.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will continue to use the funds from the KRGF as a source of revenue.

(c) How much will it cost to administer this program for the first year? The total expenditures for the ORGF is estimated at \$718,100.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

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



FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 730
2. State Compliance Standards. KRS 350.064 and KRS 350.518(2).
3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes. This administrative regulation establishes rates for production fees which are not included in the corresponding federal regulations .
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements are related to the passage of HB 66 from the 2013 legislative session.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Kentucky Law Enforcement Council**  
**(Repealer)**

**503 KAR 1:161. Repeal of 503 KAR 1:160.**

RELATES TO: 28 C.F.R. 92.1-92.13, 42 U.S.C. 14091-14102  
STATUTORY AUTHORITY: KRS 15A.070(1), (5), 15A.150, 15A.330(1)(c), (h), 42 U.S.C. 14094, 14099  
NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 14094(a) requires a state desiring to participate in the Police Corps Program to designate a lead agency to submit and administer the program in the state. KRS 15A.150 designates the Justice and Public Safety Cabinet to administer all state and federally-funded grant programs related to criminal justice. This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 503 KAR 1:160, which established the Kentucky Police Corps Program basic training, graduation, and record-keeping requirements. The Kentucky Police Corps Program, as addressed in 503 KAR 1:160, no longer exists.

Section 1. 503 KAR 1:160, Department of Criminal Justice Training – Kentucky Police Corps basic training: graduation requirements; records, is hereby repealed.

KEITH R. CAIN, Chair

APPROVED BY AGENCY: July 12, 2013

FILED WITH LRC: July 12, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013, at 9:00 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. 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 close of business September 3, 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: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana M. Todd

- (1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 503 KAR 1:160, Department of Criminal Justice Training – Kentucky Police Corps basic training: graduation requirements; records. The necessity of this administrative regulation: 503 KAR 1:160, Department of Criminal Justice Training – Kentucky Police Corps basic training: graduation requirements; records, is being repealed as the program no longer exists.

- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals obsolete or duplicate Kentucky Police Corps Program regulatory material as authorized by KRS 15A.150 and KRS 15.330(1)(c), (h).

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will repeal an obsolete administrative regulation.

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

- (a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

- (b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

- (c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

- (d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repealer administrative regulation is not expected to affect individuals, businesses, organizations, or local government. It will affect the Kentucky Law Enforcement Council and the Department of Criminal Justice Training by eliminating archaic and potentially contradictory policies established by obsolete administrative regulation.

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

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required of regulated entities.

- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on regulated entities.

- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefit, other than the elimination of potentially confusing out-of-date administrative regulation material, is expected for regulated entities.

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

- (a) Initially: The administrative regulation imposes no initial cost to the Kentucky Law Enforcement Council.

- (b) On a continuing basis: The administrative regulation imposes no continuing cost to the Kentucky Law Enforcement Council.

- (6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this administrative regulation.

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

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

- (9) TIERING: Is tiering applied? No. Tiering is not applied, as this is a repealer 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 Kentucky Law Enforcement Council will be affected 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 authorizes the action being 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? This administrative regulation will generate no revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no administrative cost on the Kentucky Law Enforcement Council.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no administrative cost on the Kentucky Law Enforcement Council.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Criminal Justice Training  
(Repealer)**

**503 KAR 3:091. Repeal of 503 KAR 3:090 and 503 KAR 3:100.**

RELATES TO: KRS 15A.070(1), 42 U.S.C. 14091-14102

STATUTORY AUTHORITY: KRS 15A.070(1), (5), 15A.150, 42 U.S.C. 14094, 14097, 14099

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 14094(a) requires a state desiring to participate in the Police Corps Program to designate a lead agency to submit and administer the program in the state. KRS 15A.150 designates the Justice and Public Safety Cabinet to administer all state and federally funded grant programs related to criminal justice. This administrative regulation, in accordance with KRS 13A.310(3)(c), repeals 503 KAR 3:090 and 503 KAR 3:100, which implemented the Kentucky Police Corps Program basic training program, participant conduct requirements, procedures, and penalties for misconduct. The Kentucky Police Corps Program, as addressed in 503 KAR 3:090 and 503 KAR 3:100, no longer exists.

Section 1. The following administrative regulations are hereby repealed:

(1) 503 KAR 3:090, Department of Criminal Justice Training – Kentucky Police Corps Program; and

(2) 503 KAR 3:100, Department of Criminal Justice Training – Kentucky Police Corps basic training course cadet conduct requirements; procedures and penalties.

JOHN W. BIZZACK, Commissioner

APPROVED BY AGENCY: July 12, 2013

FILED WITH LRC: July 12, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 21, 2013, at 9:00 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. 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 close of business September 3, 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: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana M. Todd

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(c), repeals 503 KAR 3:090, Department of Criminal Justice Training – Kentucky Police Corps Program and 503 KAR 3:100, Department of Criminal Justice Training – Kentucky Police Corps basic training course cadet conduct requirements; procedures and penalties.

(b) The necessity of this administrative regulation: 503 KAR 3:090, Department of Criminal Justice Training – Kentucky Police Corps Program and 503 KAR 3:100, Department of Criminal Justice Training – Kentucky Police Corps basic training course cadet conduct requirements; procedures and penalties are not applicable because the Kentucky Police Corps Program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals obsolete or duplicate Kentucky Police Corps Program regulatory material as authorized by KRS 15A.150 and KRS 15A.070(1), (5).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will repeal obsolete administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repealer administrative regulation is not expected to affect individuals, businesses, organizations, or local government. It will affect the Department of Criminal Justice Training by eliminating archaic and potentially contradictory policies established by obsolete administrative regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required of regulated entities.

ENERGY AND ENVIRONMENT CABINET  
Public Service Commission  
(Repealer)

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefit, other than the elimination of potentially confusing out-of-date administrative regulation material, is expected for regulated entities.

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

(a) Initially: The administrative regulation imposes no initial cost to the Department of Criminal Justice Training.

(b) On a continuing basis: The administrative regulation imposes no continuing cost to the Department of Criminal Justice Training.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied, as this is a repealer 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 Criminal Justice Training will be affected 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 authorizes the action being 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? This administrative regulation will generate no revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no administrative cost to the Department of Criminal Justice Training.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no administrative cost to the Department of Criminal Justice Training.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

807 KAR 5:009. Repeal of 807 KAR 5:003.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt, in keeping with KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. The provisions of 807 KAR 5:003, Utility filing of updated information, were incorporated into a recent revision to 807 KAR 5:006. This administrative regulation repeals 807 KAR 5:003.

Section 1. 807 KAR 5:003, Utility filing of updated information, is hereby repealed.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 12, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2013, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 807 KAR 5:003, Utility Filing of Updated Information.

(b) The necessity of this administrative regulation: The requirements in 807 KAR 5:003 were placed in 807 KAR 5:006, Section 3, effective January 4, 2013. Therefore, 807 KAR 5:003 is no longer necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the commission to promulgate administrative regulations. Since the contents of 807 KAR 5:003 have been included in 807 KAR 5:006, 807 KAR 5:003 is no longer necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation removes redundancies that would exist in the Public Service Commission's 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: 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

**ENERGY AND ENVIRONMENT CABINET  
Public Service Commission  
(New Administrative Regulation)**

**807 KAR 5:075. Treated sewage adjustment for water districts and water associations.**

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) provides that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation prescribes the requirements under which a water district or a water association may implement a treated sewage adjustment to recover the costs of treated sewage.

Section 1. Definitions. (1) "Application" means:

(a) A completed Treated Sewage Adjustment Form 1;

(b) A schedule listing current and proposed rates;

(c) A copy of the provider's notice showing a change in provider's base rate;

(d) The calculation and all supporting documents used to determine the change in treated sewage costs sufficient to determine the accuracy of the calculation;

(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and

(f) If the applicant is a water district and proposes to increase any of its rates for sewage service, a statement from an authorized utility official indicating the date its proposed rate increase was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body.

(2) "Changed rate" means the rate of a utility's provider after the most recent increase or decrease in the provider's base rate.

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

(4) "Person" is defined by KRS 278.010(2).

(5) "Provider's base rate" means the rate of a utility's provider in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of sewage service; or

(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Provider's Base Rate. (1) Upon an increase in its provider's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased treated sewage costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the provider's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased treated sewage costs on a per unit basis regardless of customer classification.

Section 3. Treated Sewage Adjustment Factor. (1) The treated sewage adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

(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 administrative regulation were been placed in another administrative regulation, no changes are occurring. Therefore, no individuals, businesses, organizations, or state and local governments are affected by this repeal.

(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): 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 the administrative body to implement this administrative regulation:

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is 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 establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? 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? Public Service Commission; water districts; sewer districts; municipalities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to promulgate administrative regulations. KRS 278.230 authorizes the commission to require a utility to file any information that the commission reasonably requires.

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? There will be no cost to repeal this administrative regulation.

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

$$\text{TSA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Treated Sewage}) - (\text{Base Rate} \times \text{Total Treated Sewage})}{\text{Total Utility Water Sales}}$$

(2) The treated sewage adjustment factor shall be expressed in cents per gallons or cubic foot depending upon the unit of measure that the utility bases its customer bills.

(3) Total treated sewage shall be determined based upon the level of treated sewage for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total treated sewage and total utility water sales.

Section 4. Submitting the Treated Sewage Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

- (a) In accordance with 807 KAR 5:001, Sections 7 and 8; and
- (b) No earlier than thirty (30) days prior to the proposed effective date of the provider's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its treated sewage costs due to the provider's changed rate.

Section 5. Notice. When filing an application for a treated sewage adjustment resulting from a provider's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

- 1. A copy of the public notice; and
- 2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice. A utility shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

- (a) The effective date;
- (b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;
- (c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;
- (d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application and any related documents the utility has filed with the Public Service Commission at the offices of (utility name) located at (utility

address); and

(f) A statement that a person may examine this application and any related documents at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner prescribed in Section 5(2) of this administrative regulation.

Section 7. Refund from a Provider. (1) A utility that receives a refund from its provider for previously paid for treated sewage due to a reduction in the provider's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

- (a) A description of the circumstances surrounding the refund;
- (b) A schedule showing the calculation of the refund factor;
- (c) A copy of the provider's notice of the refund; and
- (d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic foot depending upon the unit of measure that the utility bases its customer bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor when calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Treated Sewage Adjustment Form 1", Treated Sewage Adjustment for Water Districts and Associations, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 12, 2013 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 21, 2013, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for water districts and water associations that provide sewage service to pass through to its customers the cost it pays another entity to treat its customer's sewage.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a timely and simplified method for water districts and water associations that provide sewage service to adjust its rates to pass through to its customers the cost it pays another entity to treat its customer's sewage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a cost effective and timely method for a water district and water association that provides sewage treatment service to pass through changes in costs of its treated sewage.

(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: The proposed amendment will affect water districts and water associations providing sewage service that pay another entity to treat its customer's sewage.

(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 regulation does not require any additional action by the regulated entities identified in question 3. This regulation promulgates longstanding Commission policies and procedures.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): There are no costs to comply. This regulation promulgates longstanding Commission policies and procedures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For a utility that chooses the option to electronically file its treated sewage adjustment application, this regulation will reduce the number of documents that must be filed. Filing the application electronically in lieu of filing paper documents should result in reduced paper, printing, and postage costs for the utility.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is 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 or will be required.

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

(9) TIERING: Is tiering applied? 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? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of this administrative regulation for any governmental agency. The proposed administrative regulation does not provide for the Public Service Commission to assess any fee or charge.

(b) How 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 direct increase in revenue will result from the adoption of this administrative regulation for any governmental agency. The proposed administrative regulation does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing treated sewage adjustment applications is expected to result from the adoption of this administrative regulation. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed regulation is adopted a utility may experience lower expenses when filing treated sewage adjustment applications if the choice is made to electronically file the application. The exact amount of any savings is too difficult to quantify.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing treated sewage adjustment applications is expected to result from the adoption of this administrative regulation. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed regulation is adopted a utility may experience lower expenses when filing treated sewage adjustment applications if the choice is made to electronically file the application. The exact

amount of any savings is too difficult to quantify.

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 the Kentucky Health Benefit Exchange**  
**(New Administrative Regulation)**

**900 KAR 10:050. Individual Agent or Business Entity Participation with the Kentucky Health Benefit Exchange.**

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155

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 of the Office of the Kentucky Health Benefit Exchange relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

Section 1. Definitions. (1) "Advanced payment of premium tax credits" or "APTC" means payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange in accordance with section 1412 of the Affordable Care Act.

(2) "Agent" means an individual described in KRS 304.9-020(1).

(3) "Business entity" is defined by KRS 304.9-020(5).

(4) "Certified application counselor" or "CAC" means an individual employed by, or a volunteer of, an entity designated by the office and the Department for Medicaid Services.

(5) "Cost-sharing reductions" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in an exchange or for an individual who is an Indian enrolled in a qualified health plan in an exchange.

(6) "Date of the notice" means the date on the notice plus five (5) calendar days.

(7) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(8) "Individual market" is defined by KRS 304.17A-005(26).

(9) "In-Person Assister" means an entity performing functions described in 45 C.F.R. 155.205 selected by the Office of KHBE.

(10) "Insurance Affordability Program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the act;

(b) A state children's health insurance program (CHIP) under title XXI of the act;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act.

(11) "Issuer" is defined by 45 C.F.R. 144.103.

(12) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange conditionally approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP beginning January 1, 2014.

(13) "Kentucky Insurance Code" means KRS Chapter 304 and associated administrative regulations.

(14) "Kentucky Online Gateway" means the system for authentication services for users requesting access to the KHBE portal.

(15) "Kynectors" means CACs, in-person assisters, or navigators.

(16) "Navigator" means an entity as described in 45 C.F.R. 155.210 selected by the Office of KHBE.

(17) "Office of the Kentucky Health Benefit Exchange" or "office" or "OKHBE" means the office created to administer the Kentucky Health Benefit Exchange.

(18) "Participating agent" means an agent defined by KRS 304.9-020(1) who has been certified by the office to participate on the KHBE.

(19) "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

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

(21) "Qualified health plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification issued by the OKHBE.

(22) "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market.

(23) "Small group" is defined by KRS 304.17A-005(42).

(24) "Training" means the training established by the office for individual agents and kynectors.

Section 2. Requirements to be a Participating Individual Agent or Business Entity. (1) An individual agent seeking to be a participating agent shall:

(a) Be licensed by DOI with a health line of authority;

(b) Complete the OKHBE approved agent training in accordance with 45 C.F.R. 155.220(d)(2);

(c) Sign an individual agent participation agreement;

(d) Comply with the privacy and security standards of 45 C.F.R. 155.260;

(e) 1. Maintain an appointment with at least two (2) QHP issuers participating on the KHBE; or

2. Maintain a designation with a business entity having an appointment with at least two (2) QHP issuers participating on the KHBE; and

(f) Register with the KHBE through the Kentucky Online Gateway.

(2) A business entity licensed as an agent with a health line of authority seeking to participate with the KHBE shall:

(a) Select an individual to serve as the participating business entity representative who shall:

1. Register with KHBE through the Kentucky Online Gateway as the individual authorized by the business entity;

2. Serve as a primary contact for the office;

3. Ensure that the business entity signs a participation agreement with the office; and

4. Be responsible for ensuring that only an active Kentucky licensed agent designated with the business entity is provided access to the KHBE through the Kentucky Online Gateway;

(b) Designate the individual agents who shall participate on the KHBE through the participating business entity and who shall:

1. Complete the OKHBE agent training provided by the office or an approved party;

2. Sign an agent participation agreement;

3. Comply with the privacy and security standards of 45 C.F.R. 155.260; and

4. Register with the KHBE through the Kentucky Online Gateway; and

(c) Maintain an appointment with at least two (2) QHP issuers participating on the KHBE.

Section 3. Permitted Activities of a Participating Individual Agent or Business Entity. (1) Upon completion of the registration requirements as set forth in Section 2 of this administrative regula-



tion, a participating individual agent or business entity may:

(a) Enroll a qualified individual in any QHP offered through the KHBE in the individual market; or

(b) Assist qualified employers in selecting a QHP and enroll qualified employees in a QHP offered through the KHBE in the small group market; and

(c) Assist an individual in applying for advance payments of the premium tax credit and cost-sharing reductions.

(2) A qualified individual may be enrolled in a QHP through the KHBE by a participating individual agent or business entity if the participating individual agent or business entity ensures the applicant's completion of an application as described in 42 C.F.R. 155.405.

(3) A participating individual agent or business entity shall:

(a) Disclose to potential applicants any relationships the individual agent or business entity has with QHP issuers, insurance affordability programs, or other potential conflicts of interest identified by the OKHBE; and

(b) Not:

1. Impose any charge or fee on an applicant for assistance in completing an application or enrolling in a QHP;

2. Provide compensation or a referral fee to a kynector; and

3. Enter into an exclusive referral agreement with a kynector.

(4) If the office finds noncompliance with the terms and conditions of the individual agent participation agreement, business entity participation agreement, or an administrative regulation of the office, the office shall withdraw an agent's or business entity's registration and participation with the KHBE after:

(a) Giving notice to the participating individual agent or participating business entity; and

(b) An opportunity to respond in accordance with Section 5 of this administrative regulation.

Section 4. Renewal of Participation and Registration with the OKHBE. To maintain registration with the office, a participating individual agent or participating business entity shall:

(1) Comply with annual training prescribed by the office;

(2) Sign an agent or business entity participation agreement; and

(3) Maintain licensure, appointments, and designations as identified in Section 2 of this administrative regulation.

Section 5. Withdrawal of Registration and Appeals. (1) (a) Except as provided in subsection (2) of this section, if the office finds noncompliance with the terms and conditions of an individual agent participation agreement, a business entity participation agreement, or an administrative regulation of the office, the office shall:

1. Provide the participating individual agent or the participating business entity with notice that the applicable registration shall be withdrawn as of the date of notice;

2. Allow the participating individual agent or participating business entity an opportunity to submit evidence of compliance or additional information within ten (10) business days;

3. Review any information submitted by the participating individual agent or participating business entity; and

4. Based on a review of the information provided, issue a decision to withdraw or reinstate the applicable registration of a participating individual agent or participating business entity.

(b) A participating individual agent or participating business entity shall have the right to appeal a decision to withdraw registration in accordance with paragraph (a) of this subsection through the office.

(2) (a) If the health line of authority or licensure of an agent or business entity is suspended, revoked, or has expired, the OKHBE registration of the agent or business entity shall be withdrawn by the OKHBE based on DOI's administrative action.

(b) Any appeal or request of an action by DOI pursuant to paragraph (a) of this subsection shall be made to DOI in accordance with the Kentucky Insurance Code.

(3) After one (1) year following a decision to withdraw the registration of a participating individual agent or participating business entity, the individual agent or business entity may reapply in accordance with Section 2 of this administrative regulation.

WILLIAM J. NOLD

For CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 10, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 September 3, 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 of the Office of the Kentucky Health Benefit Exchange relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform individual agents and business entities of the registration requirements for participation on the Kentucky Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to provide the registration requirements for individual agents and business entities seeking to participate on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed information about the registration requirements for individual agents or business entities seeking to participate on the Kentucky Health Benefit Exchange to comply with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

(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 7,500 individual agents and/or business entities that may request to be registered to participate on the Kentucky Health Benefit Exchange.

(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 individual agent or business entity



will be licensed by DOI, complete OKHBE training, sign a participation agreement, meet privacy and security standards, register with KHBE through the Kentucky Online Gateway, and maintain an appointment with at least 2 QHP issuers participating on the KHBE.

(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 individual agent or business entity for participation on the KHBE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual agent or business entity that seeks to participate on the Kentucky Health Benefit by providing detailed instructions regarding the registration requirements.

(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. Part 155.

(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. Part 155.

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 of the Office of the Kentucky Health Benefit Exchange relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

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 to offer a Qualified Health Plan (QHP) in Kentucky beginning January 1, 2014. An Exchange must make qualified health plans available to qualified individuals and qualified employers. At a minimum, an Exchange must implement procedures for participation of individual agents and business entities seeking to participate on the Exchange. This registration may be done if the individual agent or business entity is licensed by DOI, completes OKHBE training, signs a participation agreement, meets privacy and security standards, registers with KHBE through the Kentucky Online Gateway, and maintains an appointment with at least two (2) QHP issuers participating on the KHBE.

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

##### Department for Public Health

##### Division of Maternal and Child Health

##### (New Administrative Regulation)

#### 902 KAR 18:011. Definitions for 902 KAR Chapter 18.

RELATES TO: KRS 194A.050, 194A.505, 194A.990, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 18.

Section 1. Definitions. (1) "Above-50-percent vendor" means a vendor that receives or is expected to receive more than fifty (50) percent of its annual food sales revenue from WIC benefits.

(2) "Alcohol" is defined by KRS 241.010(1).

(3) "Alcoholic beverage" is defined by KRS 241.010(2).

(4) "Approved product listing" or "APL" means an electronic list or file identifying the food items approved by the state WIC agency for purchase with WIC food instruments by food category and sub-category.

(5) "Authorized supplemental food" means a supplemental food authorized by the state or a local agency for issuance to a particular participant.

(6) "Cash value voucher" is defined by 7 C.F.R. 246.2.

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(7) "Certifying professional authority" means a person authorized to determine eligibility and certify persons for the WIC program.

(8) "Class" means food sale classification.

(9) "Compliance buy" means a covert, on-site investigation.

(10) "Contract price" means the price for a WIC food item negotiated between the state WIC agency and the vendor.

(11) "Dual participation" means simultaneous participation in the WIC Program and in:

(a) One (1) or more WIC clinics; or

(b) The Commodity Supplemental Food Program.

(12) "Electronic WIC benefits" or "eWIC" means a Web-based technology that allows WIC participants to obtain food benefits by using a plastic debit-type card with a personal identification number (PIN) at authorized participating WIC retailers.

(13) "Exempt infant formula" is defined by 7 C.F.R. 246.2.

(14) "FNS" means Food and Nutrition Services.

(15) "Food instrument" is defined by 7 C.F.R. 246.2.

(16) "Good letter with exceptions" means a written notification letter that a compliance buy has been conducted in the store and that a violation occurred; however, no sanction was applied due to lack of pattern of incidence.

(17) "High risk vendor" means a vendor having a high probability of noncompliance with federal and state regulations, policies, and procedures as identified in 902 KAR 18:090.

(18) "Integrated" means a commercial system that fully incorporates eWIC functionality into an existing cash register (ECR) system.

(19) "Inventory audit" means an examination of food invoices or other proof of purchase to determine if a vendor has purchased sufficient quantities of authorized supplemental food to provide to participants the quantities of food items redeemed by the vendor during a given period of time.

(20) "Investigation" means a method used by the state WIC agency to detect a WIC program violation.

(21) "Local agency" means an applying or participating WIC agency.

(22) "Low variance" means the redemption of the same type of food item at the same price or within a narrow price range.

(23) "Medical foods" means enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition when the use of conventional foods is precluded, restricted, or inadequate.

(24) "Not to exceed" or "NTE" means FNS-approved cost containment methodology whereby WIC authorized vendors are subject to price limitations. NTE is the maximum amount that Kentucky will pay for a specific food item identified by its UPC code.

(25) "Participant" means:

(a) A pregnant, breastfeeding, or postpartum woman or an infant or child who is receiving supplemental food or food instruments;

(b) The breastfed infant of a breastfeeding woman who is receiving WIC program benefits;

(c) The parent or caretaker of an infant or child receiving a WIC benefit; and

(d) The proxy for a person identified in paragraphs (a), (b), or (c) of this subsection.

(26) "Participant violation" means an intentional, knowing act of a participant that violates federal or state law governing the WIC program.

(27) "Peer Groups" means categories into which vendors are assigned based upon sales volume and region.

(28) "PIN" means a unique four (4) digit personal identification number designated by the WIC participant.

(29) "Point of sale" or "POS" means the system supporting WIC/eWIC food transactions in a store checkout lane.

(30) "POS device" means a physical electronic cash register or dedicated point of sale hardware or terminal that is used for WIC processing.

(31) "Positive buy" means a compliance buy, on-site review, or on-line WIC transaction review in which evidence of a violation of the vendor agreement or the federal or state law governing the WIC program has occurred.

(32) "Price look up" or "PLU" means a four (4) or five (5) digit

identifier used to identify individual and bulk produce.

(33) "Proxy" means a person designated by a female participant or by a parent or caretaker of an infant or child participant to obtain and transact a food instrument or cash value voucher to obtain a supplemental food or foods on behalf of a participant.

(34) "Routine monitoring" means overt, on-site monitoring during which representatives of the WIC program identify themselves to vendor personnel.

(35) "Rural" means any area not defined as urban.

(36) "Shelf price" means the price displayed on the food item, shelf, or display case where the food item is stored.

(37) "SNAP" means the Supplemental Nutrition Assistance Program, formerly known as the Food Stamp Program.

(38) "Standard bar code" means a printed series of lines of varying width on a container or product that can be read by an optical scanner to determine product classification and price.

(39) "Staple food items" means meat, poultry, fish, bread, breadstuff, cereals, vegetables, fruit, vegetable and fruit juices, and dairy products, excluding items such as coffee, tea, cocoa, carbonated and uncarbonated beverages, condiments, and spices.

(40) "State WIC agency" means the Cabinet for Health and Family Services or its designated representative.

(41) "Systematic review" means a review of electronic WIC transactions by the state WIC agency or its representatives to monitor systematic violations of the program.

(42) "Trafficking" means the redemption or exchange of WIC food instruments for cash, a firearm, ammunition, an explosive, or a controlled substance as defined in 21 U.S.C. 802.

(43) "Unauthorized food" means foods not authorized by the state or local agency for issuance to a particular participant.

(44) "Unique customer" means the number of unduplicated individuals that have one (1) or more transactions at the sanctioned vendor during the specified time period.

(45) "UPC" means a barcode consisting of twelve (12) digits used for tracking trade items in retail stores.

(46) "Urban" means a metropolitan area that is delineated by the Standards for Delineating Metropolitan and Metropolitan Statistical Areas that the Office of Management and Budget (OMB) published on June 28, 2010, in the Federal Register (75 Fed. Reg. 37246-37252).

(47) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one (1) or more stores by providing authorized supplemental foods to participants under a retail food delivery system.

(48) "Vendor authorization" means the process by which the state WIC agency assesses, selects, and enters into an agreement or contract with a store that applies or subsequently reapplies to be authorized as a vendor.

(49) "Vendor overcharge" is defined by 7 C.F.R. 246.2.

(50) "Vendor violation" means an intentional or unintentional act of a vendor's current owner, officers, agent, or employee, with or without the knowledge of management, that violates the vendor agreement or either the federal or state law governing the WIC program.

(51) "WIC agency" means a local health department or agency contracted with the state to deliver WIC services.

(52) "WIC benefits" means a voucher, check, electronic benefits transfer card (EBT), coupon, or document that is used by a participant to obtain supplemental foods.

(53) "WIC program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by Section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786, and administered pursuant to 42 U.S.C. 1786 and 7 C.F.R. 246.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlene Egbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for a new chapter of administrative regulations that establishes and implements the application and participation process for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC) for women, infants, children, and vendors.

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the definitions for 902 KAR Chapter 18.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the definitions for 902 KAR Chapter 18.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide the definitions used in Chapter 18 that implement the Kentucky Supplemental Nutrition Program for Woman, Infant and Child Program (WIC).

(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 Department for Public Health, Local Health Agencies sixty-one (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

(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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites and WIC Participants. WIC Vendors will have to have internet access to meet the qualifications to be a WIC Vendor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC sites, WIC Participants and Vendors will not experience an increase in cost to comply with the regulation.

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

entities identified in question (3): This regulation will provide better understanding of Chapter 18 as it relates to the Supplemental Nutrition Program for Woman, Infants and Children (WIC).

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or entities.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 1. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with 7 C.F.R. 246.

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.

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

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

(b) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(c) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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 regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Maternal and Child Health**  
**(New Administrative Regulation)**

**902 KAR 18:021. Eligibility, certification periods, and time frames for processing applicants.**

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the application and participation process for participants of the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Eligibility. To be certified as eligible to participate in the WIC program, a person shall:

- (1) Be categorically eligible as follows:
  - (a) A pregnant woman;
  - (b) A postpartum woman, up to six (6) months after termination of pregnancy;
  - (c) A breastfeeding woman, up to the infant's first birthday;
  - (d) An infant, birth to one (1) year of age; or
  - (e) A child, one (1) to five (5) years of age;
- (2) Provide proof of residence in the Commonwealth of Kentucky;
- (3) Provide proof of identity as defined by 7 C.F.R. 246.7(c);
- (4) Provide proof of household income and meet the following income criteria:
  - (a) Receive KTAP, SNAP, or Medicaid;
  - (b) A pregnant woman or infant in the household receives Medicaid;
  - (c) A member of the household receives Medicaid; or
  - (d) The household income is at or below 185 percent of poverty;
- (5) Meet the required nutritional risk data at certification:
  - a. Height or length and weight measurements shall be performed and documented.
  - b. Hematological tests shall be performed and documented; and
  - (6) Meet one (1) of the following nutritional risk criteria:
    - (a) A detrimental or abnormal nutritional condition detectable by biochemical or anthropometric measurements, such as:
      1. Anemia;
      2. Underweight;
      3. Overweight;
      4. Abnormal pattern of weight gain in a pregnant woman;
      5. Low weight gain in an infant; or
      6. Stunting in an infant or child; or
    - (b) A documented nutritionally related medical condition such as:
      1. Clinical signs of nutritional deficiency;
      2. Metabolic disorder;
      3. Pre-eclampsia in a pregnant woman;
      4. Failure to thrive in an infant;
      5. Chronic infection;
      6. Alcohol or drug abuse or mental retardation in a woman;
      7. Lead poisoning;
      8. History in a pregnant woman of a high risk pregnancy or an associated factor such as:
        - a. Smoking;
        - b. Conception before sixteen (16) months postpartum;
        - c. Low birth weight, premature birth, or neonatal loss;
        - d. Adolescent pregnancy; or
        - e. Current multiple pregnancy; or
      9. Congenital malformation in an infant or child or an infant born to a woman with:

- a. A history of alcohol abuse;
- b. A history of drug abuse;
- c. Mental retardation;
- d. A dietary deficiency that impairs or endangers health, such as an inadequate dietary pattern as assessed by:
  - (i) A twenty-four (24) hour dietary recall;
  - (ii) Dietary history; or
  - (iii) Food frequency checklist; or
- e. A condition that predisposes a person to an inadequate nutritional pattern or nutritionally related medical condition, such as homelessness or migrancy.

Section 2. Certification Periods. WIC program benefits shall be based upon certifications established in accordance with the following time frames:

- (1) A pregnant woman shall be certified for the duration of her pregnancy and for up to six (6) weeks postpartum.
- (2) A postpartum woman shall be certified for up to six (6) months postpartum.
- (3) A breastfeeding woman shall be certified at intervals of approximately six (6) months, ending with the breastfed infant's first birthday.
- (4) An infant shall be certified at intervals of approximately six (6) months, except an infant under six (6) months of age shall be certified for a period extending up to the first birthday if the quality and accessibility of health care services is not diminished.
- (5) A child shall be certified at intervals of approximately six (6) months, ending with the end of the issuance month in which a child reaches the fifth birthday.

Section 3. Priority System. Vacancies in the WIC program shall be filled as they occur unless maximum participation has been reached. At that time, vacancies shall be filled by a priority system based upon the nutritional risk of the patient.

Section 4. Time Frames for Processing Applicants. Pregnant and breastfeeding women, infants, and migrants shall be screened and notified of WIC program eligibility or ineligibility within ten (10) days of application. All other applicants shall be screened and notified of WIC program eligibility or ineligibility within twenty (20) days of application. WIC benefits shall be provided when participants are notified of certification.

Section 5. Nutrition Education. (1) Nutrition education shall be made available to the participant and shall relate to the participant's nutritional needs, household situation, and cultural preferences.

(2) Tobacco, drug, and other substance abuse information shall be provided to each participant.

(3) Breastfeeding information, including the benefits of breastfeeding, shall be provided to each pregnant participant, unless contraindicated.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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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 Person: Carlene Egbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for the application and participation process for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) for women, infants, and children.

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the application and participation process for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) for women, infants, and children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the eligibility criteria, periods of eligibility and processing time frames for women, infants and children for the Kentucky Supplemental Nutrition Program for Women, Infants and Children Program (WIC).

(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: State WIC Agency, Local WIC Agencies, WIC Vendors and WIC participants will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional changes in the actions will need to be made from any of the three (3) entities.

(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 not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide a more clear understanding of the criteria to qualify participants and the eligibility time frames for woman, infant and children for the Kentucky Supplemental Nutrition Program for Women, Infants and Children Program (WIC).

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, there will be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

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

funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No fees or new funding will be required to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or entities.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact State WIC Agency, Local Agencies, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with KRS Chapter 13B necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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 regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(New Administrative Regulation)

#### 902 KAR 18:031. Participant abuse.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802.

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the sanction schedule for participant abuse of the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Participant Abuse of the Program. (1) The state WIC

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agency or a local agency shall issue a written warning for the following suspected acts for which a complaint is received concerning a participant:

- (a) Purchasing unauthorized foods;
  - (b) Redeeming WIC benefits at an unauthorized store;
  - (c) Making a verbal offer to sell or exchange supplemental food or WIC food instrument(s) with another individual, group, or vendor; or
  - (d) Returning supplemental foods to a vendor for cash.
- (2) The state WIC agency or a local agency shall take the following specified action for an intentional act of abuse by a participant that is proven or documented:
- (a) Redeeming a food instrument before the first day to use or after the last date of use:
    1. First offense: written warning;
    2. Second offense: monthly pickup of food instruments;
    3. Third offense: one (1) month suspension;
    4. Reinstatement of two (2) or three (3) month issuance is at the discretion of the certifying professional authority;
  - (b) Redeeming a food instrument that has previously been reported to the local agency as being lost or stolen and which has been replaced:
    1. First offense: written warning; or
    2. Second and subsequent offenses: claim issued to recoup the WIC benefits that have been redeemed;
  - (c) Purchasing unauthorized food:
    1. First offense: written warning; or
    2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
  - (d) Redeeming WIC benefits at an unauthorized store:
    1. First offense: written warning; or
    2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
  - (e) Verbal abuse or threatening physical abuse of clinic or vendor staff:
    1. First offense: written warning; or
    2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
  - (f) Physical abuse of clinic or vendor staff:
    1. First offense: three (3) month suspension from the WIC program; or
    2. Second and all subsequent offenses: three (3) month suspension from the WIC program;
  - (g) Exchanging or selling supplemental food or WIC food instrument with another individual, group, or vendor:
    1. First offense: three (3) month suspension from the WIC program; or
    2. Second and all subsequent offenses: three (3) month suspension from the WIC program;
  - (h) Exchanging supplemental food or a WIC food instrument for credit, nonfood items, or supplemental food in excess of WIC benefits prescribed:
    1. First offense: three (3) month suspension from the WIC program; or
    2. Second and all subsequent offenses: three (3) month suspension from the WIC program;
  - (i) Posting possible WIC issued foods, benefits, or food instruments for sale in print, online, or allowing another person to do so:
    1. First offense: written warning; or
    2. Second offense: Three (3) month suspension;
  - (j) Dual participation in more than one (1) WIC program or participation in both the WIC program and the Commodities Supplemental Food Program:
    1. First offense: written warning and immediate termination from one (1) of the WIC programs. The continuing WIC agency shall be chosen based upon the participant's residence or services; or
    2. Second and all subsequent offenses: one (1) year disqualification from the WIC program and a claim to recoup WIC benefits previously redeemed;
  - (k) Knowingly and deliberately making a false or misleading statement or misrepresenting, concealing, or withholding a fact in order to obtain program benefits:
    1. First offense: three (3) month disqualification from the WIC

program and a claim issued to recoup the WIC benefits redeemed; or

2. Second and all subsequent offenses: one (1) year disqualification from the WIC program and a claim issued to recoup the WIC benefits redeemed; or

(l) Selling supplemental foods in print or online by posting WIC foods, WIC benefits, or food instruments for sale or allowing another person to do so:

1. First offense: Three (3) month suspension from the WIC program; or

2. Second and all subsequent offenses: Three (3) month suspension from the WIC program.

(3) Mandatory disqualification. Except as provided in subsections (4) and (5) of this section, a participant is disqualified from the WIC program for one (1) year if the state WIC or local WIC agency assesses:

(a) A claim of \$100 or more; or

(b) A second or subsequent claim of any dollar amount.

(4) A mandatory disqualification may not be imposed if, within thirty (30) days of receipt of the claim letter demanding repayment:

(a) Full restitution is made;

(b) A repayment schedule is agreed on; or

(c) The state WIC or local WIC agency approves the designation of a proxy if the participant is an infant, child, or under age eighteen (18).

(5) A participant may be permitted to reapply to participate in the WIC program before the end of a mandatory disqualification period if:

(a) Full restitution is made;

(b) A repayment schedule is agreed upon; or

(c) The state WIC or local WIC agency approves the designation of a proxy if the participant is an infant, child, or under age eighteen (18).

(6) The amount of a claim shall be determined by the value of the WIC benefits redeemed. If the claim is not paid, the participant shall be denied application to the WIC program for the number of months of benefits which were used to calculate the claim amount.

(7) A participant with a pattern of abuse of the WIC program shall be referred to the Office of the Inspector General for prosecution under KRS 194A.505.

(8) Activities prohibited by KRS 194A.505 apply to participants, vendors, and agency personnel. Penalties in KRS 194A.990 apply to participants, vendors, and agency personnel who have violated KRS 194A.505.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlene Egbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation addresses the procedures to follow if participant abuse has occurred or has been suspected.

(b) The necessity of this administrative regulation: KRS 194A.505 outlines prohibited activities that apply to participants, in addition to others. Penalties in KRS 194A.990 may be imposed against persons determined to have violated KRS 194A.505 by committing fraud against an assistance program. This administrative regulation addresses the procedures to follow if participant abuse has occurred or is suspected.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the violations and applicable sanctions for Kentucky Supplemental Nutrition Program for Women, Infants and Children Program (WIC).

(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 Department for Public Health, Local Health Agencies sixty-one (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

(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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants. .

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC sites, Vendors and WIC participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will provide better understanding and guidance as to the procedures to follow if a possible abuse or suspected abuse of the Supplemental Nutrition Program for Women, Infants and Children (WIC) occurs.

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: This regulation does not establish fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or entities.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with C.F.R. 7, Chapter 11, Volume 4, Part 246.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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 regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(New Administrative Regulation)

#### 902 KAR 18:040. Fair hearing procedures for participants.

RELATES TO: KRS 194A.050, 194A.505, 194A.990, 205.080, 205.120, 205.231, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 205.231, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the fair hearing procedures for participants for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Fair Hearing Procedures. (1) In accordance with 7 C.F.R. 246.9, a local agency shall inform an individual in writing of the right to a fair hearing and the method by which a hearing may be requested when the person is:

(a) Determined to be ineligible for the program;

(b) Disqualified or suspended during a certification period; or

(c) Issued a claim.

(2)(a) In accordance with 7 C.F.R. 246.9, a person shall request a fair hearing by contacting the state WIC agency within sixty (60) days from the date the person receives the adverse action letter by hand delivery or by certified mail.

(b) In accordance with 7 C.F.R. 246.9, the hearing shall be accessible to the appellant and shall be held within twenty-one (21) days from the date a person requests a hearing, or the next regular work day if the twenty-first day is a holiday or weekend.

(c) The hearing official shall provide the person with at least ten (10) days advanced written notice of the time and place of the hearing.

(3) The state WIC agency shall not deny or dismiss a request for hearing unless:

(a) The request is not received within the time limit set by subsection (2)(a) of this section;

(b) The request is withdrawn in writing by the appellant or a representative of the appellant;

(c) The appellant or representative fails, without good cause, to appear at the scheduled hearing; or

(d) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to the WIC program eligibility have changed in a way that would justify a hearing.

(4) The hearing shall be conducted in accordance with KRS Chapter 13B, subject to the partial exemption from that chapter, as certified by the Office of the Attorney General, a copy of which certification is available online at <http://chfs.ky.gov/dph/mch/ns/wic.htm>.

(5)(a) In accordance with 7 C.F.R. 246.9, the hearing officer shall complete and submit to the cabinet a written notification of the recommended order no later than forty-five (45) days after the cabinet's receipt of the request for the hearing, which shall include the findings of fact, conclusions of law, and recommended disposition, including recommended penalties, if any.

(b) In accordance with 7 C.F.R. 246.9, decisions of the hearing official shall be based upon the application of appropriate federal and state law, administrative regulations, and policies as related to the facts of the case as established in the hearing record.

(6)(a) Participants who appeal the termination of benefits within the fifteen (15) days advance adverse action notice period provided by 7 C.F.R. 246.7 shall continue to receive WIC program benefits until the hearing officer reaches a decision or the certification period expires, whichever occurs first.

(b) This shall not apply to:

1. Applicants who are denied benefits at initial certification;
2. Participants whose certification periods have expired; or
3. Participants who become categorically ineligible.

(c) If the hearing officer's recommended order concerns disqualification and is in favor to the state WIC agency, as soon as administratively feasible any continued benefits shall be terminated.

(d) If the decision regarding repayment of the benefits by the appellant is in favor of the state WIC agency, efforts to collect the claim shall be resumed, even during pendency of an appeal of a fair hearing decision.

(7)(a) The appellant may appeal a hearing officer's decision to the Appeal Board for Public Assistance by filing exceptions to the recommended order in accordance with KRS 13B.110(4).

(b) Exceptions shall be filed with or mailed to Cabinet for Health and Family Services, Office of the Secretary, Appeal Board for Public Assistance, 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.

(c) Each party in the hearing shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order with the cabinet.

(d) A party may file a response to an opposing party's exceptions within twenty-five (25) days from the date the recommended order is mailed.

(e) Exceptions and responses to exceptions shall be considered filed on the date they are received by the cabinet.

(8) Any party aggrieved by the decision of the Appeal Board for Public Assistance may seek judicial review of the decision by filing a petition in the circuit court of the county in which the petitioner resides, in accordance with KRS 13B.140, 13B.150, and 13B.160.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlene Egbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Fair Hearing Procedures for Participants for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the Fair Hearing Procedures for Participants for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the Fair Hearing Procedures for Participants for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures for hearings for participants who have been denied benefits, disqualified or issued a claim by the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

(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 Department for Public Health, Local Health Agencies sixty-one (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

(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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC sites, Vendors and WIC Participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides a better understanding of the fair hearing procedures for participants who have been denied benefits, disqualified or issued a claim by the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with 7 C.F.R. 246.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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 regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (New Administrative Regulation)

#### 902 KAR 18:050. Vendor Authorization Criteria.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802.

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor authorization criteria for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Vendor Authorization Criteria. (1) Only a vendor authorized by the state WIC agency shall redeem a food instrument.

(2) Each store operated by a business entity shall be authorized separately from other stores operated by the business entity.

(3) Each store shall have a single, fixed location and redeem the WIC food instruments and provide the WIC foods within the four (4) walls of the establishment.

(4) A retailer authorized as a pharmacy shall only redeem food instruments for exempt infant formulas and medical foods.

(5) Food vendors shall be authorized in sufficient numbers and with distribution adequate to ensure:

(a) Participant convenience and access; and

(b) Effective management of vendor review by the cabinet and the local agency.

(6) In order to be an authorized WIC vendor, a vendor shall:

(a) Provide information, including sales volume and an updated application, requested by the state WIC agency;

(b) Stock, at all times, minimum inventory in accordance with the Quantified Minimum Inventory Requirements outlined in the Kentucky WIC Manual for Applying Retailers:

1. The stock shall be in the store or in the store's stockroom;

2. Expired foods shall not count towards meeting the minimum inventory requirement; and

3. A pharmacy shall supply exempt formula or medical foods within forty-eight (48) hours of the state WIC agency request;

(c) Obtain infant formula only from the listing of Kentucky WIC Program Authorized Suppliers of WIC Approved Infant Formulas, <http://chfs.ky.gov/dph/mch/Vendor+Management.htm>;

(d) Except for a pharmacy, be in compliance with the Kentucky Retail Market Sanitation Regulations, 902 KAR 45:005, and have a valid retail food establishment or retail food store permit in the current owner's name;

(e) Except for a pharmacy, be an authorized SNAP retailer;

(f) Have competitive prices with other authorized WIC vendors in the area, compared according to the policy outlined in the WIC Manual for Applying Retailers and the Manual for Contracted WIC Vendors;

(g) Display the prices of WIC approved food items on each item or on the shelf or display case where the items are located. A cost plus ten (10) percent store shall post the final price (WIC price) on the shelf or on the signage in aisle;

(h) Be in compliance with the other Food and Nutrition Service programs or the Medicaid program, including:

1. Not be disqualified or withdrawn by the United States Department of Agriculture from participation in another Food Nutrition Service program or the Medicaid program;

2. Not be denied application to participate in SNAP or Medicaid;

3. Not be currently paying a civil money penalty to SNAP or

Medicaid; or

4. Not have been assessed a civil money penalty by SNAP or Medicaid, and the disqualification period that would otherwise have been imposed has not expired;

(i) Request authorization for a business whose primary purpose is to be a retail grocery.

1. A direct distribution outlet or wholesale food establishment shall not be eligible.

2. A vendor who derives more than fifty (50) percent of annual food sales revenue from the sale of food items that are purchased with WIC food instruments shall not be eligible.

3. A retail grocery shall:

a. Have a separate and distinct grocery department in a stationary location which stocks staple food items in addition to WIC approved foods; and

b. Have fifteen (15) percent of gross sales in nontaxable food sales, excluding specialty items such as bakery goods for a bakery or produce for a fruit and vegetable stand.

4. A dairy or home delivery grocery shall not be approved if it operates solely as a mobile operation.

5. The use of drive-up windows shall not be approved;

(j) Be registered with the Secretary of State and be in good standing according to <http://sos.ky.gov/business>, if a corporation or partnership;

(k) Be open for business year round at least eight (8) hours per day, six (6) days per week;

(l) Be accessible to monitoring by state and federal officials without prior notice;

(m) Not be indebted to the WIC program for an unpaid claim or a civil money penalty against a store owned or previously owned by the applying owners; and

(n) Have the capability to accept WIC program benefits electronically. A store shall have the use of an internet cable or a currently Food and Nutrition Services certified system to accept online WIC EBT.

(7) The WIC program shall not authorize a vendor applicant if, during the last six (6) years, an applicant current owner, officer, or manager has been convicted of or had a civil judgment for:

(a) Fraud;

(b) Antitrust violation;

(c) Embezzlement, theft, or forgery;

(d) Bribery;

(e) Falsification or destruction of records;

(f) Making false statements or claims;

(g) Receiving stolen property;

(h) Obstruction of justice; or

(i) Another act reflecting on the business integrity and reputation of the applicant, such as removal from other federal or state programs.

(8) The WIC program shall not authorize a store that has attempted to circumvent a period of disqualification from the program, including a store that has undergone a sale or changes of operation if the transaction involved the following parties:

(a) The seller or transferor is an owner, operator, or manager currently suspended, sanctioned, or disqualified from WIC, SNAP, or Medicaid; and

(b) The buyer or transferee is related to the seller by marriage or consanguinity within the fourth degree, or was a manager or employee of the seller when the sanction, suspension, or disqualification was issued or the violation occurred.

(9) A contract shall not be entered into with a vendor if the contract would cause a conflict of interest, real or apparent.

(10) The WIC program shall terminate a vendor contract if it determines the vendor or vendor's employee provided false information in connection with the vendor application.

(11) An authorized WIC vendor shall send appropriate employees (owner, manager or head cashier) to attend state WIC agency required training.

(12) If an applying retailer does not meet the criteria upon review by either the local or state WIC agency:

(a) The applying retailer will be notified in writing;

(b) After two (2) reviews, the applying retailer cannot apply for the program for sixty (60) days from the date of denial;

(c) After three (3) reviews, the applying retailer cannot apply for

120 days from the date of the denial;

(d) Each subsequent denial shall result in an additional sixty (60) day denial.

(13) A person aggrieved by a decision of the cabinet may file a written request for a hearing with the cabinet within fifteen (15) days after receipt of notice of the adverse action. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky WIC Manual for Applying Retailers", 2013; and

(b) "Manual for Contracted WIC Vendors", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlene Egbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Vendor Authorization Criteria for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as well as the Incorporation by Reference.

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor authorization criteria for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as well as the Incorporation by Reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the vendor authorization criteria for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as well as the Incorporation by Reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide a clear understanding of the guidelines and the criteria for vendor authorization for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as well providing a list of the materials Incorporated by Reference.

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

(a) How the amendment will change this existing administrative regulation: This 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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

(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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC sites, Vendors and WIC Participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will outline the criteria and process to be an authorized WIC vendor. It also ensures only qualified vendors are approved to be WIC Vendors for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with C.F.R. 7, Chapter 11, Volume 4, Part 246.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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 regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Maternal and Child Health

##### (New Administrative Regulation)

#### 902 KAR 18:061. Vendor violations and sanctions.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor violations and sanctions for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Vendor Violations and Sanctions. (1) In addition to any criminal penalty imposed pursuant to KRS 194A.990, the cabinet shall impose one (1) or more of the following civil sanctions for designated violations committed by a vendor, his employee, or agent:

(a) Failure of a vendor to meet the authorization criteria in 902 KAR 18:050:

1. First occurrence: a sixty (60) day disqualification or non-renewal;

2. Second occurrence: a ninety (90) day disqualification or non-renewal; or

3. Third and subsequent occurrences: a 120 day disqualification or non-renewal;

(b) Failure of a vendor to pay a claim. The state WIC agency shall request payment as follows:

1. Mail a letter to the vendor requesting payment by a specified date;

2. If payment was not received, the state WIC agency shall contact the vendor by either email or telephone, reminding vendor of payment due; and

3. If payment was not received, the state WIC agency shall send a second letter by certified mail, return receipt requested, of past due claim:

a. First occurrence: a six (6) month disqualification; or

b. Second occurrence and subsequent occurrences: a one (1) year disqualification from the WIC program;

(c) Failure of a vendor to return the WIC vendor authorization stamp and XAC device (if applicable) to the local WIC agency within seven (7) days of receipt of disqualification or termination letter

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shall result in an additional six (6) month disqualification when the following condition has been met: the state WIC agency contacted the vendor by telephone to request the return of the stamp and XAC device;

(d) Store personnel requesting the PIN: two (2) positive buys out of three (3) shall result in a one (1) year disqualification;

(e) Using the integrated or WIC XAC device Cash Value Benefits (CVB) functionality to provide non-produce food item(s): two (2) positive buys out of three (3) shall result in a one (1) year disqualification from the WIC program;

(f) Providing free merchandise exclusively to WIC participants as an incentive to redeem WIC benefits: one (1) positive buy out of three (3) shall result in a six (6) month disqualification;

(g) Public notice by a WIC vendor of providing free merchandise exclusively to participants as an incentive to redeem WIC benefits: one (1) occurrence shall result in a six (6) month disqualification;

(h) Conviction of trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a permanent disqualification;

(i) Trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a six (6) year disqualification;

(j) Sale of alcohol or alcoholic beverage or tobacco product in exchange for a food instrument: one (1) positive buy shall result in a three (3) year disqualification;

(k) Claiming reimbursement for the sale of an amount of a specific supplemental food item, which exceeds the vendor's documented inventory of that supplemental food item for a specific period of time:

1. An inventory audit for a thirty (30) day period, which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification; or

2. An inventory audit for a ninety (90) day period, which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification;

(l) Charging a participant more for supplemental food than:

1. A non-WIC customer is charged; or

2. The current shelf price shall result in the following disqualifications:

a. Two (2) positive buys out of three (3) shall result in a three (3) year disqualification from the WIC Program if:

(i) The vendor has exhibited a prior pattern of overcharging during the prior federal fiscal year based upon routine monitoring visits which have resulted in two (2) letters for price discrepancies.

(ii) The state WIC agency shall require a vendor who has received two (2) letters for price discrepancies during the federal fiscal year to receive training provided by the state WIC agency.

b. Three (3) positive buys out of three (3) shall result in a three (3) year disqualification for a vendor who does not meet the conditions in clause a.(i) of this subparagraph;

(m) Receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or unauthorized person: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(n) Charging for supplemental food not received by the participant, such as charging for one (1) food item or more listed on the WIC benefits but not purchased by the WIC participant: three (3) positive buys out of three (3) shall result in a three (3) year disqualification;

(o)1. Providing credit, an IOU, a rain check, a due bill, or a store credit; or

2. Providing a nonfood item other than cash, alcohol, tobacco, firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. 802, in exchange for food benefits: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(p) Providing an unauthorized food item or items in exchange for a food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(q) Charging for supplemental food provided in excess of those listed on the food instrument: three (3) positive buys out of four (4)

shall result in a one (1) year disqualification;

(r) A vendor who has been disqualified from the SNAP shall be disqualified from the WIC program for the same length of time as the SNAP disqualification; or

(s) A vendor who has been assessed a civil money penalty by SNAP, as provided under 7 C.F.R. 278.6, shall be disqualified from the WIC program for the same length of time for which the vendor would have been disqualified from SNAP unless the WIC program determines that disqualification would result in inadequate participant access, in which case a penalty shall not be assessed.

(2) If multiple vendor violations are found during an investigation, the length of the disqualification shall be determined by the most serious violation.

(3) A vendor who has previously received two (2) or more of the mandatory sanctions designated in subsection (1)(h) through (q) of this section, and who receives another sanction for a violation designated in subsection (1)(h) through (q) of this section, the third and all subsequent sanctions shall be doubled. A civil monetary penalty shall not be assessed for a third or subsequent sanction.

(4) Disqualified vendors, even if the decision is later overturned, shall not be entitled to receive compensation for revenues lost as a result of a disqualification.

Section 2. Vendor Notification (1) Except for violations identified in Section 1(1)(a) through (c), (f) through (j), (r) and (s) of this administrative regulation, the state WIC agency shall notify a vendor in writing if an investigation reveals a potential initial violation.

(2) The vendor shall be notified before another violation is documented unless the state WIC agency determines that notifying the vendor would compromise the investigation.

(a) The notification determination shall be made on a case by case basis.

(b) A notification of a potential initial violation shall not be issued if:

1. The vendor is identified as a high-risk vendor in accordance with 902 KAR 18:090;

2. One (1) or more of the same type of violation occurred within the same federal fiscal year of prior federal fiscal year and the vendor has received prior notification; and

3. Sending a notification letter would divulge the identity of the investigator.

STEPHANIE MAYFIELD GIBSON, MD, FCAP Date, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, Phone:  
502-564-7905, Fax: 502-564-7573

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the vendor violations and sanctions in regards to the Kentucky Special Supplemental Nutrition Program

for Women, Infants and Children (WIC).

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor violations and sanctions in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the vendor violations and sanctions in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will outline vendor violations and the applicable penalties for those violations.

(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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

(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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC site, Vendors and WIC Participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will outline vendor violations and the applicable penalties for those violations. The violations and penalties have been revised to incorporate the new WIC electronic benefit delivery system (EBT).

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not appropriate in this administrative regulation since it ap-

plies equally to all those individuals or entities.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with 7 C.F.R. 246.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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 regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Public Health

### Division of Maternal and Child Health

### (New Administrative Regulation)

## 902 KAR 18:071. Participant access determination and civil money penalty.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes procedures for WIC vendor disqualification including the participant access determination and civil money penalty.

Section 1. Participant Access Determination. (1) Except for a violation specified in 902 KAR 18:061, Section 1(1)(h) and (i), prior to disqualifying a vendor for a violation specified in 902 KAR 18:061, the state WIC agency shall determine if disqualification of the vendor will result in inadequate participant access.

(2) Mileage shall be measured by automobile odometer or geotagging.

(3) The determination and documentation of adequate participant access shall be made using the following criteria:

(a) The sanctioned vendor is located within:

1. A metropolitan area, as defined by the U.S. Office of Management and Budget (OMB) Bulletin No. 13-01, and there is another authorized vendor located within two (2) miles of the sanctioned vendor; or

2. A nonmetropolitan area and there is another authorized vendor located within seven (7) miles of the sanctioned vendor;

(b) The sanctioned vendor has redeemed food instruments for medical foods or exempt infant formula within thirty (30) days preceding the date of the letter issuing the notice of disqualification, and there is another authorized vendor within the designated mileage as defined in paragraph (a) of this subsection who can supply the products which were previously redeemed;

(c) The sanctioned vendor has redeemed food instruments from a minimum number of unique customers within thirty (30) days preceding the date of the letter issuing the notice of disqualification.

1. The following are the minimum number of customers according to the vendor's peer group:

- a. Class 1: forty (40) or more unique customers;
- b. Class 2: seventy-five (75) or more unique customers;
- c. Class 3: 100 or more unique customers;
- d. Class 4: 200 or more unique customers; or
- e. Class 5: forty (40) or more unique customers.

2. If a sanctioned vendor meets the criteria for unique customers, then the local agency WIC coordinator or designee shall be consulted to determine if:

a. Conditions exist which would allow travel using public transportation to another authorized WIC vendor within the designated mileage in paragraph (a)1. of this subsection;

b. Crosswalks exist across multilane highways or railroad tracks if another authorized WIC vendor is located in a metropolitan area; or

c. Impassable mountain or an unbridged river would prevent travel if another authorized WIC vendor is located in a non-metropolitan area.

(4) If the WIC program determines there is adequate participant access, retailers shall be afforded the opportunity to submit written documentation providing evidence of the impact of the adverse action on WIC participants.

(5) If inadequate participant access is determined pursuant to subsection (3) of this section, a civil money penalty shall be assessed for a violation listed in 902 KAR 18:061. The civil money penalty shall be calculated in accordance with the procedures outlined in the Manual for Contracted WIC Vendors incorporated by reference in 902 KAR 18:050.

(6) The written documentation shall be received by the state WIC agency within fifteen (15) days from the date of receipt of the state WIC agency notification of disqualification. If the written documentation is not received within fifteen (15) days, further consideration shall not be given to participant access.

(7) Upon receipt and the review of the documentation, the WIC program shall send, within thirty (30) days, a written summary of the participant access review to the vendor. The vendor may then request a hearing in accordance with 902 KAR 18:081.

Section 2. Civil Money Penalty. (1) The WIC program may negotiate an installment plan for the collection of a civil money penalty if requested by the vendor in writing prior to the payment due date.

(2) A vendor that fails to pay, partially pay, or timely pay a civil money penalty within the required time frame shall be disqualified for the length of time corresponding to the most serious violation.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlene Egbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the participant access determination and civil money penalty in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the participant access determination and civil money penalty in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the participant access determination and civil money penalty process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a process to determine if removing a vendor who has violated the WIC Program, will create a hardship for participants. It also outlines the process to determine the resulting civil money penalty.

(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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

(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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC sites, Vendors and WIC Participants will not experience an increase in cost to comply with the regulation.

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



entities identified in question (3): This administrative regulation will help to ensure that removing a vendor, who has violated the Program, will be assessed a penalty even if there is a participant hardship.

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with 7 C.F.R., Chapter 11, Volume 4, Part 246.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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 regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (New Administrative Regulation)

#### 902 KAR 18:081. Local agency and vendor hearing process and administrative appeal process.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the local agency's and vendor's rights to a hearing in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Local Agency. (1) A local agency may request a hearing for the following adverse actions:

- (a) Denial of a local agency's application;
- (b) Disqualification of a local agency; and
- (c) Any other adverse action that affects a local agency's participation.

(2) The following state WIC agency actions shall not be subject to administrative review:

- (a) Expiration of the local agency's agreement; and
- (b) Denial of a local agency's application when the state WIC agency has issued a request for bid and followed finance procurement procedures.

(3) The following shall be the effective dates of adverse actions against local agencies:

- (a) Denial of local agency applications shall be effective immediately;
- (b) Adverse actions in subsection (1)(b) and (c) of this section shall be effective no later than sixty (60) days after the date of the notice of adverse action is served by hand delivery or certified mail receipt; and
- (c) Adverse actions that are appealed shall be effective the date that the local agency receives the hearing decision.

Section 2. Vendor Right to a Hearing or Administrative Review. (1) In accordance with 7 C.F.R. 246.18, a vendor aggrieved by a qualifying adverse action may request a hearing for the following:

- (a) Denial of authorization based on the vendor authorization criteria found in 902 KAR 18:050;
- (b) Termination of an agreement;
- (c) Disqualification in accordance with 902 KAR 18:061; and
- (d) Imposition of a fine or civil money penalty in lieu of a disqualification in accordance with 902 KAR 18:071.

(2) In accordance with 7 C.F.R. 246.18, the following state WIC agency actions shall not be subject to administrative review under this section:

- (a) The validity or appropriateness of the vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;
- (b) The validity or appropriateness of the selection criteria for competitive price, including vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors;
- (c) The validity or appropriateness of the participant access criteria and the state WIC agency's participant access determinations;
- (d) The determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list of entities where infant formula can be purchased;
- (e) The validity or appropriateness of the prohibition of incentive items;
- (f) The determination not to notify a vendor in writing when an

investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;

(g) The determination that a vendor did not have a policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;

(h) The expiration or non-renewal of a vendor's agreement;

(i) Disputes regarding food instrument payments and vendor claims; or

(j) Disqualification of a vendor as a result of disqualification from the SNAP.

Section 3. Hearing or Administrative Appeal. (1) A vendor or local agency may file a written request by hand delivery or certified mail with the state WIC agency within fifteen (15) days after receipt of notice of the adverse action.

(2) The hearing shall be conducted in accordance with KRS Chapter 13B.

(3) Within fifteen (15) days of a request for a hearing, the cabinet shall issue a date of hearing.

(4) The state WIC agency may dismiss a request for hearing if:

(a) The request is not received within the time limit set by this administrative regulation;

(b) The request is withdrawn in writing by the appellant or a representative of the appellant; or

(c) The appellant or representative fails, without good cause, to appear at the scheduled hearing.

(5) To protect the identity of the state WIC agency investigators, cross examinations of these witnesses shall be conducted behind a protective screen or other device in accordance with 7 C.F.R. 246.18.

(6)(a) In accordance with 7 C.F.R. 246.18, the hearing officer shall issue a written recommended order no later than ninety (90) days after the cabinet receives the request for the hearing which shall include:

1. The findings of fact;

2. Conclusions of law; and

3. Recommended disposition, including recommended penalties, if any, in accordance with KRS 13B.110.

(b) In accordance with 7 C.F.R. 246.18, decisions of the hearing official shall be based on the applicable state and federal law and the facts of the case as established in the official record of the hearing as defined in KRS 13B.130.

(c) A hearing officer shall not have authority to reduce or modify sanctions that are prescribed by WIC statutes, regulations, or policies.

(7) Exceptions to the hearing officer's recommended order shall be filed with or mailed to Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.

(8) Each party in the hearing shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order, as provided in KRS 13B.110.

(9) A party may file a response to an opposing party's exceptions within twenty-five (25) days from the date the recommended order is mailed.

(10) Exceptions and responses to exceptions shall be considered filed on the date they are received by the cabinet.

(11) Appealing an action shall not relieve an appellant from the responsibility of continued compliance with WIC program regulations, policies, and procedures.

(12) The final order shall be issued in accordance with KRS 13B.120.

(13) In accordance with 7 C.F.R. 246.18, the state WIC agency shall make denials of authorization and disqualifications imposed under 902 KAR 18:061 effective on the date of receipt of the notice of adverse action.

Section 4. In accordance with KRS 13B.140, any party aggrieved by the final order may seek judicial review of the decision by filing a petition within thirty (30) days of receipt of final order notice in the Franklin Circuit Court or the circuit court of the county in which the party resides or operates a business.

STEPHANIE MAYFIELD GIBSON, MD, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlene Egbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a local agency and a vendor's right to a hearing and the administrative appeals process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the local agency's and vendor's right to a hearing and the administrative appeals process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the Local Agency's Right to a Hearing in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the procedures to follow for local agency's and vendor's rights to a hearing and the administrative appeals process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

(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 changes in the actions will need to be made from the Department of Public Health, Local Health Agencies, Local WIC Sites, Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, local agencies, local WIC sites, vendors and WIC participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation outlines procedures to follow in regards to the Local Agency's Right to a Hearing in regards for local agency's and vendor's right to a hearing and the administrative appeals process in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

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

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No fees or new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors, and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with 7 C.F.R. 246.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated for state or local government in the first year of implementing this regulation.

(b) How much revenue will this administrative regulation generate for the state and local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated for state or local government in the subsequent years of implementing this regulation.

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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

regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (New Administrative Regulation)

#### 902 KAR 18:090. High Risk Criteria.

RELATES TO: KRS, 194A.050, 194A.505, 194A.990, 205.080, 205.120, 205.231, 7 C.F.R. 246, 7 C.F.R. 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 205.231, 211.090(3), 7 C.F.R. 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the high risk criteria for contracted retailers with the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. High Risk Criteria. In accordance with 7 C.F.R.. 246.12, high-risk vendors shall be identified at least once each federal fiscal year. The criteria and points established in this section shall be assessed.

(1) A vendor with low variance, as defined by 902 KAR 18:011, Section 1, shall be assessed five (5) points per quarter.

(2) A vendor who has greater than or equal to twenty (20) percent but less than fifty (50) percent of the vendor's quarterly WIC transactions ending in whole dollar amounts shall be assessed five (5) points per quarter. The transactions shall not include produce and formula.

(3) A vendor who has greater than or equal to fifty (50) percent of the vendor's quarterly WIC transactions ending in whole dollar amounts shall be assessed ten (10) points per quarter. The transactions shall not include produce and formula.

(4) A vendor in which six (6) or more gallons of milk were redeemed in a single transaction, occurring in thirty (30) or more transactions a quarter, shall be assessed five (5) points per quarter.

(5) A vendor with full package redemptions in one (1) transaction occurring in twenty (20) or more transactions per quarter shall be assessed five (5) points per quarter.

(6) A vendor shall be assessed ten (10) points for every overcharge letter unless the overcharge is justified in writing and accepted by the state WIC agency.

(7) A vendor with a lack of inventory, as outlined in the Kentucky WIC Manual for Applying Retailers, shall be assessed five (5) points per occurrence during a monitoring visit.

(8) A vendor whose prices for transactions are greater than or equal to ninety (90) percent above the NTE shall be assessed five (5) points per quarter.

(9) A vendor whose percentage of WIC sales to food sales is greater than twenty (20) percent shall be assessed five (5) points for every ten (10) percent increment per federal fiscal year.

(10) A vendor who has redeemed more than \$2,000 in transactions per federal fiscal year from out of its contracted agency shall receive one (1) point per federal fiscal year.

(11) A vendor who received a Good Letter with Exceptions shall be assessed five (5) points per letter.

Section 2. High Risk Referrals. A vendor who is assessed thirty (30) points or more per federal fiscal year shall be referred to a federal, state, or local law enforcement agency for a compliance investigation.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY TAYSE HAYNES, Secretary

## VOLUME 40, NUMBER 2 – AUGUST 1, 2013

APPROVED BY AGENCY: July 10, 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, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone 502-564-7905, fax 502-564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlene Egbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Criteria used to determine High-Risk Vendors for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the criteria used to determine High-Risk Vendors for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050 to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. This administrative regulation establishes the criteria used to determine High-Risk Vendors for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria used to determine High-Risk Vendors for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(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 Department for Public Health, Local Health Agencies (61), WIC sites (148) WIC Vendors (886) and WIC Participants (128,883).

(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 changes in the actions will need to be made from the Department of Public Health, Local

Health Agencies, Local WIC Sites, Vendors and WIC Participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Public Health, Local Agencies, Local WIC sites, Vendors and WIC Participants will not experience an increase in cost to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides a better understanding of the fair hearing procedures for participants who have been denied benefits, disqualified or issued a claim by the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(b) On a continuing basis: On a continuing basis, additional funding is not required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The initial funding was from a grant from the USDA Food and Nutrition Services. There would be no additional cost to the cabinet to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No fees or new funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation since it applies equally to all those individuals or entities.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Department of Public Health, Local Health Agencies, WIC Sites, WIC Vendors and WIC participants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 authorizes the Department for Public Health to promulgate, administer, and enforce those administrative regulations in accordance with C.F.R. 7, Chapter 11, Volume 4, Part 246.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated for state or local government in the first year of implementing this regulation.

(b) How much revenue will this administrative regulation generate for the state and local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated for state or local government in the subsequent years of implementing this regulation.

(c) How much will it cost to administer this program for the first year? There is no cost to the local or state governments to implement this regulation the first year.

(d) How much will it cost to administer this program for the subsequent years? There is no cost to the local or state governments 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 regulations.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Commissioner's Office**  
**(Repealer)**

**907 KAR 10:018. Repeal of 907 KAR 10:017, 907 KAR 10:372, and 907 KAR 10:376.**

RELATES TO: 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Kentucky Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation repeals 907 KAR 10:017, 907 KAR 10:372, and 907 KAR 10:376. 907 KAR 10:017 is being repealed as the program addressed in the administrative regulation no longer exists. 907 KAR 10:372 and 907 KAR 10:376 are being repealed as the policies for those programs are established in other administrative regulations within Title 907.

Section 1. The following administrative regulations are hereby repealed:

(1) 907 KAR 10:017, Hospital indigent care assurance program (HICAP);

(2) 907 KAR 10:372, Incorporation by reference of the Mental Hospital Services Manual; and

(3) 907 KAR 10:376, Incorporation by reference of the Hospital Services Manual.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 3, 2013

FILED WITH LRC: July 3, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2013, at 9:00 a.m. in the Cabinet for Health and Family Services, Office of the Ombudsman's Conference Room Located on the First Floor at 1E-B; 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 3, 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 40601, phone (502) 564-7905, fax (502) 564-7573, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(c), repeals 907 KAR 10:017, Hospital indigent care assurance program (HICAP); 907 KAR 10:372, Incorporation by reference of the Mental Hospital Services Manual; and 907 KAR 10:376, Incorporation by reference of the Hospital Services Manual.

(b) The necessity of this administrative regulation: 907 KAR 10:017, Hospital indigent care assurance program (HICAP) is being repealed as the program addressed in the administrative regulation no longer exists. 907 KAR 10:372, Incorporation by refer-

ence of the Mental Hospital Services Manual and 907 KAR 10:376, Incorporation by reference of the Hospital Services Manual are being repealed as the policies for those programs are established in other administrative regulations within Title 907.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals obsolete or duplicate Medicaid program regulatory material as authorized by KRS 194A.030(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by repealing obsolete or duplicate Medicaid program regulatory material as authorized by KRS 194A.030(2).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This repealer administrative regulation is not expected to affect individuals, businesses, organizations, or local government. The administrative regulation will affect the Department for Medicaid Services in that archaic and potentially contradictory policies will no longer be established in archaic administrative regulations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). No benefit, other than the elimination of potentially confusing archaic administrative regulation material, is expected for regulated entities.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The administrative regulation imposes no cost on the Department for Medicaid Services.

(b) On a continuing basis: The administrative regulation imposes no cost on the Department for Medicaid Services.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the 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 fee nor funding increase is necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes nor increases any fee.

(9) Tiering: Is tiering applied? Tiering is not applied as this is a repealer 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 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. This administrative regulation authorizes the action being 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? This administrative regulation will generate no revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no administrative cost on the Department for Medicaid Services.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no administrative cost on the Department for Medicaid Services.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of July 9, 2013

**Call to Order and Roll Call**

The July 2013 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 9, 2013, at 10:00 a.m., in Room 149 of the Capitol Annex. Senator Ernie Harris, Co-chair, called the meeting to order, the roll call was taken. The minutes of the June 2013 meeting were approved.

**Present were:**

**Members:** Senators Joe Bowen, Perry Clark, and Ernie Harris, and Representatives Johnny Bell, Robert Damron, Jimmie Lee, and Tommy Turner.

**LRC Staff:** Dave Nicholas, Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Laura Napier, and Betsy Cupp.

**Guests:** Dinah Bevington, Personnel Cabinet; Steve Hart, Board of Pharmacy; Jonathan Buckley, David Cox, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Paula Schenk, Jimmy Isenberg, Board of Nursing; Anne-Tyler Morgan, Chuck O'Neal, Board of Emergency Medical Services; Thomas B. Gabbard, Sandra Gruzesky, Franklin C. Hall Jr, Division of Water; Kevin Brown, Hiren Desai, Amy Peabody, Kay Kennedy, Department of Education; Dustin R. Adams, Melissa Beasley, Anthony Hudgins, Clay Lamb, Education and Workforce Development Cabinet; Trey Heineman, Freddy Higdon, Steve Humphress, Department of Alcohol Beverage Control; John C. Allader, Michael T. Davis, David Moore, Ambrose Wilson, Department of Housing, Buildings and Construction; Stuart Owen, Department for Medicaid Services; Bob Babbage, Jim McGowan, American Diabetes Association; Teresa Combs, Sarah Nicholson, Kentucky Hospital Association; Malicia Hitch and Heidi Schissler, Department of Protection and Advocacy; Dan O'Brien, Ryan Stanton, MD, Kentucky Chapter of American College of Emergency Physicians; Jordan Absher, Wanda Johnson, Apple's Wine and Spirits; Charles Cole, Mayor Eddie Girdler, City of Somerset; and Chris Daniels, Wildcat Beer, Wine and Spirits Inc.

**The Administrative Regulation Review Subcommittee met on Tuesday, July 9, 2013, and submits this report:**

**The Subcommittee determined that the following administrative regulation did not comply with statutory requirements and was deficient:**

**PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Quotas**

804 KAR 9:040. Retail liquor package license quota. Trey Hieneman, special assistant; Frederick Higdon, commissioner; and Stephen Humphress, general counsel, represented the department. Nick Bradley, Somerset official; Charles Cole, attorney; and Eddie Girdler, Somerset mayor, appeared in support of this administrative regulation. Jordan Absher, manager, Apple's Wine and Spirits; Chris Daniels, vice president, Wildcat Beer, Wine and Spirits, Inc.; Wanda Johnson, owner, Apple's Wine and Spirits; and Jason Nemesis, attorney, appeared in opposition to this administrative regulation.

In response to questions by Representative Lee, Mr. Humphress stated that KRS 246.201 authorized the board to establish liquor package licenses. Each city voted to repeal prohibition or not. Until recently, few cities opted to change status; however, in the recent past two (2) years, approximately a dozen cities voted to repeal prohibition. The board used population and other data to determine the number of licenses appropriate for a given city. Case law established clearly that the acceptance of a license was accompanied by inherent business risks, including the risk of increased competition, which may be the case if more licenses were issued now or in the future. Mr. Higdon stated that the agency criteria included population, local retail demographics, and location (for example, if the area was near a tourist venue). A hearing was

held, open to the public, to present data and discuss licensing options prior to license issuance.

Representative Lee stated that the doubling of licenses occurred after the licensing-related public hearing held by the agency, which was separate from the regulatory public hearing required by KRS Chapter 13A.

In response to questions by Representative Turner, Mr. Higdon stated that the license quota was changed through the administrative regulation process, as an Amended After Comments version of this administrative regulation. The City of Somerset provided economic data to support the added licenses. The agency agreed that the city had an obligation to voters who intended to vote for five (5), rather than ten (10), licenses.

Mr. Cole stated that local licensees accepted licenses knowing that the state had yet to officially determine the number of state licenses that would be available to Somerset. A city public hearing had been held to address licensing. Somerset was a local retail hub, and sales were much greater than could be satisfied by the initial five (5) licenses. Somerset was responsible for eighty-five (85) percent of Pulaski County sales, and demand in Somerset came from a four (4) county region, including the tourist area, Lake Cumberland. The City of Somerset was capable of supporting ten (10) retail liquor package licenses.

Representative Lee stated that, prior to and during the election to repeal prohibition in Somerset, it was publicized in the press that Somerset would have five (5) retail liquor package licenses. Voters were unaware that the actual number of licenses could be double that. If the City of Somerset knew that it needed ten (10) licenses, the city should have lobbied for ten (10) licenses prior to and during the election process.

Representative Turner stated that if the City of Somerset needed ten (10) licenses, a second election should be held to clarify the number of licenses. Representative Turner himself was opposed to any retail liquor package licenses; however, the citizens of Somerset had voted on the belief that there would be five (5) licenses, and that is what he supported. Mr. Cole stated that Somerset license holders knew both a local and a state license were required. Mayor Girdler stated that some Kentuckians opposed the sale of alcohol. Rumors were always part of elections. During the public hearing there were no public comments opposed to the ten (10) licenses. Mayor Girdler stated that, as an elected official, he represented the desires of the city and knew the intentions of its citizens.

Co-Chair Harris stated that Oldham County in his Senate district was similar in size but had been granted only three (3) licenses.

In response to questions by Co-Chair Harris, Mayor Girdler stated that Pulaski County had a population of approximately 60,000 persons. The election results that repealed prohibition in Somerset demonstrated that sixty (60) percent of voters supported repealing prohibition and forty (40) percent supported maintaining prohibition.

Mr. Nemesis stated that the issuance of ten (10) retail package licenses constituted fraud because citizens intended to vote for five (5) licenses when voters repealed prohibition. Business planning and financing had been based on the expectation of five (5) licenses. Financial institutions would not have loaned funds pursuant to the same terms if it was known that there would be ten (10) licenses issued. The number of licenses was doubled in less than one (1) month. Nothing had changed population wise to demonstrate the need for additional licenses. Mayor Girdler had announced to the press that LiquorWorld was a preferred licensee; however, LiquorWorld did not receive a license. If LiquorWorld had received a license, the City of Somerset probably would not have petitioned for more licenses during the administrative regulation process. During the recent holiday season, there had been no complaints from the public, including tourism areas, that consumer demands for alcohol were not being met by the existing licensees. Additionally, the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT filed with this administrative regulation was

superficial and erroneous. It did not comply with the requirements established by KRS 13A.240.

Mr. Absher stated that, as local small business owners, the current licensees had taken a big personal financial risk. Suddenly and with little notice, competition was being doubled.

Mrs. Johnson stated that, when licensees petitioned financial institutions for capital, those financial institution determinations relied on expectations that five (5) licenses would be issued.

Mr. Daniels stated that the agency seemed to keep changing standards. Current licensees had local economic interests at heart.

In response to a question by Senator Clark, Mr. Nemesis stated that Somerset's ballot initiative did not expressly state that only five (5) licenses would be established.

In response to a question by Senator Bowen, Mr. Higdon stated that this situation was not unique but that, until the last two (2) years, not many cities had voted to repeal prohibition. Until 2011, only two (2) cities in the past twenty (20) years had voted to repeal prohibition. Mr. Hieneman stated that the issues related to this administrative regulation were complex, and KRS 241.060(2) authorized the agency to establish the appropriate number of licenses.

Co-Chair Harris stated that statutory provisions for these licenses were probably adequate in previous years, but now that many cities were voting to repeal prohibition, KRS Chapter 241 probably needed revision to clarify requirements.

A motion was made and seconded to approve a committee amendment to return Somerset to a maximum of five (5) licenses. In response to a question by Co-Chair Harris, Mr. Higdon stated that, respectfully, the agency did not agree with the committee amendment because the agency believed that ten (10) licenses were appropriate. Without agreement of the agency, the committee amendment was not approved.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 22 to revise terms consistent with statutory updates. Without objection, and with agreement of the agency, the amendments were approved.

Representative Turner made a motion, seconded by Representative Lee, to find 804 KAR 9:040 as amended deficient. On a roll call vote, the administrative regulation as amended was found deficient, with Co-Chairs Harris and Bell; Senator Bowen; and Representatives Damron, Lee, and Turner voting in favor of the finding of deficiency.

#### **Administrative Regulations Reviewed by the Subcommittee:**

##### **PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified**

101 KAR 2:076. Vacancies, detail to special duty and temporary overlap. Dinah Bevington, general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) 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.

101 KAR 2:095. Classified service administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1, 2, 3, 5, 7, 8, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the RELATES TO paragraph to add a citation. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:102. Classified leave administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO, STATU-

TORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1, 2, 3, 5, 6, 10, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to clarify: (a) holiday exceptions; and (b) that the leave limit shall be continuous calendar days; and (3) to amend Section 10 to make technical corrections for internal consistency. Without objection, and with agreement of the agency, the amendments were approved.

##### **Personnel Cabinet, Unclassified**

101 KAR 3:015. Leave administrative regulations for the unclassified service.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and sections 1, 2, 3, 5, 6, 9, 10, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to clarify: (a) holiday exceptions; and (b) that the leave limit shall be continuous calendar days; and (3) to amend Section 10 to make technical corrections for internal consistency. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 3:050. Unclassified service; promotion, transfer and disciplinary actions.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to make a grammatical correction; (2) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

##### **GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board**

201 KAR 2:020. Examination. Steve Hart, pharmacy inspector and inspection coordinator, represented the board.

201 KAR 2:030. License transfer.

In response to a question by Co-Chair Bell, Mr. Hart stated that the national background check was necessary because Kentucky had licensing reciprocity with other states. A violation in another state would not manifest from a strictly Kentucky background check. HB 1 217 of the Regular Session of the 2013 General Assembly required a national background check.

##### **State Board of Licensure for Professional Engineers and Land Surveyors: Board**

201 KAR 18:040. Fees. Jonathan Buckley, general counsel, and David Cox, executive director, represented the board.

201 KAR 18:072. Experience.

201 KAR 18:142. Code of professional practice and conduct.

In response to a question by Co-Chair Harris, Mr. Buckley stated that the board's aim was to ensure that administrative hearings would involve only issues of record. Licensees were prohibited from lobbying the board in an effort to prevent jury tampering.

A motion was made and seconded to approve the following amendments: to amend Section 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

##### **Board of Nursing: Board**

201 KAR 20:400. Delegation of nursing tasks. Jimmy Eisenberg, vice president; Nathan Goldman, general counsel; and Paula Shenk, executive director, represented the board. Malicia Hitch, attorney, and Heidi Schissler, legal director, represented the Division of Protection and Advocacy. Bob Babbage, cofounder of Babbage Company, and Jim McGowan, recent association member,

represented the American Diabetes Association. Teresa Combs, director of legal services, represented the Kentucky School Boards Association.

Representative Lee thanked the board for agreeing to his committee amendment to delete Section 5 of this administrative regulation, which may have otherwise created a problem for Kentucky's Supports for Community Living (SCL) program. That program promoted in-home care over institutionalization, and the prohibition established in Section 5 of this administrative regulation pertaining to delegating the administration of medication via injection may have resulted in unnecessary institutionalization of some program participants. Ms. Shenk stated that the board did agree to the committee amendment.

Ms. Hitch stated that the division applauded the board for this administrative regulation, which permitted the administration of insulin in a school setting by someone other than a nurse. Some parents of diabetic students have had to change their lives in order to provide a child with necessary insulin injections. Some diabetic students have had to go to distant schools. The division appreciated the board's deletion and reconsideration of Section 5 of this administrative regulation, which may have otherwise harmed some independently living patients. Representative Lee reminded the division that, because the board had been willing to amend this administrative regulation due to the division's concerns, the division too should be willing to work with the board to establish safeguards for the delegation of injections. Ms. Hitch stated that the division intended to work with the board on this issue.

Mr. McGowan described disruptions in his diabetic son's school career and why this administrative regulation was important. His son had not been allowed to test his blood sugar level during the school day. Currently, approximately thirty (30) states had a program similar to that established by this administrative regulation, and the programs had been working well. Mr. McGowan supported the deletion of Section 5 of this administrative regulation. The American Diabetes Association promoted a "Safe at School" program to educate patients and schools regarding testing blood sugar levels and injecting insulin. This program had been endorsed by many medical associations, including the Centers for Disease Control. The program addressed supervision requirements and safety issues.

Mr. Babbage thanked the board and stated that this administrative regulation was an important step forward to creating a safer environment for diabetic students.

Representative Damron thanked the board and the local boards of education, superintendents, and administrators, and the American Diabetes Association for developing and strengthening this administrative regulation. The General Assembly considered this process to be the best approach to ensure that all stakeholders would be involved in the development of this policy. Representative Damron stated his agreement with Representative Lee's committee amendment, and supported revisions to this administrative regulation in the future regarding the previous requirements in Section 5 of this administrative regulation.

In response to a question by Representative Lee, Mrs. Combs stated that only one (1) or two (2) school systems had been able to afford a nurse for every building facility. Supervision often would have to take place after the injection due to the lack of nursing staff. The Kentucky School Boards Association supported this administrative regulation. This administrative regulation provided flexibility for diabetic students to participate in field trips and athletic events. The association was tolerant of the deletion of the previous Section 5 of this administrative regulation.

A motion was made and seconded to approve the following amendments: to delete Section 5, which prohibited certain nursing tasks from being delegated to an unlicensed person, including the administration of medication via an injection. Without objection, and with agreement of the agency, the amendments were approved.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Board of Emergency Medical Services: Board**

202 KAR 7:330. Requirements for examination, certification, and recertification of the advanced emergency medical technician. Anne-Tyler Morgan, attorney, and Chuck O'Neal, deputy director,

represented the board. Dan O'Brien, MD, associate professor of emergency medicine, Kentucky Chapter of the American College of Emergency Physicians, and Ryan Stanton, president, Kentucky Chapter of the American College of Emergency Physicians, appeared in support of these administrative regulations.

Dr. O'Brien stated that collection of the data required by these administrative regulations was crucial. Violations for failure to collect this data were nationally publicized even prior to state implementation. Transition periods, such as from an emergency vehicle and to and from surgery, were especially vulnerable periods for patient safety, and proper transmission of patient information was crucial to patient safety and continuity of care.

Mr. Stanton stated that the outcome for an emergency patient was often affected by how much useful information was available, especially from EMS providers to medical facilities. The Kentucky Chapter of the American College of Emergency Physicians supported portions of these administrative regulations, including the provisions for patient safety during transitions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:520. Allocation of block grant funding assistance for emergency medical services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 4, 6, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:540. Emergency Medical Services data collection, management, and compliance.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to clarify that electronic submission shall only be required upon full implementation of the Kentucky Emergency Medical Information System (KEMSIS); and (2) to amend Section 9 to insert an edition date. Without objection, and with agreement of the agency, the amendments were approved.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality**

401 KAR 5:320. Wastewater Laboratory Certification Program. Thomas B. Gabbard, manager, Technical Assistance Branch, and Sandra Gruzesky, division director, represented the division.

In response to a question by Co-Chair Harris, Ms. Gruzesky stated that this administrative regulation was mandated by federal regulations. Ninety-seven (97) municipalities had wastewater laboratories that would be affected by this administrative regulation. Facilities that contracted with wastewater laboratories may continue to do so and shall submit newly required paperwork to demonstrate compliance with the federal standards. For many municipal wastewater laboratories, there would not be an additional cost as this administrative regulation is implemented.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Facilities Management**

702 KAR 4:160. Capital construction process. Kevin Brown, general counsel; Hiren Desai, associate commissioner; and Kay Kennedy, director, represented the department.

Senator Bowen stated that Senators David Givens and John Schickel asked Senator Bowen to express thanks to the department for addressing their concerns.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required

by KRS 13A.220; and (3) to amend Sections 1, 12, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance**

787 KAR 1:010. Application for employer account; reports. Dustin R. Adams, director; Melissa Beasley, assistant director; and Clay Lamb, staff attorney, represented the department.

787 KAR 1:290. Contract construction rates.

**PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Quotas**

804 KAR 9:050. Retail liquor drink license quota.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to revise terms consistent with statutory provisions. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing**

815 KAR 20:034. Requirements for approval of continuing education courses and providers. Michael T. Davis, general counsel; David Moore, director; and Ambrose Wilson, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Medicaid Services**

907 KAR 1:055 & E. Payments for primary care center, federally-qualified health center, federally qualified health center look-alike, and rural health clinic services. Stuart Owen, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 6 to 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:071. Repeal of 907 KAR 1:070, 907 KAR 1:072, 907 KAR 1:090, 907 KAR 1:092, and 907 KAR 1:320.

907 KAR 1:595. Model Waiver II service coverage and reimbursement policies and requirements.

**Other Business:** A motion was made and seconded to adopt the following resolution:

A RESOLUTION honoring David L. Nicholas for his service to the Administrative Regulation Review Subcommittee, the Legislative Research Commission, the General Assembly, and the citizens of the Commonwealth of Kentucky.

WHEREAS, Dave Nicholas began his career with the Legislative Research Commission (LRC) in 1974, where he worked for five years before leaving for the executive branch; and

WHEREAS, Dave Nicholas spent over 18 years as the Director of Occupations and Professions in the Finance and Administration Cabinet, before returning home to LRC in 1999; and

WHEREAS, Dave Nicholas worked as a legislative analyst for the Committee on Licensing and Occupations prior to be-

ing named committee staff administrator for the Administrative Regulation Review Subcommittee on October 1, 1999; and

WHEREAS, for the last 14 years, Dave Nicholas has worked behind the scenes to ensure that the members of the Administrative Regulation Review Subcommittee have the information to do their jobs, and he has worked diligently with various state agencies, interested citizens, and LRC staff to bring improvements to administrative regulations and the regulatory process; and

WHEREAS, Dave Nicholas has a Baccalaureate degree in Business Administration and a Master's degree in Public Administration, both from Eastern Kentucky University; and

WHEREAS, Dave Nicholas will be retiring at the end of this month with over 39 years of dedicated state government service;

NOW, THEREFORE,

***Be it resolved by the Administrative Regulation Review Subcommittee of the General Assembly of the Commonwealth of Kentucky:***

Section 1. This honorable body recognizes and congratulates David L. Nicholas upon his retirement as committee staff administrator of the Administrative Regulation Review Subcommittee.

Section 2. This honorable body tenders Dave Nicholas best wishes and expresses its appreciation for his nearly four decades of service to the legislative and executive branches of government and to the Commonwealth of Kentucky.

Section 3. The Regulations Compiler is directed to transmit a copy of this Resolution to Dave Nicholas.

Representative Lee stated that, as the longest-serving Subcommittee member present, he knew that Mr. Nicholas had a long history of integrity and careful deliberation. The Subcommittee wished him well, but noted that he would be sorely missed.

Senator Bowen reiterated Representative Lee's statements and thanked Mr. Nicholas for his years of service to the Commonwealth.

Co-Chairs Harris and Bell thanked Mr. Nicholas, and Co-Chair Harris stated that Senator Tapp highly recommended Mr. Nicholas before Co-Chair Harris accepted the position of Senate Co-Chair. Mr. Nicholas left a legacy of excellent management and high moral standards.

Mr. Nicholas stated that he had enjoyed working for the Subcommittee and learned a great deal about administrative regulations. God had blessed Mr. Nicholas with wonderful legislative members, staff, and colleagues. Only once in his experience had this Subcommittee voted along party lines, which was a testimony to the fact that these legislators were statesmen. Mr. Nicholas thanked LRC staff leadership for giving him this opportunity. His goal as he retired was to provide a smooth transition. Mr. Nicholas thanked his new employer, his wife, Pat; lobbyists he had worked with over the years; and agency representatives who participated regularly in the administrative regulation process. Donna Little was announced as the new committee staff administrator effective August 1, and Mr. Nicholas stated that he had faith that she would be an excellent leader.



**VOLUME 40, NUMBER 2 – AUGUST 1, 2013**

**The following administrative regulations were deferred to the August 5, 2013, meeting of the Subcommittee:**

**GENERAL GOVERNMENT CABINET: Board of Registration for Professional Geologists: Board**

201 KAR 31:010. Fees.

201 KAR 31:020. Compensation of board members.

201 KAR 31:040. Applications and examinations.

201 KAR 31:050. Renewals.

201 KAR 31:060. Code of professional conduct.

201 KAR 31:080. Geologist-in-training.

201 KAR 31:090. Complaint management process.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality Standards**

401 KAR 10:030. Antidegradation policy implementation methodology.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health  
Division of Maternal and Child Health: Kentucky Early Intervention System**

902 KAR 30:120. Evaluation and eligibility.

902 KAR 30:200. Coverage and payment for services.

**Department for Medicaid Services: Payment and Services**

907 KAR 3:230 & E. Reimbursement policies and requirements for specialty intermediate care (IC) clinic 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 2:120. Child-care center health and safety standards.

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.

**The Subcommittee adjourned at 12:10 p.m. until August 5, 2013 at 1 p.m.**

VOLUME 40, NUMBER 2 – AUGUST 1, 2013

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 APPROPRIATION  
AND REVENUE  
Meeting of June 27, 2013**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Appropriations & Revenue for its meeting of June 27, 2013, having been referred to the Committee on June 5, 2013, pursuant to KRS 13A.290(6):

907 KAR 1:056E  
907 KAR 1:711E  
907 KAR 17:005 & E  
907 KAR 17:010  
907 KAR 17:015 & E  
907 KAR 17:020 & E  
907 KAR 17:025 & E  
907 KAR 17:030 & 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 5, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON APPROPRIATION  
AND REVENUE  
Meeting of July 17, 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 July 17, 2013, having been referred to the Committee on July 3, 2013, pursuant to KRS 13A.290(6):

201 KAR 20:057  
201 KAR 20:085  
201 KAR 20:110  
921 KAR 3:090 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 17, 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

B - 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

B - 7

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

B - 11

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

B - 12

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.

# VOLUME 40, NUMBER 2 – AUGUST 1, 2013

## VOLUME 39

The administrative regulations listed under VOLUME 38 are those administrative regulations that were originally published in Volume 39 (last year's) issues of the Administrative Register but had not yet gone into effect when the 12 bound Volumes were published.

### SYMBOL KEY:

\* Statement of Consideration not filed by deadline

\*\* 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.)

103 KAR 3:040	1862	1-15-13
301 KAR 2:195E	1574	12-28-12
900 KAR 10:010E	2296	5-13-13
907 KAR 1:055E	1987	3-1-13
907 KAR 1:056E(r)	1993	3-1-13
Expires		8-28-13
907 KAR 1:711E	1587	12-21-12
Expired		6-19-13
907 KAR 3:015E	2112	4-3-13
907 KAR 3:225E	2301	5-8-13
907 KAR 3:230E	2306	5-8-13
907 KAR 17:005E	1589	12-21-12
Replaced	2322	6-5-13
907 KAR 17:010E	1610	12-21-12
Replaced	2343	6-5-13
907 KAR 17:015E	1620	12-21-12
907 KAR 17:020E	1625	12-21-12
Replaced	2353	6-5-13
907 KAR 17:025E	1630	12-21-12
Replaced	2356	6-5-13
907 KAR 17:030E	1635	12-21-12
Replaced	1846	6-5-13
921 KAR 2:015E	1639	12-21-12
Replaced	1813	6-19-13
921 KAR 3:090E	2115	3-28-13
922 KAR 1:130E	2117	3-28-13
922 KAR 1:140E	2122	3-28-13
922 KAR 1:320E	2126	3-28-13
922 KAR 1:400E	2130	3-28-13
922 KAR 2:090E	2134	3-27-13
922 KAR 2:160E	2140	3-27-13

### ORDINARY ADMINISTRATIVE REGULATIONS:

17 KAR 3:010		
Amended	1897	
As Amended	2310	7-5-13
17 KAR 3:040	1963	7-5-13
101 KAR 2:076		
Amended	2361	(See 40 Ky.R.)
101 KAR 2:095		
Amended	2362	(See 40 Ky.R.)
101 KAR 2:102		
Amended	2365	(See 40 Ky.R.)
101 KAR 3:015		
Amended	2370	(See 40 Ky.R.)
101 KAR 3:050		
Amended	2375	(See 40 Ky.R.)
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## SYMBOL KEY:

\* Statement of Consideration not filed by deadline

\*\* Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation

**VOLUME 40, NUMBER 2 – AUGUST 1, 2013**  
**VOLUME 40**

**SYMBOL KEY:**

\* Statement of Consideration not filed by deadline  
\*\* 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.

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(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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## SYMBOL KEY:

\* Statement of Consideration not filed by deadline

\*\* Withdrawn, not in effect within 1 year of publication

\*\*\* Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.



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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*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

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