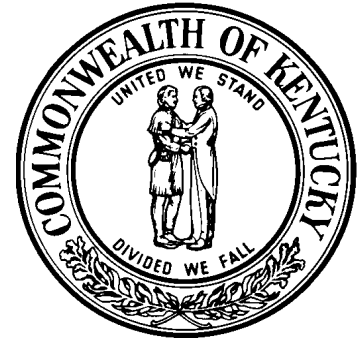


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 40, NUMBER 3
SUNDAY, SEPTEMBER 1, 2013

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

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet Wednesday, September 11, 2013 at 1:00 p.m. in room 154 Capitol Annex. See **tentative agenda** on pages **519-522** of this Administrative Register.

EARRS MEETING NOTICE

The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet at 10:00 a.m., Thursday, September 12, 2013, in room 129, Capitol Annex, Frankfort, Kentucky.

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 |

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, SEPTEMBER 11, 2013, at 1:00 p.m., Room 154 Capitol Annex**

AGRICULTURAL EXPERIMENT STATION

Seed

- 12 KAR 1:116. Sampling, analyzing, testing, and tolerances. (Deferred from August)
- 12 KAR 1:135. Tags available for purchase from the director. (Deferred from August)
- 12 KAR 1:140. Permits, reports, and fees for persons using own tags. (Amended After Comments)
- 12 KAR 1:145. Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners. (Deferred from August)
- 12 KAR 1:150. Stop sale orders. (Deferred from August)
- 12 KAR 1:155. Schedule of charges for samples submitted for testing. (Deferred from August)
- 12 KAR 1:165. Germination standards for vegetable seed. (Deferred from August)

SECRETARY OF STATE

Implementation of Revised Article 9

- 30 KAR 5:010 & E. Definitions for 30 KAR Chapter 5. ("E" expires 12/25/2013)
- 30 KAR 5:020 & E. General provisions. ("E" expires 12/25/2013)
- 30 KAR 5:030 & E. Acceptance and refusal of records. ("E" expires 12/25/2013)
- 30 KAR 5:040 & E. UCC Information Management System. ("E" expires 12/25/2013)
- 30 KAR 5:050 & E. Filing and data entry procedures. ("E" expires 12/25/2013)
- 30 KAR 5:060 & E. Search requests and reports. ("E" expires 12/25/2013)

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue**

Inheritance Tax

- 103 KAR 2:005. Life expectancy table.

Income Tax; Corporations

- 103 KAR 16:230. Intangible expenses, intangible interest expenses, and management fees.

Selective Excise Tax; Cigarettes

- 103 KAR 41:120. Retention of records.
- 103 KAR 41:200. Manufacturers report.

Kentucky Retirement Systems

General Rules

- 105 KAR 1:140 & E. Employer's administrative duties. ("E" expires 12/28/2013)

**GENERAL GOVERNMENT CABINET
Board of Medical Licensure**

Board

- 201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances. (Deferred from August)

Real Estate Commission

Board

- 201 KAR 11:220. Errors and omissions insurance requirements.

Board of Hairdressers and Cosmetologists

Board

- 201 KAR 12:020. Examination.
- 201 KAR 12:040. Apprentices; ratio to operators.
- 201 KAR 12:045. Apprentice, nail technician, esthetician, and instructor's licensing.
- 201 KAR 12:050. Reciprocity for valid licensee.
- 201 KAR 12:060. Inspections.
- 201 KAR 12:065. New, relocated and change of owner salons.
- 201 KAR 12:082. School's course of instruction.
- 201 KAR 12:083. Educational requirements.
- 201 KAR 12:088. Esthetic course of instruction.
- 201 KAR 12:100. Sanitation standards.
- 201 KAR 12:101. Equipment sanitation.
- 201 KAR 12:120. School faculty.
- 201 KAR 12:125. Schools' student administrative regulations.
- 201 KAR 12:150. School records.
- 201 KAR 12:176. Repeal of 201 KAR 12:175, 201 KAR 12:200, and 201 KAR 12:210.
- 201 KAR 12:180. Hearing procedures.
- 201 KAR 12:190. Investigations and complaints.
- 201 KAR 12:260. License fees, examination fees, renewal fees, restoration fees, and miscellaneous fees.
- 201 KAR 12:270. Threading practice.

Board of Speech-Language Pathology and Audiology

Board

- 201 KAR 17:012. Requirements for licensure.
- 201 KAR 17:030. License fees and renewal requirements.
- 201 KAR 17:034. Requirements for licensure as a speech-language pathology assistant.
- 201 KAR 17:036. Requirements for licensure for an audiologist.

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Board of Licensed Diabetes Educators

Board

- 201 KAR 45:001. Definitions. (Amended After Comments)
- 201 KAR 45:070. Application procedures for current practitioners. (Amended After Comments)
- 201 KAR 45:100. Fees. (Amended After Comments)
- 201 KAR 45:110. Supervision and work experience. (Amended After Comments)
- 201 KAR 45:120. Renewal, reinstatement, and inactive status. (Amended After Comments)
- 201 KAR 45:130. Continuing education. (Amended After Comments)
- 201 KAR 45:140. Code of ethics. (Amended After Comments)
- 201 KAR 45:150. Complaint procedures. (Amended After Comments)
- 201 KAR 45:160. Scope of practice. (Amended After Comments)

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

Fish

- 301 KAR 1:150. Waters open to commercial fishing.
- 301 KAR 1:201. Recreational fishing limits.

Game

- 301 KAR 2:132. Elk depredation permits, landowner cooperators permits, and quota hunts.
- 301 KAR 2:300. Black bear seasons and requirements.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reports

Permits

- 405 KAR 8:010. General provisions for permits.

Bond and Insurance Requirements

- 405 KAR 10:001 & E. Definitions for 405 KAR Chapter 10. ("E" expires 12/30/2013)
- 405 KAR 10:015. General bonding provisions.
- 405 KAR 10:070 & E. Kentucky reclamation guaranty fund. ("E" expires 12/30/2013)
- 405 KAR 10:080 & E. Full-cost bonding. ("E" expires 12/30/2013)
- 405 KAR 10:090 & E. Production fees. ("E" expires 12/30/2013)
- 405 KAR 10:201E. Repeal of 405 KAR 10:200. ("E" expires 12/30/2013)

Department for Natural Resources Division of Technical and Administrative Support

General Administrative Procedures

- 418 KAR 1:010. Definitions for 418 KAR Chapter 1. (Not Amended After Comments)
- 418 KAR 1:040. Grant applications. (Deferred from August)
- 418 KAR 1:050. Procedures for acquisitions of land. (Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

Office of the Secretary

- 501 KAR 6:999 & E. Corrections secured policies and procedures. ("E" expires 12/30/13)

Kentucky Law Enforcement Council

Council

- 503 KAR 1:161. Repeal of 503 KAR 1:160.

Department of Criminal Justice Training

General Training Provision

- 503 KAR 3:091. Repeal of 503 KAR 3:090 and 503 KAR 3:100.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver License

Driver Improvement

- 601 KAR 13:025. Point system.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET 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. (Amended After Comments)

Office of Instruction

- 704 KAR 3:035. Annual professional development plan.
- 704 KAR 3:303. Required core academic standards. (Not Amended After Comments)

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET

**Department of Workforce Investment
Office of Employment and Training**

Unemployment Insurance

787 KAR 1:090. Unemployed worker's reporting requirements.

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control

Licensing

804 KAR 4:400 & E. ABC basic application form incorporated by reference. ("E" expires 12/22/2013)

804 KAR 4:410 & E. Special applications and registration forms incorporated by reference. ("E" expires 12/22/13)

ENERGY AND ENVIRONMENT CABINET

Public Service Commission

Utilities

807 KAR 5:009. Repeal of 807 KAR 5:003.

807 KAR 5:011. Tariffs.

807 KAR 5:067. Purchased water adjustment for investor-owned utilities.

807 KAR 5:068. Purchased water adjustment for water districts and water associations.

807 KAR 5:075. Treated sewage adjustment for water districts and water associations.

PUBLIC PROTECTION CABINET

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

Elevator Safety

815 KAR 4:030 & E. Elevator contractor licensing requirements. ("E" expires 12/22/13)

815 KAR 4:040 & E. Elevator mechanic licensing requirements. ("E" expires 12/22/13)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Kentucky Health Benefit Exchange

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) (Amended After Comments)

900 KAR 10:050 & E. Individual Agent or Business Entity Participation with the Kentucky Health Benefit Exchange. ("E" expires 1/6/14)

Department of Public Health

Division of Maternal and Child Health

WIC Program

902 KAR 18:011. Definitions for 902 KAR Chapter 18.

902 KAR 18:021. Eligibility, certification periods, and time frames for processing applicants.

902 KAR 18:031. Participant abuse.

902 KAR 18:040. Fair hearing procedures for participants.

902 KAR 18:050. Vendor authorization criteria.

902 KAR 18:061. Vendor violations and sanctions.

902 KAR 18:071. Participant access determination and civil money penalty.

902 KAR 18:081. Local agency and vendor hearing process and administrative appeal process.

902 KAR 18:090. High risk criteria.

Kentucky Early Intervention System

902 KAR 30:001. Definitions for 902 KAR Chapter 30. (Amended After Comments)

902 KAR 30:110. Point of entry and service coordination. (Not Amended After Comments)

902 KAR 30:120. Evaluation and eligibility. (Not Amended After Comments)

902 KAR 30:130. Assessment, service planning, and assistive technology. (Amended After Comments)

902 KAR 30:150. Personnel qualifications. (Not Amended After Comments)

902 KAR 30:160. Covered services. (Not Amended After Comments)

902 KAR 30:180. Procedural safeguards. (Not Amended After Comments)

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

Department for Medicaid Services

Medicaid Services

907 KAR 1:563. Medicaid covered services appeals and hearings unrelated to managed care. (Amended After Comments)

Payment and Services

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

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

Commissioner's Office

Hospital Service Coverage and Reimbursement

907 KAR 10:018. Repeal of 907 KAR 10:017, 907 KAR 10:372, and 907 KAR 10:376.

Department for Community Based Services

Division of Family Support

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:040. Procedures for determining initial and continuing eligibility.

921 KAR 2:046. Adverse action; conditions.

921 KAR 2:050. Time and manner of payments.

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Division of Protection and Permanency

Child Welfare

922 KAR 1:450. Eligibility confirmation for tuition waiver.

DEFERRED FROM SEPTEMBER 2013 AGENDA

COUNCIL ON POSTSECONDARY EDUCATION

Nonpublic Colleges

13 KAR 1:020. Private college licensing. (Comments Received)

GENERAL GOVERNMENT CABINET

Real Estate Appraisers Board

Board

201 KAR 30:040. Standards of practice. (Comments Received; SOC ext.)

201 KAR 30:360. Operation of an appraisal management company. (Comments Received; SOC ext.)

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)

TRANSPORTATION CABINET

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. (Comments Received; SOC ext.)

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. (Comments Received; SOC ext.)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Kentucky Health Benefit Exchange

Health Benefit Exchange

900 KAR 10:020 & E. Kentucky Health Benefit Exchange Small Business Health Options Program. ("E" expires 1/2/2014) (Comments Received; SOC ext.)

Office of the Inspector General

Office

906 KAR 1:190. Kentucky Applicant Registry and Employment Screening Program. (Comments Received; SOC Ext)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
301 KAR 2:225E

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

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

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

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

RELATES TO: KRS 150.330, 150.340, 150.603
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21
EFFECTIVE: August 14, 2013
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

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

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

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

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

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

(a) Dove, beginning on:

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

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

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

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

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

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

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

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

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

1. Public land in the Ballard Zone;

2. Public land in the West-Central Goose Zone; and

3. The Northeast Goose Zone.

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

(a) Dove:

1. Daily limit of fifteen (15); and

2. Possession limit of forty-five (45)~~[thirty (30)]~~.

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

1. The head; or

2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit of three (3); and

2. Possession limit of nine (9)~~[six (6)]~~.

(d) Common snipe:

1. Daily limit of eight (8); and

2. Possession limit of twenty-four (24)~~[sixteen (16)]~~.

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

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

2. Possession limit of seventy-five (75)~~[twenty-five (25)]~~.

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

1. Daily limit of fifteen (15); and

2. Possession limit of forty-five (45)~~[thirty (30)]~~.

(g) Wood duck and teal:

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

2. Possession limit of twelve (12)~~[eight (8)]~~, which shall not include more than six (6)~~[four (4)]~~ wood ducks.

(h) Canada goose:

1. Daily limit of three (3)~~[two (2)]~~; and

2. Possession limit of nine (9)~~[four (4)]~~.

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

(a) The head; or

(b) A fully-feathered wing.

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

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

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

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

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

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

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

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

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

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(2) Containing:

- (a) Lead shot;
- (b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or
- (c) Shot larger than size "T".

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

- (1) Hunting waterfowl or doves; or
- (2) Accompanying a person hunting waterfowl or doves.

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

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

- (b) Hunt in an area marked by a sign as closed to hunting; or
- (c) Enter an area marked by a sign as closed to the public.

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

- (a) Ballard WMA;
- (b) Boatwright WMA;
- (c) Doug Travis WMA;
- (d) Duck Island WMA;
- (e) Kaler Bottoms WMA;
- (f) Kentucky River WMA;
- (g) Ohio River Islands WMA;
- (h) Sloughs WMA;
- (i) South Shore WMA;
- (j) Yatesville Lake WMA; and
- (k) A WMA wetland management unit that is posted by sign.

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

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

(b) Woodcock.

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

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

(b) Woodcock.

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

(a) Dove or snipe after October 13; or

(b) Woodcock.

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

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

(b) On Deer Creek Fork; or

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

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

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

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

(a) The Greenbrier Creek embayment; and

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

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

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 6, 2013

FILED WITH LRC: August 14, 2013 at noon

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Ken-

tucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the United States Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2013–2014 migratory bird seasons in accordance with the USFWS.

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment will increase the Canada goose bag limit from two to three during the September season, which is consistent with the long-term management efforts for this species. In addition, the U.S. Fish and Wildlife Service has allowed states to increase possession limits after the first day of the hunting season from two (2) times the daily bag limit to three (3) times the daily bag limit. This Administrative Regulation was changed to be consistent with federal frameworks.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase migratory bird hunting opportunity for early migratory bird hunting seasons, defined as those seasons in which the hunting season may open as early as September 1.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Migratory bird hunters in the early season will have the opportunity to harvest an additional Canada goose on a daily basis, and possession limits for all migratory game birds will be increased to three times the daily limit.

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

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

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

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

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

and published in 50 C.F.R. Parts 20 and 21.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 5, 2013)

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

RELATES TO: KRS 164.740-164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(3) "Authority" is defined by KRS 164.740(1).

(4) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course; and

(c) Does not include courses from the Kentucky Virtual Campus.

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2.a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution; and

(c) 1. For purposes of the College Access Program, is a public or private participating institution; or

2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs are not comprised solely of sectarian instruction.

(8) "Eligible institution" is defined by KRS 164.740(3).

(9) "Eligible noncitizen" means an individual who is:

(a) Either:

1. A U.S. national;

2. A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551); or

3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. "Refugee";

b. "Asylum granted";

c. "Indefinite parole" or "humanitarian parole"; or

d. "Cuban-Haitian entrant"; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa; or

3. G series visa.

(10) "Eligible program of study" means an undergraduate program, of a least two (2) academic years duration, offered by an educational institution which:

(a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or

(b) For purposes of only the CAP Grant Program:

1. Leads to a certificate or diploma while attending a publicly operated vocational-technical institution; or

2. Is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education.

(11) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087vv to the information that the student and his family provided on the application.

(12) "Federal act" is defined by KRS 164.740(7) and means 20 U.S.C. 1001 through 1146a.

(13) "Full-time student" means an enrolled student who is carrying a full-time academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. Twelve (12) semester hours or eighteen (18)~~twelve (12)~~ quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;

3. Twenty-four (24) clock hours per week for an educational program using clock hours;

4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):

a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12)

and the number of clock hours per week divided by twenty-four (24); or

b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24) and the number of quarter hours per academic year divided by thirty-six (36) and the number of clock hours per week divided by twenty-four (24);

5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(14) "Grant" is defined by KRS 164.740(8).

(15) "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(16) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).

(17) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards:

(a) That are made to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution); and

(b) That shall be:

1. Measured in terms of the applicable percentage of the maximum KHEAA grant that would have been disbursed for the academic year to a full-time student and not fully refunded;

2. Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, derived by dividing the net amount of KHEAA grant disbursed for the academic term by the maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant; and

3. Based upon the following applicable percentages representing the aggregate limitation of KHEAA grant awards:

a. 200[250] percent for a student enrolled in a two (2) year eligible program of study; or

b. 400[450] percent for a student enrolled in a four (4) year eligible program of study.

(18) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(6), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(19) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:130 through 5:145.

(20) "Participating institution" is defined in KRS 164.740(13).

(21) "Part-time student" means an enrolled student who is carrying an academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. At least six (6) semester hours per semester;

2. Six (6) quarter hours per quarter; or

3. Half of the academic workload of a full-time student as determined by the educational institution.

(22) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.

(23) "Resident of Kentucky" or "resident" means a person who

is determined by the participating institution to be **a resident of Kentucky**[classified as an in-state student] in accordance with the criteria established in 13 KAR 2:045.

(24) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: May 16, 2013

FILED WITH LRC: June 11, 2013 at 1 p.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 5, 2013)**

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.740, 164.744(2), 164.753(3), 164.769 STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Critical shortage area" is defined in KRS 164.769(2)(a).

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(4) "Eligible program of study" is defined in KRS 164.769(2)(b).

(5) "Expected family contribution" is defined in KRS 164.769(2)(c).

(6) "Kentucky Teacher Internship Program" or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:

(a) Required by KRS 161.030 and established in 16 KAR 7:010; and

(b) Also referenced as the beginning teacher internship.

(7) "Participating institution" is defined in KRS 164.769(2)(d).

(8) "Professional Teaching Certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.

(9) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, or secondary instruction.

(10) "Qualified teaching service" is defined in KRS 164.769(2)(e).

(11) "Semester" is defined in KRS 164.769(2)(f).

(12) "Summer term" is defined in KRS 164.769(2)(g).

(13) "Teaching" means performing continuous classroom in-

struction that:

(a) Is:

1. Pursuant to a professional teaching certificate in a position for which regular teacher certification is a prerequisite; or

2. During participation in the Kentucky Teacher Internship Program (KTIP);^{1,7} and

(b) Shall not include substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, post baccalaureate, or graduate shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session).

(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be \$325 for a summer session, \$625 for a semester, and \$1,250 for an academic year (exclusive of a summer session).

(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, post baccalaureate or master's degree will be completed shall be:

(a) \$210 per credit hour if the student is enrolled during a regular semester; or

(b) \$105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

(2) The monies awarded under the Teacher Scholarship Pro-

gram shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 12 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2)(a) If a recipient has received loans or scholarships from more than one (1) program that is administered by the authority, and requires a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently.

(b) Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(c) If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) A recipient shall receive cancellation under this program for each semester during which service is provided as specified in KRS 164.769(6)(c) if the recipient:

(a) Has completed the program of study;

(b) Is providing qualified teaching service; and

(c) Is prohibited from participating in KTIP solely as a result of state budget limitations.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to complete the eligible program of study, attain certification after completion of the eligible program of study, or commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(3) If a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of teaching service, refund of payments previously made shall not be given to the recipient.

Section 7. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to the collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins either providing qualified teaching service in the Commonwealth of Kentucky or participating in KTIP shall be removed from default status.

Section 8. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for a maximum two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability;

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 9. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 10. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the institution.

Section 12. Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Teacher scholarship;

(d) Kentucky Educational Excellence Scholarship;

(e) National Guard tuition assistance; and Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. Refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

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Section 13. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 14. Incorporation by Reference. (1) "Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: May 16, 2013

FILED WITH LRC: June 11, 2013 at 1 p.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, August 5, 2013)

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

RELATES TO: KRS 164.7881(4)

STATUTORY AUTHORITY: KRS 164.748(4), 164.7881(4)(b), 164.7885(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) authorizes the authority to promulgate administrative regulations for the administration of the Commonwealth Merit Scholarship Program, renamed Kentucky Educational Excellence Scholarship (KEES) Program by EO 98-1592. KRS 164.7881(4)(b) requires the authority to promulgate an administrative regulation to proportionately reduce the maximum award amount for an eligible student enrolled part time. This administrative regulation establishes the conditions for KEES eligibility for eligible students enrolled on a part-time basis.

Section 1. Reduction for Part-time Study. (1) If an eligible student is enrolled as a part-time student for an academic term, the maximum award amount to which the student is entitled shall be as follows:

- (a) Fifty (50) percent if enrolled for six (6) semester hours;
- (b) Fifty-eight (58) percent if enrolled for seven (7) semester hours;
- (c) Sixty-seven (67) percent if enrolled for eight (8) semester hours;
- (d) Seventy-five (75) percent if enrolled for nine (9) semester hours;
- (e) Eighty-three (83) percent if enrolled for ten (10) semester hours;
- (f) Ninety-two (92) percent if enrolled for eleven (11) semester hours; and
- (g) 100 percent if enrolled for twelve (12) semester hours or more.

(2) For a quarter hour institution[institutions], in order to determine the maximum award amount to which the student is entitled, the number of quarter hours of the student's enrollment shall be converted to semester hours on either a semester or academic year basis as follows:

(a) Quarter to semester hour conversion per semester for periods July 1 - December 31 and January 1 – June 30

| Quarter Hours | Semester Hours | Award Percentage |
|---------------|----------------|------------------|
| 18 | 12 | 100 |
| 16 | 11 | 92 |
| 14 | 10 | 83 |
| 13 | 9 | 75 |
| 12 | 8 | 67 |
| 10 | 7 | 58 |
| 8 | 6 | 50 |
| 6 | 4 | 0 |
| 4 | 3 | 0 |
| 2 | 2 | 0 |

(b) Quarter to semester hour conversion per academic year for periods July 1 – June 30

| Quarter Hours | Semester Hours | Award Percentage |
|---------------|----------------|------------------|
| 36 | 24 | 100 |
| 32 | 22 | 92 |
| 28 | 20 | 83 |
| 24 | 16 | 67 |
| 20 | 14 | 58 |
| 16 | 12 | 50 |
| 12 | 8 | 0 |
| 8 | 6 | 0 |
| 4 | 4 | 0 |

(3) The equivalent academic unit of measurement shall be used to correspond to a semester[credit] hour, if the participating institution does not use semester[credit] hours.

(4)[(3)] A participating institution shall determine full-time and less than full-time enrollment status for purposes of subsection (1) of this section in the same manner as the participating institution uses to determine enrollment status for Pell Grant eligibility.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: May 16, 2013

FILED WITH LRC: June 11, 2013 at 1 p.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

GENERAL GOVERNMENT CABINET Board of Physical Therapy (As Amended at ARRS, August 5, 2013)

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

RELATES TO: KRS 12.355,~~1~~ 327.010(1), (2),~~1~~ 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on KRS Chapter 327[current physical therapy laws] and 201 KAR Chapter 22.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph. [follows:]

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium. [; and]

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section. [; and]

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a physical therapist assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph. [follows:]

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium. [;]

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section. [; and]

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium. [;]

(2) Category 1 continued competency shall be [any of the following]:

(a) Completion of courses, seminars, workshops, symposia, or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensing agency;

(b) Completion of courses, seminars, workshops, symposia, or home study courses consisting of less than three (3) contact hours that have been produced and developed by the American Physical Therapy Association (APTA) or its state chapters and sections;

(c) Completion or auditing of an accredited postsecondary educational institution credit course meeting continued competency as defined by Section 1(2) of this administrative regulation.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(d) [e)] Presentation of a continued competency course, workshop, seminar, or symposium that has been approved by the board or its designee. Contact hours shall be awarded equal to contact hours awarded to a participant with a maximum of two (2) events of the same course per biennium;

(e) [d)] Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) [e)] A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(g) [f)] Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(h) American Board of Physical Therapy Specialties (ABPTS) [g)] certification [or recertification of clinical specialization within the scope of physical therapy practice]. Twenty-eight (28) contact hours shall be awarded per biennium;

(i) ABPTS recertification or other certifications and recertifications within the scope of physical therapy practice. A maximum of twenty-eight (28) contact hours per biennium shall be awarded. [;]

(j) [h)] Completion of a clinical residency program [;] or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(k) [i)] Engaging in the practice of "physical therapy" as defined by KRS 327.010(1) [2)] at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(l) [j)] Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(m) [k)] Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(n) [l)] Election or appointment to a position of the Kentucky Physical Therapy Association, APTA, or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(o) [m)] Member of a committee or task force for one (1) of the organizations in paragraph (m) [k)] or (n) [l)] of this subsection. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be [any of the following]:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;

(f) Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;

(g) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(h) Completion of cardiopulmonary resuscitation initial certification or re-certification. A maximum of two (2) contact hours shall be awarded per biennium; or

(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of at least three (3) years from the end of the biennium. [;]

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board. [; and]

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

- Age;
- Disability;
- Medical condition;
- Financial condition; or
- Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continued competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continued competency requirements as established in KRS 12.355.

Section 3. Incorporation by Reference. (1) "Exemption or Extension for Completion of Continued Competency Form", June 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: June 4, 2013

FILED WITH LRC: May 16, 2013 at 8 a.m.

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

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 5, 2013)**

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

RELATES TO: KRS 324A.035(1), (3), 324A.065, 324A.075, 12 C.F.R. 225.64, 225.65, 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3), 324A.065(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related[~~federally-related~~] transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience, examination of applicants, and the continuing education of appraisers. KRS 324A.065(1) requires the board to establish fees. KRS 324A.075 authorizes the board to establish requirements for reciprocity. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally related[~~federally-related~~] transactions. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates.

Section 1. **Scope and Applicability. This administrative regulation shall apply to the licensure and certification process for appraisal of a federally related property.**

Section 2. A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in that state shall apply for registration to receive temporary appraiser licensing or certification privileges in this state by paying a fee of \$150[fifty (50) dollars] and filing with the board a notarized application on a form prescribed by the board. The completed application shall include[~~the following information~~]:

(1) The applicant's name, address, Social Security number, and other information necessary to identify the applicant;

(2) A statement under seal issued by the appraiser licensing or certifying agency in the applicant's resident state setting forth:

(a) The applicant's name, business name, and address;

(b) The type of license or certificate held by the applicant and

the license or certificate number;

(c) The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

(d) ~~If~~[~~Whether or not~~] the license or certificate was issued as a result of passing a licensure or[~~or~~] certification examination, by reciprocity, or by some other means; and

(e) A complete record of disciplinary actions taken or disciplinary proceedings pending against the applicant;

(3) An irrevocable consent that service of process in an action against the applicant arising out of the applicant's appraisal activities in this state may be made by delivery on the executive director of the board;

(4) A statement that the applicant:

(a) Has read and agrees to comply with KRS Chapter 324A and 201 KAR Chapter 30[~~abide by appraiser laws and rules in this state~~]; and

(b) Agrees to cooperate with any investigation initiated by the board at the direction of the board, including:

1. Supplying relevant documents; and

2. Personally appearing before the board or its investigators;

(5) Information sufficient to identify the appraisal assignment to be performed under the temporary practice certificate or license, including the projected beginning and ending dates for performing the appraisal assignment, but the applicant shall not divulge information concerning the appraisal assignment that[~~which~~] would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and

(6) ~~Such~~[~~Other~~] information [~~as may be~~] necessary to determine the applicant's eligibility for temporary appraiser licensing or certification privileges in this state.

Section 3[~~2~~]. (1) An applicant shall be granted a temporary practice certificate or license by the board, to perform the appraisal assignment described in his application, if:

(a) He has filed a properly completed application;

(b) He has submitted the required fee with the application;

(c) He has satisfied the board as to his qualifications and eligibility[~~eligibility, and moral fitness~~] for temporary licensing or certification privileges; and

(d) The time projected by the applicant for completion of the assignment is reasonable, given the scope and complexity of the assignment.

(2) Application for a temporary practice certificate or license shall be made on board form, Nonresident Application for Temporary Appraiser Permit[, ~~incorporated by reference~~].

Section 4[~~3~~]. (1) Except as provided by subsection (2) of this section, licensing and certification privileges granted under the provisions of this administrative regulation shall expire upon completion of the appraisal assignment described in the application for temporary licensing.

(2) To afford an applicant additional time to complete the appraisal assignment, the board shall extend the licensing or certification privileges granted under an applicant's temporary practice certificate or license, if he shows that[~~to the board's satisfaction that, notwithstanding diligent attention to the appraisal assignment,~~] additional time is needed to complete the assignment.

Section 5[~~4~~]. A person granted temporary licensing or certification privileges under the provisions of this administrative regulation shall not advertise or otherwise claim to be a Kentucky state-licensed or state-certified appraiser.

Section 6[~~5~~]. Incorporation by Reference. (1) "Nonresident Application for Temporary Appraiser Permit", 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: June 11, 2013

FILED WITH LRC: June 13, 2013 at 2 p.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 5, 2013)**

201 KAR 30:125. Continuing education for appraisers.

RELATES TO: KRS 324A.035(3), 324A.045(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for the renewal of certification or licensure of appraisers of real property in federally related~~[federally-related]~~ transactions. This administrative regulation establishes the continuing education requirements for appraisers.

Section 1. Continuing Education: Number of Hours Required.

(1) Certified general real property appraisers, certified residential real property appraisers, licensed real property appraisers, and associate real property appraisers shall:

(a)[(1)] Complete fourteen (14) hours of approved continuing education each license year prior to May 16[16th] of the current renewal year; and

(b) Submit to the board[(2) Furnish the board with] proof of course completion prior to May 31[June 1st] of the current renewal year[compliance].

(2)[(3)] Non-compliance with either of the requirements specified in this section shall cause the applicant's renewal application to be deemed to be late, **which shall result in a \$200 late fee for renewal.**

Section 2. Continuing Education. (1) Continuing education credit may be granted. **If granted, continuing education credit shall be** for:

(a) Approved continuing education courses; or

(b) Participation, other than as a student, in appraisal educational programs and processes not to exceed seven (7) hours of the required fourteen (14) hours of continuing education for each licensure year.

(2) Appraisal educational programs and processes shall include:

(a) Teaching a course.~~[, however]~~ Credit for instructing any given course shall only be awarded one **(1)** time during a continuing education cycle;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities~~[that are determined by the board to be equivalent to obtaining continuing education]~~.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal **shall[will]** be maintained or increased; and

(c) Has been approved by the board.

(4) **Course Approval Program** Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

(5) To be approved for continuing education credit, a course shall be consistent with the purpose of continuing education and cover those real property related appraisal topics, including:

(a) Ad valorem taxation;

(b) Arbitration, dispute resolution;

(c) Courses related to the practice of real estate appraisal or consulting;

(d) Development cost estimating;

(e) Ethics and standards of professional practice, USPAP;

(f) Land use planning, zoning;

(g) Management, leasing, timesharing;

(h) Property development, partial interests;

(i) Real estate law, easements, and legal;

(j) Real estate litigation, damages, condemnation;

(k) Real estate financing and investment;

(l) Real estate appraisal related computer applications;

(m) Real estate securities and syndication;

(n) Green building construction;

(o) Impact of seller concessions;

(p) Appraising personal property as a component of real property value; or

(q) Appraising business value as a component of real property value.

(6) Real estate appraisal related field trips **shall[may]** be acceptable for credit toward the continuing education requirements, ~~except[. However,]~~ transit time to or from the field trip shall not be included ~~[when-awarding-credit]~~ unless instruction occurs during the transit time.

(7)(a) **Each credential holder[All-credential-holders]** shall successfully complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and June 30 of each even numbered year.

(b) Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program~~[or by an alternate method established by the Appraiser Qualifications Board]~~.

(c) USPAP continuing education credit shall only be awarded **if[when]** the class is instructed by an AQB Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

(8) The board shall defer continuing education requirements for up to 180 days for credential holders:

(a) Returning from active military duty; or

(b) Whose business or residence is located in a county that has been declared a disaster area by the governor or President of the United States~~[under the law]~~.

(9) Credit for repeating the same course title and content within a twenty-four month (24) period shall not be granted.

Section 4. Incorporation by Reference. (1) "Course Approval Program Application". October 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: June 11, 2013

FILED WITH LRC: June 13, 2013 at 2 p.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 5, 2013)**

201 KAR 30:150. Education provider approval.

RELATES TO: KRS 324A.035(3)(d),(f), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d),(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of edu-

cation providers for real estate appraisers.

Section 1. Definitions. (1) "Approved instructor" means an instructor who has been approved under 201 KAR 30:160 to teach continuing education ~~or~~^{or} qualifying education.

(2) "Education provider" means a school or organization that teaches continuing education courses, programs, or seminars required by 201 KAR 30:125 or qualifying education courses required by 201 KAR 30:125 and 30:190.

Section 2. Education Provider Approval. (1) To apply for approval as an real estate appraiser education provider or to renew approval, a provider shall submit a:

(a) Completed Application for Real Estate Appraiser Education Provider, including the information required concerning curriculum, approved instructors, educational materials, and policies;

(b) Copy of the Certificate of Approval from the State Board for Proprietary Education or the Kentucky Department of Education, if applicable;

(c) Sample schedule outlining how a course will be presented; and

(d) Completed course outline for each course, which shall include:

1. A Real Estate Appraisal Instructor Application for each instructor, as required by 201 KAR 30:160;

2. A copy of a contract or agreement signed by the student which outlines the class schedule, grading system, and attendance requirements, **if a contract or agreement is executed between the student and the provider.**

3. A copy of the written material, including the textbook and other materials that will be used in the classroom;

4. A sample copy of a education provider brochure or information sheet promoting the education provider;

5. A copy of legal documentation required to support an answer made on the form, if applicable; and

6. A sample copy of an official transcript from the education provider.

(2) An approved real estate appraisal education provider shall include a statement in the education provider's application for admission into the program that informs the prospective students that a criminal conviction may prevent that person from qualifying for licensure by the Real Estate Appraisers Board. Failure to include this notification **shall**~~may~~ result in suspension of an approved education provider's approval until the information is included in the application.

(3) Courses from institutions **that**~~which~~ have been accredited by a regional accrediting agency approved by the U.S. Department of Education or listed in the Transfer of Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers shall be approved by the board without review.

(4) The applicant shall be required to supply a syllabus or course outline to verify that the content of the course satisfies an area of study outlined in 201 KAR 30:190.

Section 3. Requirements for an Approved Education Provider.

(1) An approved education provider shall notify the board within fourteen (14) days of a material change in the information originally furnished on the application or in an attachment to the application.

(2) A renewal application shall be submitted by **May 31**~~June 30~~ of each year.

(3) The curriculum offered by the education provider shall:

(a) Include a minimum of two (2) academic hours for a continuing education course;

(b) Include a minimum of fifteen (15) academic hours, including examination time, for each qualifying education course;

(c) Be conducted for a maximum of no more than eight (8) hours during a twenty-four (24) hour period; and

(d) Consist of courses covering the topics listed by the Real Estate Appraisers Board in 201 KAR 30:050, Section 3, or 201 KAR 30:190.

(4) An approved real estate appraisal education provider shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include:

1. Each student's record of courses completed or attempted, academic hours awarded, and final grades; and

2. A board-approved Certificate of Completion form for each student and proof that it was mailed to each student upon completion of a course.

(b) A permanent record shall:

1. Be maintained for five (5) years; and

2. Include student attendance records and test scores.

(c) The education provider shall submit to the board a roster with the names of the individuals who attended the course and each student's final examination grade with numerical score by June 1 of each licensure year~~within ten (10) days of the completion of each course~~.

(d) The education provider shall submit to the student a certificate of course completion within ten (10) days of the completion of each course.

(5) An approved real estate appraisal education provider shall file with the board a Notification Form for Course Dates and Locations no later than ten (10) days prior to beginning a qualifying education course or a continuing education class.

(6) An approved real estate appraisal education provider shall permit an inspection and monitoring by the board or its designee to evaluate all aspects of the administration or operation of the education provider.

(7) Education provider status approval shall be withdrawn if the board determines that:

(a) Information contained on the application or renewal is inaccurate or misleading;

(b) The establishment or conduct of the education provider is not in compliance with this administrative regulation;

(c) The instruction is so deficient as to impair the value of the course; or

(d) The education provider failed to meet any policy or statement made in its application.

(8) If an education provider has been given notice of a deficiency under this section, the board shall give the education provider an opportunity to correct the deficiency within thirty (30) days.

(9) An effort made directly or indirectly by **an**~~a~~ education provider, official, or employee, or a **designee**~~person on their behalf~~ to reconstruct the national real property appraisal licensing or certification examination for any licensed or certified real property appraiser, or a portion of these examinations shall result in immediate revocation of education provider approval.

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

(a) "Application for Approved Real Estate Appraisal Education Provider", 2005;

(b) "Course Outline", 2005;

(c) "Certificate of Completion", 2005; and

(d) "Notification Form for Course Dates and Locations", 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: June 11, 2013

FILED WITH LRC: June 13, 2013 at 2 p.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 5, 2013)**

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

RELATES TO: KRS 324A.035(1), (3), 324A.065, 324A.075, 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.035(1), (3), 324A.075, 12 U.S.C. 3331 - 3351

NECESSITY, FUNCTION, AND CONFORMITY: 12 U.S.C. 3331 through 3351 requires the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally related transactions. KRS 324A.075 authorizes the board to issue a license or certification to a person licensed or certified in another state under certain requirements. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state.

Section 1. General. A licensee from another state who seeks [Persons licensed in another state who seek] to obtain a certification or license in Kentucky by reciprocity shall[may] obtain a Kentucky real property appraiser certification upon terms and conditions established[outlined] in this administrative regulation.

Section 2. (1) An individual who is a certified residential or a certified general real property appraiser out-of-state may apply for a Kentucky certification that is the same as the out-of-state certification held by that individual in the other state iff[provided that] the appraiser licensing program of the other state:

(a) Is in compliance with the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of Title XI Real Estate Appraisal Reform Amendments (12 U.S.C. 3331-3351); and

(b) Meets or exceeds the minimum certification criteria established by the Appraiser Qualifications Board (AQB) of The Appraisal Foundation upon[at the time of] application.

(2) To obtain a Kentucky certification issued by the board, an out-of-state applicant shall:

(a) Complete the Application for Out-of-state Resident Certification on a form approved by the board;

(b) File with the board a letter of good standing, license history, or other proof of good standing issued to the applicant for reciprocity by the out-of-state appraiser regulatory agency;

(c) Be identified on the National Registry of The Appraisal Subcommittee as an active certified real property appraiser that currently conforms to the AQB criteria;

(d) Not have received disciplinary action that limited or stopped the ability to complete the practice of real property appraising;

(e) Not have lost a license to practice any profession by revocation, suspension, or voluntary surrender;

(f) Certify completion of the experience requirements in 201 KAR 30:050, Section 2, for the type of certification requested on the Application for Reciprocal Appraisal License/Certification[a form approved by the board]; and

(g) Successfully complete a Kentucky real property appraiser law and administrative regulation course developed and offered by the board.

Section 3. Exemption from requirements. No provision of this administrative regulation shall be construed to prohibit the professional appraisal practice activities of any out-of-state certified appraiser who is performing the duties and responsibilities while a direct full-time employee of any entity of the United States government.

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

(a) "Application for Out-of-State Resident Certification", June 2013, Kentucky Real Estate Appraisers Board; and

(b) "Application for Reciprocal Appraisal License/Certification", June 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, sub-

ject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: June 11, 2013

FILED WITH LRC: June 13, 2013 at 2 p.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Registration for Professional Geologists
(As Amended at ARRS, August 5, 2013)**

201 KAR 31:010. Fees.

RELATES TO: KRS 322A.050, 322A.060, 322A.070

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.050, 322A.060(1), 322A.070(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.050 requires the board to establish the application and examination fees. KRS 322A.060 requires the board to establish renewal fees. KRS 322A.070 requires the board to establish the replacement fee. This administrative regulation sets forth the fees charged by the board to apply for registration or certification, sit for the examination, and[fe] renew and reinstate a registration.

Section 1. Application Fee. The application fee for registration as a professional geologist or certification as a geologist-in-training shall be [\$100 which shall be] non-refundable pursuant to KRS 322A.050 and shall be paid with the filing of the application [fifty (50) dollars].

(1) The application fee for registration as a professional geologist or certification as a geologist-in-training for each application filed from January 1 to September 30 of each odd numbered year shall be fifty (50) dollars.

(2) The application fee for registration as a professional geologist or certification as a geologist-in-training for each application filed from October 1 of each odd numbered year to December 31 of each even numbered year shall be \$100.

Section 2. Examination Fees. The following fees shall be paid with the filing of the registration or certification application in connection with the licensure examinations required by the board:

(1) The fee for the Fundamentals of Geology (FG) portion of the examination shall be \$175 for each initial and subsequent administration[\$125].

(2) The fee for the Practice of Geology (PG) portion of the examination shall be \$225 for each initial and subsequent administration[\$150].

Section 3. [Initial Licensure Fee. (1) Upon passage of the examinations required in Section 2 of this administrative regulation, the initial licensure fee for registration as a professional geologist or certification as a geologist-in-training for each application filed from January 1 to September 30 of each odd numbered year shall be fifty (50) dollars.

(2) Upon passage of the examinations required in Section 2 of this administrative regulation, the initial licensure fee for registration as a professional geologist or certification as a geologist-in-training for each application filed from October 1 of each odd numbered year to December 31 of each even numbered year shall be \$100.

Section 4.] Biennial Renewal Fees and Penalties. The following fees shall be paid in connection with licensure and certification renewals and late renewal penalties:

(1) The biennial renewal fee for registration as a professional geologist or certification as a geologist-in-training shall be \$100[fifty (50) dollars];

(2) The late biennial renewal fee as a professional geologist or certification as a geologist-in-training, including penalty, for late renewal during the ninety (90) day grace period shall be \$150[seventy-five (75) dollars]; and

(3) The reinstatement fee for registration as a professional geologist or certification as a geologist-in-training renewal after the end of the ninety (90) day grace period and before the registration or certification is revoked pursuant to KRS 322A.060(3) shall be \$200[\$100].

Section 4[5]4. Duplicate Registration or Certification Fees. The fee for a duplicate of the original registration or certification certificate shall be ten (10) dollars.

LARRY R. RHODES, Chairman

APPROVED BY AGENCY: April 1, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Board of Registration for Professional Geologists, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 228, fax (502) 696-4961.

GENERAL GOVERNMENT CABINET
Kentucky Board of Registration for Professional Geologists
(As Amended at ARRS, August 5, 2013)

201 KAR 31:040. Applications and Examinations.

RELATES TO: KRS 322A.030(3), (4), 322A.040(1)(c), 322A.045

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.040(1)(c) requires administrative regulations governing the examination of applicants for registration. KRS 322A.045 requires the board to promulgate an administrative regulation governing the examination for an applicant for certification as a geologist-in-training. This administrative regulation establishes[outlines] requirements concerning examinations.

Section 1. General Requirements. (1) The board shall furnish to applicants pertinent instructions and establish the examination schedule which shall include: the place, the time, and the final date by which the board shall have received the applicant's materials.

(2) An applicant for examination shall submit a complete application and pay the required application and examination fees required by 201 KAR 31:010 to the board when[at the time of] filing [of] the application[in a timely manner]. Once the application has been approved by the board, the applicant shall be scheduled to take the examination at the next regularly scheduled date.

(3) If an applicant fails to appear for the scheduled examination and presents a valid reason in writing no later than thirty (30) days after the missed examination date for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date upon payment of a twenty-five (25) dollar fee[without forfeiture of the examination fee].

(4) If an applicant fails to appear for or to complete the examination without a valid reason, the applicant shall forfeit all examination fees paid.

(5) If an applicant fails to appear for a second scheduled examination, without presenting a valid reason in writing such as illness or death in the immediate family, the application shall be terminated on the date of the examination, and the applicant shall be denied registration on the basis of failure of the examination by default. The applicant shall[may] not engage in the public practice of geology or otherwise violate KRS 322A.090(2)[use the title "registered geologist"].

(6) An applicant who fails to complete the application and examination process within one (1) year of the date of filing of the application shall file a new application and pay the fees required by 201 KAR 31:010 in order to be eligible for registration or certification unless the applicant has obtained a deferral under subsection (3) of this section[201 KAR 31:040].

Section 2. Examination for Registration. (1) An applicant for registration[licensure] shall submit to an examination composed of the Fundamentals of off[ia] Geology (FG) and the Practice of Geology (PG) developed and owned by the National Association of State Boards of Geology (ASBOG®). The applicant shall obtain a scaled score equal to passage of seventy (70) percent[of the test items] on both the Fundamentals of Geology (FG) and the Practice of Geology (PG) examinations[each portion of the examination].

(2) An applicant shall provide a current, government-issued, photographic identification when taking[at the time of] the examination[An applicant for registration who has been approved to sit for the examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary permit until all requirements for registration have been completed].

(3) If an applicant for registration fails one (1) or both[portions] of the examinations[examination], the applicant may, with payment of the required fee, be rescheduled to take the examination at the[its] next regularly scheduled examination date. An applicant who fails one (1)[portion] of the examinations[examination] shall be required to retake only the examination[portion] on which the applicant failed to achieve a passing scaled score.

(4) If the applicant is practicing under a temporary permit, the applicant may continue to practice under the supervision of a registered geologist until achieving a passing score on the examination or until sixty (60) days after the second examination offered after the applicant has been approved for registration.

Section 3. Examination for Certification as a Geologist-in-Training. [(4)] An applicant for certification as a Geologist-in-Training shall:

(1)[(a)] [Shall] Submit to an examination composed of the Fundamentals of off[ia] Geology (FG) developed and owned by the National Association of State Boards of Geology (ASBOG®);

(2)[(b)] [Shall] Obtain a scaled score equal to passage of seventy (70) percent[of the test items on the examination]; and

(3)[(c)] [Shall] Not[May] take this examination prior to[during] the applicant's final semester or quarter from an accredited college or university[year of approved undergraduate program having completed ninety (90) semester hours or 135 quarter hours of college course work].

Section 4. Incorporation[Incorporated] by Reference. (1) [Form] "Application for Registration as a Professional Geologist", 7-10-2013[April 1, 2013][(September 1, 2005, [edition])], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Kentucky Board of Registration for Professional Geologists, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 5:00[4:30] p.m.

LARRY R. RHODES, Chairman

APPROVED BY AGENCY: April 1, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Board of Registration for Professional Geologists, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 228, fax (502) 696-4961.

GENERAL GOVERNMENT CABINET
Kentucky Board of Registration for Professional Geologists
(As Amended at ARRS, August 5, 2013)

201 KAR 31:050. Renewals.

RELATES TO: KRS 322A.060, 322A.070

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.060, 322A.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.060 establishes conditions for the renewal, suspension, and

revocation of certificates of registration. KRS 322A.070 authorizes the board to determine the initial and expiration dates for certificates of certification. KRS 322A.030(5) authorizes the board to promulgate administrative regulations required to perform its duties. This administrative regulation establishes procedures for the renewal of certificates of registration and certification.

Section 1. (1) A registered professional geologist or certified geologist-in-training shall ~~annually~~ before October 1 of each odd numbered year:

- (a) File a completed renewal application using the:
1. Application for Renewal as a Professional Geologist; or
2. Application for Renewal as a Geologist-in-Training; and

(b) Pay to the board the renewal fee established by 201 KAR 31:010, Section 3(1).

(2)(a) A certificate of registration that is not renewed before October 1 of each odd numbered year shall expire as provided by KRS 322A.060(1).

(b) A certificate ~~of certification~~ for a geologist-in-training that is not renewed before October 1 of each odd numbered year shall expire as provided by KRS 322A.070.

Section 2. A ninety (90) day grace period shall be allowed beginning October 1 of each odd numbered year, during which a registered professional geologist or certified geologist-in-training may:

- (1) Continue to practice; and

(2) Renew his or her certificate of registration or certification by filing a completed renewal application and by paying ~~upon payment of~~ the renewal fee as provided by 201 KAR 31:010, Section 3(1).

Section 3. (1) A certificate of registration or certification that is not renewed on or before December 29 of each odd numbered year shall be suspended ~~expire~~ for non-renewal ~~be suspended for failure to renew~~.

(2) Upon suspension ~~expiration~~ ~~[suspension]~~, the registered professional geologist or certified geologist-in-training shall:

(a) ~~Not be eligible to~~ practice geology in Kentucky ~~the Commonwealth~~;

(b) Be notified by the Board at the last known address available to the board of the suspension ~~his or her expiration~~ ~~[suspension]~~; and

(c) Be instructed to cease and desist the public practice of geology in Kentucky.

Section 4. After the ninety (90) day grace period and before the end of two (2) years, a professional geologist or geologist-in-training suspended ~~expires~~ ~~[suspended]~~ for failure to renew ~~]~~ may have his or her certificate of registration or certification reinstated upon:

(1) Payment of the reinstatement fee as provided by 201 KAR 31:010, Section 3(3);

- (2) Completion of the;

(a) Application for Reinstatement as a Professional Geologist; or

(b) Application for Reinstatement as a Geologist-in-Training; and

(3) Documentation of employment and description of job duties from the time of suspension ~~expiration~~ ~~[suspension]~~ until the date of the renewal application ~~[present]~~.

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

(a) "Application for Renewal as a Professional Geologist", July 10, 2013;

(b) "Application for Renewal as a Geologist-in-Training", July 10, 2013;

(c) "Application for Reinstatement as a Professional Geologist", July 10, 2013; and

(d) "Application for Reinstatement as a Geologist-in-Training", July 10, 2013 ~~Renewal Application for Registration as a Geologist", April 1, 2013~~ ~~(September 1, 2005,)~~ ~~[edition]~~ ~~];~~;

(b) "Renewal Application for Certification as a Geologist-in-Training", April 1, 2013 ~~(September 1, 2005)~~ ~~[edition]~~ ~~];~~;

(c) "Reinstatement Application for Registration as a Geologist", April 1, 2013 ~~(September 1, 2005)~~ ~~[edition]~~ ~~];~~; and

(d) "Reinstatement Application for Certification as a Geologist-in-Training", April 1, 2013 ~~(September 1, 2005)~~ ~~[edition]~~ ~~];~~;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Registration for Professional Geologists, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 5:00[4:30] p.m.

LARRY R. RHODES, Chairman

APPROVED BY AGENCY: April 1, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Board of Registration for Professional Geologists, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 228, fax (502) 696-4961.

GENERAL GOVERNMENT CABINET Kentucky Board of Registration for Professional Geologists (As Amended at ARRS, August 5, 2013)

201 KAR 31:060. Code of professional conduct.

RELATES TO: KRS 322A.010, 322A.030(6), 322A.100

STATUTORY AUTHORITY: KRS 322A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.030(6) requires the board to promulgate ~~adept~~ by administrative regulation a code of professional conduct. KRS 322A.030(5) authorizes ~~requires~~ the board to promulgate administrative regulations necessary to conduct its responsibilities and duties. KRS 322A.100 authorizes the board to discipline a registered professional geologist or geologist-in-training ~~registrants, including any person issued a certificate by the board~~. This administrative regulation establishes a code of professional conduct, which includes a list of ~~actions considered to be~~ grounds for disciplinary action against a registered professional geologist or registrant, including a registered geologist or certified geologist-in-training.

Section 1. ~~[Definition. "Registrant" means a "registered geologist" or a "geologist-in-training" as defined by KRS 322A.010(4) and (7). Section 2.]~~ Public Trust and Welfare. (1) The public practice of geology requires professional ethical conduct and professional responsibility, as well as scientific knowledge on the part of the registered professional geologist or geologist-in-training ~~[practitioner]~~.

(2) A registered professional geologist or geologist-in-training ~~[registrant]~~ shall protect, to the fullest extent possible, the public health and welfare, and public and private property, in carrying out the public practice of geology.

Section 2 ~~[3]~~. Integrity in Professional Practice. (1) A registered professional geologist or geologist-in-training ~~[registrant]~~ shall be guided by the highest standards of ethics, honesty, integrity, personal honor, fairness, and professional conduct when engaged in the public practice of geology.

(2) ~~[(a)]~~ A registered professional geologist or ~~[certified]~~ geologist-in-training shall provide professional service only within his or her scope of competency as determined by education, ~~[when qualified by]~~ training, or experience in the technical areas involved. ~~[(b)]~~ A registrant may practice under the supervision of another registered geologist for the purpose of obtaining training or experience in new technical areas.

(3) ~~[(a)]~~ A registered professional ~~[registrant]~~ geologist or geologist-in-training shall:

(a) ~~Render~~ ~~[exercise reasonable care when rendering]~~ professional services and shall apply appropriate technical knowledge and skills consistent with the standards of the profession; ~~[ordinarily applied by a registrant.]~~

(b) ~~[A registrant shall]~~ Distinguish between fact and opinion in all estimates, descriptions, locations, and evaluations provided;

(c) Document[; and set forth] all assumptions applied to estimates, descriptions, locations, and evaluations; and

(d) (4) A registrant when engaged in the public practice of geology, shall Base his or her professional conclusions[epinions] upon empirical knowledge and commonly recognized geological principles.

(4)(5) A registered professional geologist or geologist-in-training[registrant] shall not use, issue, or provide[a false statement or] false, misleading, or deceptive information[or make sensational, exaggerated and unwarranted statements when engaged in the public practice of geology with the intent to mislead or deceive others].

(5)(6) A registered professional geologist shall sign and seal only professional work[; including, but not limited to, maps and reports] for which he or she[the registrant] has direct professional knowledge for which he or she shall be responsible[; and the registrant intends to be responsible for its accuracy and adequacy].

Section 3[4] Relationship of Registered Professional Geologists and Geologist-In-Training to Employer or Client. (1) A registered professional geologist and geologist-in-training[registrant] shall provide adequate and accurate representation of his or her credentials, qualifications, and scope of responsibilities for all previous professional and academic experience[claimed] when negotiating with prospective employers or clients.

(2) A registered professional geologist and geologist-in-training[registrant] shall protect[; to the fullest possible extent,] the interest of his or her employer or client, and the confidentiality of information obtained from an employer or client[; so far as is consistent with the law and the geologist's professional obligations and ethics].

(3) It shall not be a violation of subsection (2) of this section[;] if a registered professional geologist or a geologist-in-training reports in good faith an immediate or potential danger to the health, safety, or and welfare of the public to the appropriate federal, state, or local authority.

(4) A registered professional geologist or geologist-in-training[registrant] shall avoid conflict of interest with an employer or client and shall disclose the circumstances to the employer or client if a conflict exists[is unavoidable]. A registered professional geologist or geologist-in-training[registrant] shall disclose[make full disclosure] to all parties[of];

(a) Any financial interest, compensation, or other value[transaction involving payments] made to any person for the purpose of securing a contract, assignment, or engagement;

(b) Any[monetary,] financial or beneficial interest the registered professional geologist or geologist-in-training has[registrant may have] in any contract or entity providing goods or services, other than[professional] services for the public practice of geology, to a project or engagement;

(c) Any financial interest, compensation, or other value[compensation or concurrent employment] from more than one (1) employer or client on the same or substantially similar project; or

(d) Any financial interest, compensation, or other value[owned or controlled mineral or other interest] which affects[may, either directly or indirectly, have a pertinent bearing on] the registered professional geologist's or geologist-in-training's[geologist or geologist-in-training] registrant's employment[; to the employer] or client.

(5)(4) A registered professional geologist or geologist-in-training[registrant] in the public practice of geology shall not engage in fraud or material deception in the delivery of professional services, including reimbursement or[accept] compensation[without furnishing services].

(6)(5) A registered professional geologist or geologist-in-training[registrant] shall give reasonable[due] notice of withdrawal of service from an employer or client except that the registered professional geologist or geologist-in-training[registrant] may withdraw without reasonable[due] notice if:

(a) The registered professional geologist or geologist-in-training[registrant] fails to receive adequate compensation, or has reasonable cause to believe that compensation for services performed will not be received;

(b) The registered professional geologist or geologist-in-training[registrant] knows, or has reasonable cause to believe, that continued employment will result in a violation of KRS Chapter 322A, 201 KAR Chapter 31[the accompanying administrative regulations promulgated thereunder], or otherwise be in violation of local, state, or federal law[illegal];

(c) The registered professional geologist or geologist-in-training[registrant] knows, or has reasonable cause to believe, that the employer or client is in violation of local, state, or federal law[involved in illegal] or is involved in fraudulent[;] or deceptive practices, or practices dangerous to the public health and welfare or property; or

(d) The registered professional geologist or geologist-in-training[registrant] knows, or has reasonable cause to believe, that continued employment may[will] result in sickness or injury to the registered professional geologist, geologist-in-training, or third parties who may be affected[; or the geologist's dependents].

Section 4[5]. Relationship of Professional Geologists and Geologists-In-Training to[Other Professionals Engaged in the Public Practice of Geology and] Other Related Disciplines. (1) A registered professional geologist or geologist-in-training[registrant] shall:

(a)[freely] Give credit for work done by others to whom credit is due;

(b) Not plagiarize[and shall refrain from plagiarism in] oral and written communications[;]; and

(c) Not knowingly accept credit[;rightfully] due another.

(2) A registered professional geologist or geologist-in-training[registrant] shall[either] engage, or advise an employer or client to engage, other experts or specialists if in the best interests of the employer or client[the client's interests are best served by this service].

(3) If a registered professional geologist or geologist-in-training[registrant] has knowledge or reasonable cause to believe another person or geologist is in violation of any provision of KRS Chapter 322A or 201 KAR Chapter 31[the administrative regulations promulgated thereunder], the registered professional geologist or geologist-in-training shall file an initiating complaint pursuant to 201 KAR 31:090[present information in writing to the board].

(4) A registered professional geologist shall provide adequate supervision and training to other registered professional geologists or other geologists-in-training the registered professional geologist is supervising, and make them aware of this code of professional conduct.

Section 5[6]. Grounds for Disciplinary Action. (1) A registered professional geologist or[;] geologist-in-training[; or applicant]registrant shall not:

(a) Violate any provision of KRS Chapter 322A or 201 KAR Chapter 31[the accompanying administrative regulations] including this code of professional conduct;

(b) Issue a false, misleading, or deceptive statement or information, or make a sensational, exaggerated, or unwarranted statement while engaged in the public practice of geology;

(c) Defraud or deceive a client or employer while engaged in the practice of geology;

(d) Fail to comply with an order issued by the board;

(e) Fail to cooperate with the board by:

1. Unreasonably refusing to furnish a [paper or] document or other tangible evidence requested by the board;

2. Unreasonably refusing to furnish in writing a complete explanation covering a matter contained in a complaint against the registered professional geologist or geologist-in-training[registrant] filed with the board;

3. Not appearing before the board at a time and place designated by the board during the investigation of a complaint or hearing without good cause; or

4. Not properly responding to a subpoena issued by the board.

(f) Aide or abet an unregistered person or uncertified in the public practice of geology when registration or certification is required;

(g) 1. Be convicted of:

a. A felony; or

b. A misdemeanor which may impact that person's ability to

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engage in the public[related to the] practice of geology with reasonable care and skill; and

2. A conviction shall include:

a. A finding or verdict of guilt;

b. An admission of guilt;

c. A plea of Alford or nolo contendere; or

d. [conviction based on:

a. A plea of nolo contendere or an Alford plea; or

b.] The suspension or deferral of a sentence; or

(h) Engage in the public practice of geology if the registered professional geologist or geologist-in-training may be impaired by a reason of a mental, physical, or other condition that impedes his or her ability to practice competently[while under any physical or mental disability, or other condition, so that continued practice may be dangerous to clients or to the public safety].

(2) A registered professional geologist shall not:

(a) Fail to provide adequate supervision to persons for whom the registered professional geologist is professionally responsible; and

(b) Sign, seal, or stamp professional geological work not prepared under his or her direct professional knowledge, control or supervision.

LARRY R. RHODES, Chairman

APPROVED BY AGENCY: April 1, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Board of Registration for Professional Geologists, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 228, fax (502) 696-4961.

GENERAL GOVERNMENT CABINET

**Kentucky Board of Registration for Professional Geologists
(As Amended at ARRS, August 5, 2013)**

201 KAR 31:080. Geologist-in-training.

RELATES TO: KRS 322A.010~~(6)~~~~(7)~~, 322A.045(2), 322A.070(5)

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.070(5) authorizes the board to issue a certificate as a geologist-in-training to a person who pays the required fee and who, in the opinion of the board, meets the requirements established in KRS 322A.045. KRS 322A.010~~(6)~~~~(7)~~ authorizes the board to set the academic qualifications and establishes the examination and passing score required for certification as a geologist-in-training. KRS 322A.070(5) indicates that a person who is issued a certificate as a geologist-in-training is entitled to certain rights and privileges while credentialed. KRS 322A.030(5) authorizes the board to promulgate administrative regulations necessary to the conduct of its responsibilities and duties. This administrative regulation establishes the examination, and the required passing score for certification, and establishes the rights and privileges relative to the practice of a geologist-in-training.

Section 1. Examination and Passing Score. (1) The examination required by KRS 322A.045(2) shall be the Fundamentals of Geology (FG), developed and owned by the National Association of State Boards of Geology (ASBOG®).

(2) The passing score on the examination shall be seventy (70) percent.

Section 2. Rights and Privileges. A geologist-in-training shall:

(1) Prepare geologic reports, documents, or conduct any geological work only while[in the employment of, and] under the direct supervision of[,] a registered professional geologist;

(2) Clearly identify himself or herself on any geologic reports or documents and to the public as a "geologist-in-training";

(3) Limit his or her professional geologic work to the specific services for which he or she is competent based on professional,

training, education, and experience; and

(4) Not provide supervision for a registered professional geologist or another geologist-in-training.

Section 3[5]. Incorporation by Reference. (1) "Application for Certification[a Certificate] as a Geologist-in-Training", July 10~~April 1~~, 2013~~(September 1, 2005,]~~ edition[]], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Registration for Professional Geologists, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 5:00[4:30] p.m.

LARRY R. RHODES, Chairman

APPROVED BY AGENCY: April 1, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Board of Registration for Professional Geologists, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 228, fax (502) 696-4961.

GENERAL GOVERNMENT CABINET

**Kentucky Board of Registration for Professional Geologists
(As Amended at ARRS, August 5, 2013)**

201 KAR 31:090. Complaint management process.

RELATES TO: KRS 322A.030(6), (7), (8), 322A.100(1)-(5)

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.030(8) allows any person or organization to file a complaint regarding[prefer charges of fraud, deceit, gross negligence, or] misconduct against any registered professional geologist or[,] geologist-in-training[registrant, certificant][, or applicant]. KRS 322A.090(2) prohibits any person not registered by the board from practicing geology or using or otherwise assuming in any way any title or description tending to convey the impression that the person is a registered professional geologist. This administrative regulation establishes procedures for the investigation of a complaint received by the board.

Section 1. Definitions. (1) "Chair" means the chair or vice-chair of the board.

(2) "Charge" means a specific allegation contained in a Notice of Administrative Hearing[formal complaint], as established in subsection (7)~~(4)~~ of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 322A or 201 KAR Chapter 31~~[the administrative regulations promulgated thereunder]~~.

(3) "Complaints committee" means the committee appointed pursuant to Section 7 of this administrative regulation.

(4) "[Notice of Administrative Hearing][Formal complaint]" means a formal administrative pleading authorized by the board which sets forth charges against a registered professional geologist, geologist-in-training[registrant, certificant][, or applicant][or other person][and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B][or requests the court to take appropriate action][].

(5) "Informal proceeding" means a proceeding instituted before, during, or after the disciplinary process with the intent of reaching a disposition[dispensation] of a matter[without further recourse to formal disciplinary procedures under KRS Chapter 13B or appropriate relief in the courts].

(5)~~(6)~~ "Initiating complaint" means a written statement[allegation] alleging possible misconduct by a registered professional geologist or[,] geologist-in-training[applicant][, credentialed individual] or other person which might constitute a violation of KRS Chapter 322A or 201 KAR Chapter 31~~[the administrative regulations promulgated thereunder]~~.

(6)~~(7)~~ "Investigator" means an individual designated by the

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board to assist the board in the investigation of a complaint[er an investigator employed by the Attorney General or the board. (8) "Registrant" means a "registered geologist" or a "geologist-in-training" as defined by KRS 322A.040(4) and (7)].

(7) "Notice of Administrative Hearing" means a formal administrative pleading authorized by the board which sets forth charges against a registered professional geologist or geologist-in-training and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

Section 2. Receipt of Initiating Complaints. (1)(a) An initiating complaint may be submitted by an individual, organization,[er] entity, or the board based on information in its possession.

(b) An initiating complaint shall be in writing and shall be signed by the person offering the initiating complaint.[(e) The board may file an initiating complaint based on information in its possession.]

(2) Upon receipt of an initiating complaint.

(a) A copy of the initiating complaint shall be sent to the individual named in the initiating complaint, along with a request for that individual's response to the initiating complaint.

(b) The individual shall submit a written response within twenty (20) days from the date of receipt.

Section 3. Initial Review. (1)(a) After the receipt of an initiating complaint and the expiration of the period for the individual's response, the complaints committee shall consider the initiating complaint, the individual's response, and other relevant material available and make a recommendation to the board.

(b) The board shall determine whether there is enough evidence to warrant an[a formal] investigation of the initiating complaint.

(2) If, in the opinion of the board, an initiating complaint does not warrant an[a formal] investigation of the initiating complaint, the board shall dismiss the initiating complaint and shall notify both the complaining party and the individual of the outcome of the initiating complaint.

(3) If, in the opinion of the board, an initiating complaint warrants an[a formal] investigation against either a registered professional geologist, geologist-in-training,[individual] or a person who may be practicing without appropriate credential, the board shall authorize an investigator to investigate the matter and make a report to the complaints committee[at the earliest opportunity].

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1)(a) Upon completion of an[the formal] investigation, the investigator shall submit a report to the complaints committee of the facts regarding the initiating complaint.

(b) The complaints committee shall review the investigative report and make a recommendation to the board.

(c) The board[board] shall determine whether there is enough evidence to believe that a violation of KRS Chapter 322A or 201 KAR Chapter 31[the law or administrative regulations] may have occurred and whether a Notice of Administrative Hearing[formal complaint] shall be filed.

(2)(a) If, in the opinion of the board, an initiating complaint does not warrant the issuance of a Notice of Administrative[formal complaint and the holding of a] Hearing, the board shall dismiss the initiating complaint or take other action in accordance with Section 5 of this administrative regulation[initiating complaint shall be dismissed or other appropriate action taken].

(b) The board shall notify both the complaining party and the individual of the outcome of the initiating complaint.

(3)(a) When in the opinion of the board an initiating complaint warrants the issuance of a formal complaint against a registrant, the complaints committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing.

(b) The formal complaint shall be signed by the chair or designee and served upon the individual as required by KRS 13B.040. (4) If, in the opinion of the board, a person may be practicing without appropriate credential, the board may:

(a) Issue a letter ordering that person to cease and desist from the uncredentialed practice of geology or using any words or

phrases prohibited by KRS 322A.090(2); or

(b) Forward information to the county attorney of the county of residence of the person allegedly practicing without appropriate credential with a request that appropriate action be taken under KRS 322A.990(1)-(2).

Section 5. Settlement by Informal Proceedings; Letter of Admonishment. (1) The board, through counsel and the complaints committee, may enter into informal proceedings with the individual who is the subject of the initiating complaint for the purpose of appropriately dispensing with the matter.

(a) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the initiating complaint.

(b) The board may employ mediation as a method of resolving the matter informally.

(2)(a) The board may issue a written admonishment to the registered professional geologist or geologist-in-training[registrant] if in the judgment of the board:

1. An alleged violation is not of a serious nature; and

2. The evidence presented to the board after the investigation and appropriate opportunity for the registered professional geologist or geologist-in-training[registrant] to respond, provides a clear indication that the alleged violation did in fact occur.

(b) A copy of the admonishment shall be placed in the permanent file of the registered professional geologist or geologist-in-training[registrant].

(c) Within thirty (30) days of receipt of a written admonishment, the registered professional geologist or geologist-in-training[registrant] may file:

1. A response to the written admonishment which shall be placed in the registered professional geologist's or geologist-in-training's[registrant's] permanent file; or

2. A request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

Section 6. Notice and Service Process. A notice required by KRS Chapter 322A or this administrative regulation shall be issued pursuant to KRS 13B.040.

Section 7. Complaints Committee. The Complaints Committee shall:

(1) Be appointed by the chair of the board to:

(a) Review an initiating complaint or investigative report; and

(b) Participate in an informal proceeding to resolve a formal complaint;

(2) Consist of two (2) board members, who may be assisted by board staff, an investigator, and counsel.

LARRY R. RHODES, Chairman

APPROVED BY AGENCY: April 1, 2013

FILED WITH LRC: May 15, 2013 at 11 a.m.

CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Board of Registration for Professional Geologists, Division of Occupations and Professions, 911 Leewood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 228, fax (502) 696-4961.

**GENERAL GOVERNMENT CABINET
Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, August 5, 2013)**

201 KAR 43:010. Application procedures for licensure.

RELATES TO: KRS ~~319C.070~~, 319C.080(1), (2)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants

for licensure.

Section 1. Application Procedures. (1) An Application for ~~Li-~~
~~cence[a license]~~ as a behavior analyst or assistant behavior analyst may be submitted after the requirements established in KRS 319C.080(1) and (2) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed Form ABA-001, Application for Licensure, to the board. The application shall include:

(a) ~~[Include]~~A certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board shall[may] take disciplinary action in accordance with KRS 319C.070 if the application contains a misrepresentation or falsification; and

(b) ~~[Include]~~An official transcript for all levels of education required for licensure.

Section 2. Licensure of Behavior Analysts. The applicant for licensure as a behavior analyst shall submit:

(1) ~~[Submit]~~A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 43:030;

(2) ~~[Submit]~~Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1); and

(3) ~~[Submit]~~Proof of completion of at least five (5) hours of training in:

(a) Adult abuse and neglect prevention;and]

(b) Child abuse, neglect, and dependency prevention;or

(c) A combination of paragraphs (a) and (b) of this subsection.

Section 3. Licensure of Assistant Behavior Analysts. The applicant for licensure as an assistant behavior analyst shall submit:

(1) ~~[Submit]~~A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 43:030;

(2) ~~[Submit]~~Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(2); and

(3) ~~[Submit]~~Proof of completion of at least five (5) hours of training in:

(a) Adult abuse and neglect prevention;and]

(b) Child abuse, neglect, and dependency prevention;or

(c) A combination of paragraphs (a) and (b) of this subsection.

Section 4. Incorporation by Reference. (1) Form ABA-001, "Application for Licensure", May 2013~~[October 2014]~~ edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHELLI DESKINS, Chair

APPROVED BY AGENCY: May 9, 2013

FILED WITH LRC: May 17, 2013 at 10 a.m.

CONTACT PERSON: Lindsey Lane, Board Administrator, Kentucky Applied Behavior Analyst Licensing Board, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 5, 2013)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.180,~~[150.360,]~~ 150.370, 150.399, 150.400, 150.415, 150.416, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360(6), 150.410

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~~[those]~~ requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. KRS 150.360(6) authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night with or without the use of lights or other means designed to make wildlife visible at night. This administrative regulation establishes seasons, bag limits, and legal methods for hunting and trapping furbearers.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap that is not set to submerge an animal in water upon capture.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic or rubber soft-catch jaws that close upon an animal's foot.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or[and] striped skunk.

(5) "Hunter" means a person hunting furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Otter Zone 1" means the following counties: Anderson, Ballard, Bath, Boone, Bourbon, Bracken, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Daviess, Fayette, Fleming, Franklin, Fulton, Gallatin, Grant, Graves, Grayson, Hancock, Hardin, Harrison, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McCracken, McLean, Meade, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Robertson, Rowan, Scott, Shelby, Spencer, Trigg, Trimble, Union, Webster, and Woodford.

(7) "Otter Zone 2" means all Kentucky counties not included in subsection (6) of this section.

(8) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device which is not power or spring assisted.

(9) "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(10) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers.

(11) "Water set" means a trap set to submerge an animal in water upon capture.

(12) "Youth" means a person who has not reached sixteen (16) years of age.

Section 2. Harvest Methods for Furbearers. Unless specified in Section 3(9) of this administrative regulation, a person shall only use the following to take furbearers:

(1) Centerfire gun;

(2) Rimfire gun;

(3) Shotgun;

(4) Bow and arrow;

(5) Crossbow; or

(6) An air gun using pellets at least .22 caliber in size.

Section 3. Hunting Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid hunting license while hunting furbearers.

(2) Furbearers may be taken during daylight hours only, except for the following, which may[can] also be taken after daylight hours:

(a) Coyote;

(b) Opossum; or

(c) Raccoon[and opossum].

(3)[Raccoon and opossum may be taken day or night, except that] A person shall not take a raccoon or opossum~~[raccoons or opossums]~~ during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.

(4) A hunter in a boat shall not use a light~~[from a boat]~~ to take a

raccoon or opossum.

(5) A person shall not use the following while chasing a raccoon or opossum from noon on March 1 through September 30;

- (a) A firearm;
- (b) Slingshot;
- (c) Tree climber; or

(d) Any device to kill, injure, or force a raccoon or opossum from a tree or den.

(6) A person may use a squaller year-round.

(7) There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; and

(b) Chasing raccoons or opossums for sport and not to kill.

(8) A hunter may use a hand or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.

(9) A person may take a coyote after daylight hours, with the following restrictions:

(a) A person shall not use artificial light or other means designed to make wildlife visible at night from June 1 through January 31;

(b) Any artificial light or other means designed to make wildlife visible at night shall not be connected to or cast from a mechanized vehicle;

(c) A person shall not use any weapon other than a shotgun; and

(d) A person shall not use **a shell[shot-shells]** with a single projectile.

Section 4[3]. Trapping Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid trapping license while trapping.

(2) A person who is trapping on dry land shall not:

(a) Set traps closer than ten (10) feet apart; or

(b) Use any trap except for the following:

1. Deadfall;

2. Wire cage or box trap;

3. Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;

4. Body-gripping trap with a maximum inside jaw spread of seven and one-half (7.5) inches measured parallel with the trigger; or

5. A snare.

(3) There shall be no restrictions on the size or type of trap used as a water set.

(4) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(5) A trapper may use lights from a boat or a vehicle.

Section 5[4]. Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows one (1) of the following:

(a) The name and address of the person setting, using, or maintaining the trap; or

(b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.

(2) A person applying[~~may apply~~] for a wildlife identification number shall apply by:

(a) Accessing the department's Web site at www.fw.ky.gov; or

(b) Calling the department's information center at 1-800-858-1549.

(3) The following information shall be required for a person to apply for a wildlife identification number:

(a) Name;

(b) Current home address;

(c) Social Security number;

(d) Current phone number;

(e) Date of birth; and

(f) Driver's license number, if available.

(4) A person shall:

(a) Not use a trap tag that has an inaccurate or outdated address;

(b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and

(c) Contact the department to provide updated address and phone number.

(5) A wildlife identification number is valid for the life of the holder.

Section 6[5]. Hunting Season Dates. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Bobcat: from noon on the fourth Saturday in November through the last day of February.

(2) Coyote: year round.

(3) Raccoon and Opossum: October 1 through the last day of February.

(4) All other furbearers: from noon on the third day of the modern gun deer season through the last day of February.

(5) Furbearers taken by falconry: September 1 through March 30.

Section 7[6]. Trapping Season Dates. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take furbearers except from noon on the third day of the modern gun deer season through the last day of February.

Section 8[7]. License-Exempt Season for Youth. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.

Section 9[8]. Bag Limits. There shall not be a bag limit on furbearers except:

(1) A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun;

(2) A person shall not take more than ten (10) river otters per season in Otter Zone 1;

(3) A person shall not take more than six (6) river otters per season in Otter Zone 2;

(4) The total river otter bag limit per season shall be ten (10) per person, only six (6) of which can be taken from Otter Zone 2; and

(5) A falconer hunting within the falconry season, but outside the dates specified in Section 6[3][5(3)] and (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section 10[9]. Harvest Recording. (1) Immediately after taking a river otter or bobcat, and before moving the carcass, a person shall record in writing the following information:

(a) The species;

(b) The date;

(c) The county where taken; and

(d) The sex of the animal.

(2) The information listed in subsection (1) of this section shall be recorded on one of the following:

(a) The hunter's log section on the reverse side of a license or permit;

(b) The hunter's log section in the current hunting and trapping guide;

(c) A hunter's log available from any KDSS agent; or

(d) An index card or similar card.

(3) A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section 11[40]. Checking a River Otter or Bobcat. (1) A person who takes a river otter or bobcat shall:

(a) Check each animal by calling the toll free number listed in the current hunting and trapping guide on the day the river otter or bobcat is harvested;

(b) Provide the information requested by the automated check-in system; and

(c) Write the confirmation number provided by the automated check-in system on the hunter's log described in Section 10[9] of this administrative regulation.

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or

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wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid confirmation number as described in subsection (1) of this section; and

2. A street address where the tag is to be mailed; or

(b) Access the department's Web site at www.fw.ky.gov and complete and submit the CITES tag request form to the department.

(3) A person who intends to transfer to another person a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the following:

(a) The confirmation number;

(b) The hunter or trapper's name; and

(c) The hunter or trapper's phone number.

(4) A person shall not provide false information when:

(a) Completing the hunter's log;

(b) Checking a river otter or bobcat; or

(c) Creating a handmade carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass per the instructions provided by the department and remain with the pelt until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag is prohibited unless authorized by the department.

Section 12[44]. Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

(a) Fur buyer;

(b) Fur processor; or

(c) Taxidermist.

(2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part of a river otter or bobcat without a proper carcass tag or CITES tag described in Section 11[40] of this administrative regulation; and

(b) Keep the following information from a hunter or trapper:

1. Name;

2. Address;

3. Confirmation number or CITES tag number; and

4. Date received for each river otter or bobcat.

DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 8, 2013

FILED WITH LRC: May 14, 2013 at 10 a.m.

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

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, August 5, 2013)

803 KAR 2:307. Hazardous materials.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.101-1910.126

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.101-1910.126 establishes federal requirements relating to hazardous materials. This administrative regulation establishes hazardous materials standards to be

enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.101-1910.126, revised July 1, 2012; and 2014;

(2) The revisions to 29 C.F.R. 1910.119 and 1910.120 as published in the February 8, 2013 Federal Register, Volume 78, Number 27 [1910.102 as published in the December 5, 2011 Federal Register, Volume 76, Number 233 and confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46];

(3) The revisions to 29 C.F.R. 1910.119 and 29 C.F.R. 1910.120 as published in the December 27, 2011 Federal Register, Volume 76, Number 248; and

(4) The revisions to Subpart H of 29 C.F.R. 1910 as published in the March 26, 2012 Federal Register, Volume 77, Number 58].

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).

(2) Automotive service station, or service station, shall include that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, or accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 6, 2013

FILED WITH LRC: June 10, 2013 at 3 p.m.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, August 5, 2013)

803 KAR 2:314. Machinery and machine guarding.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires~~authorizes~~ the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes machinery and machine guarding standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

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Section 1. Definitions. (1) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "National consensus standard" is defined in KRS 338.015(9).

(5) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.211 through 1910.222, revised as of July 1, 2012; and

(2) The revisions to 29 C.F.R. 1910.217, as published in the August 7, 2012 Federal Register, Volume 77, Number 152 [General industry shall follow the federal regulations incorporated by reference in Section 5 of this administrative regulation as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative regulation].

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report the[such] information to the Kentucky Labor Cabinet, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

Section 4. Clutch/Brake Control. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.217(b)(7)(xii).

(2) The clutch/brake control shall incorporate an automatic means to prevent initiation or continued activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision shall not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position. ~~[Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~-(a) 29 C.F.R. 1910.211 through 1910.217(b)(xi), revised as of July 1, 2004;~~

~~-(b) 29 C.F.R. 1910.217(b)(xiii) through 1910.222, revised as of July 2, 2004; and~~

~~-(c) The revisions to 29 C.F.R. 1910.217 and 1910.219, as published in the June 8, 2004, Volume 69, Number 110.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Labor Cabinet, Division of Occupational Safety and Health Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

~~(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.]~~

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 6, 2013

FILED WITH LRC: June 10, 2013 at 3 p.m.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (As Amended at ARRS, August 5, 2013)

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

RELATES TO: KRS Chapter 338, 29 C.F.R. ~~[Part]~~ 1926.250-1926.252

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 require[authorize] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.250 through 29 C.F.R. 1926.252, revised July 1, ~~2012~~[2014]; and

(2) The amendment[amendments] to 29 C.F.R. 1926.251 as published in the February 15, 2013[April 18, 2012] Federal Register, Volume 78[76], Number 32[75].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 6, 2013

FILED WITH LRC: June 10, 2013 at 3 p.m.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (As Amended at ARRS, August 5, 2013)

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

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.850 - 860

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 require[authorize] the Kentucky Occupational Safety and Health Standards Board to promulgate occupa-

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tional safety and health rules, administrative regulations, and standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.600-1926.606, revised July 1, 2012[2040]; and

(2) The amendments to 29 C.F.R. 1926.856 and 1926.858 as amended and published in the April 23, 2013[August 9, 2040] Federal Register, Volume 78[75], Number 78[152].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 6, 2013

FILED WITH LRC: June 10, 2013 at 3 p.m.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (As Amended at ARRS, August 5, 2013)

804 KAR 4:250. Special temporary licenses.

RELATES TO: KRS 243.260[-243.290]

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.260[244.060] provides for the issuance of a[distilled spirits and wine] special temporary license in wet territory[or a special temporary wine license] to any regularly organized fair, exposition, racing association, or other party, ["]when, in the opinion of the board[,] a necessity therefore[therefor] exists.["] KRS 243.290 provides for the issuance of a malt beverage special temporary license for any regularly organized fair, race or race meeting conducted by the association, or for special temporary occasions such as picnics, bazaars and carnivals subject to administrative regulations. This administrative regulation establishes application procedures and requirements for[these] special temporary licenses.

Section 1. Definition. "Organized civic or community-sponsored event" means a public gathering of broad appeal where citizens are invited and encouraged to attend without significant cost of admission that is sponsored or acknowledged by the city or county government in which the event is conducted, including any convention, conference, celebration, pageant, parade, festival, fair, public display, commemoration, or other type of public assemblage conducted for the benefit and enjoyment of the general public.

Section 2. An application[All applications] for a special temporary license[licenses] pursuant to KRS 243.260[or 243.290] shall be on a **Special Temporary License Application**[Schedule "Temporary" license] form incorporated by reference in 804 KAR 4:410. The applicant shall complete and submit the form to the Department of Alcoholic Beverage Control[forms provided by the Kentucky Alcoholic Beverage Control Board and shall be filed with the board] no later than five (5) working days prior to the date for which the license is requested.

Section 3[2]. An applicant for a special temporary license pursuant to KRS 243.260[and 243.290] shall provide by a sworn affidavit supplemental information as the [Alcoholic Beverage Control] board shall deem necessary for proper review of the application.

Section 4[3]. For purposes of the issuance of special temporary licenses pursuant to KRS 243.260[and 243.290], necessity, in the opinion of the board, shall limit applicants to:

(1) A[any] regularly organized fair, exposition, racing association, [or] nonprofit organization, or political campaign function; or

(2) A[or any] for-profit individual, corporation, or organization if the license will be[when] used in conjunction with an organized[charitable,] civic[, or] community sponsored event.

Section 5. An application by for-profit individual, corporate, or organizational applicants for a temporary license in conjunction with an organized civic or community sponsored event shall submit written or documentary evidence of the civic nature of the event, including promotional materials or news articles evidencing the local government's knowledge of, and support for, the event for which the applicant seeks a temporary license[4. Each applicant for a special temporary license shall complete and submit to the Office of Alcoholic Beverage Control, a Schedule "Temporary" License form incorporated by reference in 804 KAR 4:410].

FREDERICK A. HIGDON, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 12, 2013

FILED WITH LRC: June 14, 2013 at 11 a.m.

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.

PUBLIC PROTECTION CABINET Department of Housing, Buildings, and Construction Division of Building Code Enforcement (As Amended at ARRS, August 5, 2013)

815 KAR 7:125. Kentucky Residential Code.

RELATES TO: KRS 132.010(9), (10), 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform state building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

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

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

(3) "Commissioner" means the commissioner of the Department of Housing, Buildings, and Construction.

(4) "Department" means the Department of Housing, Building, and Construction.

(5) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) that is qualified by and registered with the property valuation administrator in the county in which the property is located.

(6) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(7) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(8) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one-family dwelling" means a

single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and which ***is not[shall not be]*** connected to any other unit or building.

(11) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling, or townhouse shall not be constructed unless it is in compliance with the 2012 International Residential Code[2006] for One (1) and Two (2) Family Dwellings, as amended by this administrative regulation and the 2013[2007] Kentucky Residential Code.

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies ***that[which]*** are not single-family, two-family, or townhouses shall comply with the 2012 International Building Code for One (1) and Two (2) Family Dwellings[2006] and the 2013[2007] Kentucky Building Code.

(3) The 2012 International Residential Code for One (1) and Two (2) Family Dwellings[2006] shall be amended as established in the 2013[2007] Kentucky Residential Code.

(4) Plans for single-family or one (1) family dwellings, two (2) family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

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

(a) "2012 International Residential Code for One (1) and Two (2) Family Dwellings[2006]" International Code Council, Inc.[February 2006]; and

(b) "2013[2007] Kentucky Residential Code", ***August[June] 2013[August 2008, revised August 2014]***.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 13, 2013

FILED WITH LRC: June 14, 2013 at 11 a.m.

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-0365, ext. 144, fax 502-573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(As Amended at ARRS, August 5, 2013)

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

RELATES TO: KRS 216B.010, 216B.020(2)(a), 216B.040

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for registration of Magnetic Resonance Imaging units and the requirements for submission of annual survey data that are used to produce annual reports necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS

216B.015(6).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Exempt ~~practitioners~~[physicians]" means physicians, ~~dentists, and other practitioners of the healing arts~~ that meet the exemption established in KRS 216B.020(2)(a) and that operate a Magnetic Resonance Imaging unit.

(4) "Long term care facility" means any entity with licensed long term care beds including nursing facility, nursing home, intermediate care, Alzheimer's, intermediate care facility for the mentally retarded, or personal care.

(5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(6) "Owner" means a person as defined in KRS 216B.015(22)[(24)] who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) "Year" means a calendar year from January 1 through December 31.

Section 2. Entities Completing Surveys. The following entities shall submit annual surveys:

- (1) Licensed ambulatory surgery centers;
- (2) Licensed hospitals performing ambulatory surgery services[or performing outpatient surgical services];
- (3) Licensed home health agencies;
- (4) Licensed hospice agencies;
- (5) Licensed hospitals;
- (6) Licensed private duty nursing agencies;
- (7) Facilities with licensed long term care beds;
- (8) Entities that hold a certificate of need for MRI equipment;
- (9) Facilities with megavoltage radiation equipment;
- (10) Licensed psychiatric residential treatment facilities; and
- (11) Facilities with positron emission tomography equipment.

Section 3. Entities Completing Surveys on a Voluntary Basis. Exempt ~~practitioners~~[physicians] that have MRI equipment may submit surveys on a voluntary basis.

Section 4. Annual Survey Submission Including Entities Completing Surveys on a Voluntary Basis. ***[Exempt ~~practitioners~~][physicians][that have MRI equipment shall submit surveys on a voluntary basis.]*** An annual survey shall be completed for the previous year and transmitted electronically by accessing the Office of Health Policy's Web site at <https://prd.chfs.ky.gov/OHPSurvey/>.

Section 5. Surveys shall be submitted annually as follows:

- (1) Kentucky Health Survey Registry 2013[2012] Ambulatory Surgery II;
- (2) Kentucky Health Survey Registry 2013[2012] Home Health II;
- (3) Kentucky Health Survey Registry 2013[2012] Hospice;
- (4) Kentucky Health Survey Registry 2013[2012] Hospital[Annual Survey of Licensed Hospitals];
- (5) Kentucky Health Survey Registry 2013[2012] Private Duty Nursing;
- (6) Kentucky Health Survey Registry 2013[2012] Long Term Care;
- (7) Kentucky Health Survey Registry 2013[2012] Magnetic Resonance Imaging;
- (8) Kentucky Health Survey Registry 2013[2012] Megavoltage Radiation (Linear Accelerator);
- (9) Kentucky Health Survey Registry 2013[2012] Psychiatric Residential Treatment Facility; and
- (10) Kentucky Health Survey Registry 2013[2012] Positron Emission Tomography.

Section 6. Annual surveys shall be completed and submitted no later than March 15th of each year. If the 15th falls on a week-end or holiday, the submission due date shall be the next working day.

Section 7. Extensions for Survey Submission. (1) A request for an extension for submission of data shall be made in writing or via

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email to the Office of Health Policy~~[administrator of the specific survey]~~.

(2) The request for an extension shall state the facility name, survey log-in identification number, contact person, contact phone number, contact email address, and a detailed reason for the requested extension.

(3) One (1) extension per survey of up to ten (10) days shall be granted.

(4) An additional extension shall only be granted if circumstances beyond the entity's control prevents timely completion of a survey.

Section 8. Data Corrections to Draft Annual Reports Utilizing Data Submitted in the Annual Surveys. (1)(a) Prior to the release of a draft report to a facility for its review, the Office of Health Policy shall review data for completeness and accuracy.

(b) If an error is identified, the facility shall be contacted by the Office of Health Policy and allowed fourteen (14) days to make corrections.

(2)(a) Prior to publication of the reports, the Office of Health Policy shall publish draft reports available only to the entities included in each individual report.

(b) Each facility shall be notified of a Web site and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review the data for errors.

(c) Corrections shall be submitted in writing or via email to the Office of Health Policy before the expiration of the fourteen (14) day review period.

(3)(a) After publication of the reports, reports shall not be revised as a result of data reported to the Office of Health Policy incorrectly by the facility.

(b) Corrections received after the fourteen (14) day review period shall not be reflected in the published report.

(c) A facility may provide a note in the comments section for the following year's report, referencing the mistake from the previous year.

Section 9. Annual Reports. (1) Utilizing data submitted in the annual surveys, the Office of Health Policy shall publish reports annually as follows:

- (a) Kentucky Annual Ambulatory Surgical Services Report;
- (b) Kentucky Annual Home Health Services Report;
- (c) Kentucky Annual Hospice Services Report;
- (d) Kentucky Annual Hospital Utilization and Services Report;
- (e) Kentucky Annual Private Duty Nursing Agency Report;
- (f) Kentucky Annual Long Term Care Services Report;
- (g) Kentucky Annual Magnetic Resonance Imaging Services Report;
- (h) Kentucky Annual Megavoltage Radiation Services Report;
- (i) Kentucky Annual Psychiatric Residential Treatment Facility Report; and
- (j) Kentucky Annual Positron Emission Tomography Report.

(2) Electronic copies of annual reports may be obtained at no cost from the Office of Health Policy's Web site at <http://chfs.ky.gov/ohp/dhppd/dataresgal.htm>. A paper copy may be obtained for a fee of twenty (20) dollars at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621.

Section 10. Any facility, other than an exempt practitioner~~[physician]~~ that has MRI equipment, that fails to complete a required annual survey shall be referred to the Office of Inspector General for further action which may impact the facility's license renewal as provided for in 902 KAR 20:008, Section 2(6).

Section 11. Magnetic Resonance Imaging Equipment Registration on a Voluntary Basis by Exempt Practitioners~~[Physicians]~~ that have MRI Equipment. (1) An exempt practitioner~~[physician]~~ who uses a Magnetic Resonance Imaging unit (MRI) may register the MRI equipment by disclosing the following information by telephone contact and followed up in writing to the Office of Health Policy~~[Cabinet for Health and Family Services]~~:

- (a) Name, address, and telephone number of the facility at

which each unit is located or to be utilized;

(b) Identification of designated contact person or authorized agent of each facility;

(c) Make, model, and serial number of each unit;

(d) Date the unit became operational at each site; and

(e) Whether the unit is free-standing or mobile. If the unit is mobile, the submission shall also identify the number of days the unit is operational.

(2) Within thirty (30) days of a change in the facility's address, the addition of another MRI unit, or the discontinuation of any unit, the designated contact person or authorized agent shall notify the Office of Health Policy in writing.

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

(a) "Kentucky Health Survey Registry 2013~~[2012]~~ Ambulatory Surgery II", screen prints, 2013~~[dated August 23, 2012]~~;

(b) "Kentucky Health Survey Registry 2013~~[2012]~~ Home Health II", screen prints, 2013~~[dated August 23, 2012]~~;

(c) "Kentucky Health Survey Registry 2013~~[2012]~~ Hospice", screen prints, 2013~~[dated August 23, 2012]~~;

(d) "Kentucky Health Survey Registry 2013~~[2012]~~ Hospital", screen prints, 2013~~[dated August 23, 2012]~~;

(e) "Kentucky Health Survey Registry 2013~~[2012]~~ Private Duty Nursing", screen prints, 2013~~[dated August 23, 2012]~~;

(f) "Kentucky Health Survey Registry 2013~~[2012]~~ Long Term Care", screen prints, 2013~~[dated August 23, 2012]~~;

(g) "Kentucky Health Survey Registry 2013~~[2012]~~ Magnetic Resonance Imaging", screen prints, 2013~~[dated August 23, 2012]~~;

(h) "Kentucky Health Survey Registry 2013~~[2012]~~ Megavoltage Radiation (Linear Accelerator)", screen prints, 2013~~[dated August 23, 2012]~~;

(i) "Kentucky Health Survey Registry 2013~~[2012]~~ Psychiatric Residential Treatment Facility", screen prints, 2013~~[dated August 23, 2012]~~; and

(j) "Kentucky Health Survey Registry 2013~~[2012]~~ Positron Emission Tomography", screen prints, 2013~~[dated August 23, 2012]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 29, 2013

FILED WITH LRC: June 4, 2013 at 1 p.m.

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.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (As Amended at ARRS, August 5, 2013)

906 KAR 1:200. Use of Civil Money Penalty Funds Collected from Certified Long-term Care Facilities.

RELATES TO: KRS 194A.050(1), 209.005

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff), 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff)

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. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff) pertain to the collection and use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid bene-

ficiaries) which do not comply with applicable federal health and safety laws and regulations. Except for temporary use in the case of sudden nursing facility relocations, natural disasters, or similar emergencies, states are required to obtain prior approval from CMS for any new project, new grantee, or new use of federally imposed CMP funds, and any state-approved use or project that is currently in effect for a period that will endure more than thirty-six (36) months after December 31, 2011. Upon approval by CMS, states may direct collected CMP funds to a variety of organizations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff). This administrative regulation establishes a competitive grant program to provide funding to organizations which offer programs or services approved by CMS for the use of CMP funds, thereby establishing the CMP Fund Grant Program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) **"CMP" means civil money penalties imposed by CMS on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) which do not comply with applicable federal health and safety laws and regulations;**

(3) "CMS" means the Centers for Medicare and Medicaid Services.

(4) "EAC" means the Elder Abuse Committee created by KRS 209.005.

(5) ~~(3)~~ "Funding" means a grant from collected CMP funds distributed by the cabinet upon approval by CMS.

Section 2. Funding Opportunities. Collected CMP funds may be used to support activities which benefit Kentucky's residents of certified long-term care facilities, including:

(1) Assistance to support and protect residents of a certified long-term care facility that closes (voluntarily or involuntarily) or is decertified, and may include offsetting the costs of relocating residents to a home and community-based setting or another facility;

(2) Projects that support resident and family councils;

(3) Consumer involvement activities which assure quality care in long-term care facilities; or

(4) Facility improvement initiatives approved by CMS, which may include:

(a) Joint training of facility staff and the cabinet's long-term care facility surveyors;

(b) Technical assistance for facilities implementing quality assurance programs; or

(c) The appointment of temporary management firms.

Section 3. Prohibited Uses of CMP Funds. CMP funds shall not be approved:

(1) For a project for which a conflict of interest exists or the appearance of a conflict of interest **exists**;

(2) If the applicant is currently paid by a federal or state source to perform the same function as the proposed CMP project or use;

(3) For capital improvements to a long-term care facility, or to build a long-term care facility;

(4) To pay for services or supplies that are the responsibility of the long-term care facility, including laundry, linen, food, heat, or staffing costs;

(5) To pay the salaries of temporary managers who are actively managing a long-term care facility; or

(6) To recruit or provide Long-Term Care Ombudsman certification training for staff or volunteers, or investigate and work to resolve complaints.

Section 4. Applicants. (1) An entity that applies for and receives funding shall be qualified and capable of carrying out the intended project or use described in the State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes.

(2) Entities that may qualify for funding include:

(a) Consumer advocacy organizations;

(b) Resident or family councils;

(c) Professional or state long-term care facility organizations;

(d) State Long-term Care Ombudsman programs;

- (e) Quality improvement organizations;
- (f) Private contractors;
- (g) Academic or research institutions;
- (h) Certified long-term care facilities;
- (i) State, local, or tribal governments; or
- (j) Profit or not-for-profit organizations.

Section 5. Application Process. To apply for funding, an applicant shall:

(1) Download a copy of the application titled State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes from the cabinet's Web site at

<http://chfs.ky.gov/os/oig/cmpfunds.htm>; and

(2) Complete and email the application to the cabinet at the following web address: CMPPAPPLICATION_OIG@KY.GOV.

Section 6. Review of Applications. (1) Upon receipt of an application, the cabinet shall:

(a) Review the application and determine if the application meets the criteria for use of collected CMP funds pursuant to:

1. Sections 2 through 4 of this administrative regulation; and

2. The application's instructions;

(b) Present each application that meets the criteria for use of collected CMP funds at the next scheduled EAC meeting following receipt of the application;

(c) Advise the EAC of each application not approved for review by the EAC due to the receipt of an:

1. Incomplete application; or

2. Application that does not meet the criteria for use of collected CMP funds; and

(d) Notify each applicant electronically if an application is not approved for review by the EAC, including the reason the application was not approved.

(2) The EAC shall:

(a) Review each application presented by the cabinet based on the criteria for use of collected funds; and

(b) Make a recommendation to the cabinet secretary regarding the ability of the applicant's proposal to:

1. Improve resident outcomes; and

2. Advance the care and services provided in certified long-term care facilities.

(3) Upon consideration of the recommendation made by the EAC and review of the application based on the criteria for use of collected CMP funds, the cabinet secretary shall forward the application to CMS, including the secretary's recommended award decision.

Section 7. Reporting. If an application is approved by CMS, the organization or entity from which the application originated shall:

(1) Submit a quarterly report on the status of the project to the CMS regional office and the cabinet;

(2) Submit a follow-up report within five (5) calendar days of conclusion of the funded project to the CMS regional office and the cabinet; and

(3) Submit a final report monitoring the success of the project within six (6) months of conclusion of the funded project to the CMS regional office and the cabinet.

Section 8. Denials. An application that is denied shall not be subject to an appeal.

Section 9. Incorporation by Reference. (1) The Centers for Medicare and Medicaid Services, Region IV Atlanta, "State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes", **May 2013**, is incorporated by reference.

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

MARY REINLE BEGLEY, Inspector General

AUDREY TAYSE HAYNES, Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Commissioner's Office
(As Amended at ARRS, August 5, 2013)

922 KAR 1:130. Kinship Care Program.

RELATES TO: KRS ~~194A.060[194B.060]~~, 199.462(1), 205.175, 205.177, 205.210, 205.211, 205.720(1), 403.270, 403.280, 405.020(3), (4), 600.020(1), ~~[(5);]~~ (20), ~~(50)[(48); (55); (56); 605.120(5);]~~, 610.010(8), 615.030,~~[620.020(1);]~~ 620.027, 620.050, 620.080, 620.090, 620.130(2), 620.230(2), 45 C.F.R. 264.30,~~[1355.20;]~~ 42 U.S.C. 601-619,~~674(a)(20)(A)]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200~~(1);~~ (2), (3), 605.120~~(5);~~ (6), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs[program]. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619 and federal regulations. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement provisions of KRS Chapter 605, Administrative Matters. KRS 605.120(5) authorizes[requires] the cabinet, to the extent funds are available, to establish a program for kinship care that provides a permanent placement for a child who is or would otherwise be placed in foster care due to abuse, neglect, or death of both parents. KRS 605.120(6) requires the cabinet to promulgate administrative regulations establishing uniform conditions and requirements regarding eligibility, financial assistance and payment rates, and support and case-management services for kinship care. This administrative regulation establishes the Kinship Care Program in Kentucky.

Section 1. Definitions. (1) "Adolescent member of the household" means a youth who:

(a) Resides in the home of an individual who applies for approval to be a kinship caregiver; and

(b) Is age twelve (12) through age seventeen (17).

(2) "Adult member of the household" means an adult who:

(a) Resides in the home of an individual who applies for approval to be a kinship caregiver; and

(b) Is age eighteen (18) or older.

(3) "Caretaker relative" means a relative:

(a) With whom the child is, or shall be, placed by the cabinet; and

(b) Who is seeking to qualify as a kinship caregiver.

(4) "Case permanency plan" is defined at KRS 620.020(1).

(5) "Child" means an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, middle, or high school, or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a graduate of high school or equivalent.

(6) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families money payment program established in 921 KAR Chapter 2.

(7) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care.

(8) "Supplemental Security Income" or "SSI" means a program established in 42 U.S.C. 1382.

Section 2. Initial Eligibility Determination for A Child. (1)(a) Effective April 1, 2013, the cabinet shall not consider a child for initial eligibility in the Kinship Care Program.

(b) Other cabinet resources for a prospective or existing permanent relative placement may include:

1. K-TAP for a child if an application is made in accordance with 921[922] KAR 2:006 and 921 KAR 2:016;

2. Health benefits for a child if an application is made in accordance with 907 KAR 1:610, 907 KAR 4:020, or 907 KAR 4:030;

3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030; or

4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available.

(2) To the extent funds are available, the cabinet may consider a child for initial eligibility in the Kinship Care Program if the cabinet:

(a) Determines that the child is at risk of removal from the child's home with the child's biological or adoptive parent and would otherwise be placed in foster care, or is in the custody of the cabinet and residing in foster care due to:

1. A cabinet investigation, pursuant to 922 KAR 1:330, that resulted in a substantiation of abuse or neglect;

a. Within 120 calendar days of placement in the home of the caretaker relative; and

b. Prior to April 1, 2013; or

2. The death of both parents; and/or]

(b) Places the child with a caretaker relative prior to April 1, 2013, due to:

1. Abuse or neglect as provided in paragraph (a)1 of this subsection; or

2. Death of both parents.

(3) Prior to April 1, 2013,[(2)] the cabinet may consider a child for the Kinship Care Program if the child is placed with a caretaker relative in Kentucky by another state pursuant to KRS 615.030, and the cabinet receives from the other state agency responsible for the child's placement verification of:

(a) A finding of substantiated abuse or neglect within 120 calendar days of the child's placement, as determined by the state agency responsible for the child's placement; or

(b) The death of both parents.

(4) Prior to April 1, 2013,[(3)] the cabinet may consider a child placed with a caretaker relative in another state for the Kinship Care Program if the:

(a) Child and caretaker relative become a resident of Kentucky within forty-five (45) calendar days of the child's placement;

(b) Caretaker relative applies for the Kinship Care Program within forty-five (45) calendar days of the child's placement; and

(c) Other state agency responsible for the child's placement provides verification that the placement was due to:

1. A finding of substantiated abuse or neglect within 120 days of the child's placement, as determined by the state agency responsible for the child's placement; or

2. The death of both parents.

[(5)](4) The cabinet shall offer the] Kinship Care Program benefits shall be available to a child:

(a) Placed by the cabinet with a nonparental relative in accordance with this administrative regulation; and

(b) Whose initial eligibility determination for the Kinship Care Program took place prior to April 1, 2013[to a nonparental relative who has received a child from the cabinet for placement].

Section 3. Initial Eligibility Determination Process for Child's Relative. (1) The caretaker relative of the child and each[an] adult member of the household shall:

(a) Undergo a:

1. Criminal records check in accordance with 922 KAR 1:490; and

2. Child abuse and neglect check conducted by the cabinet in accordance with 922 KAR 1:490; and

(b) Be approved in accordance with 922 KAR 1:490.

(2) Each adolescent household member of the caretaker relative's home shall:

(a) Undergo a child abuse and neglect check, conducted by

the cabinet in accordance with 922 KAR 1:490; and

(b) Be approved in accordance with 922 KAR 1:490.

(3) The caretaker relative, each adult member of the household, and each adolescent member of the household shall agree to undergo a relative home evaluation.

Section 4. Relative Home Evaluation. (1) The cabinet shall utilize the "DPP-1276 Relative Home Evaluation" to verify a relative home evaluation for the Kinship Care Program.

(2) During a relative home evaluation, the cabinet shall consider the caretaker relative's:

(a) Willingness and ability to:

1. Protect the child from abuse or neglect;

2. Assume permanent custody;

3. Understand and agree to the "KC-01 Kinship Care Program Statement of Rights and Responsibilities";

4. Participate in the child's case permanency plan;

5. Access:

a. Transportation;

b. Telephone;

c. Medical services;

d. First aid supplies; and

e. School;

6. Provide full-time care; and

7. Accommodate for the child within the home, including:

a. Providing for the child's sleeping and eating;

b. Maintaining adequate heat and ventilation in the home;

c. Using active smoke detectors in the home; and

d. Assuring the child's inaccessibility to:

(i) Medication;

(ii) Alcoholic beverages;

(iii) Poisonous or cleaning materials;

(iv) Ammunition;

(v) Firearms; and

(vi) Unsupervised contact with a birth parent; and

(b) Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.

(3)(a) The cabinet shall indicate the need for any start-up costs, as described in Section 14 of this administrative regulation, with the "DPP-1276 Relative Home Evaluation".

(b) Start-up costs shall no longer be available effective April 1, 2013.

Section 5. Completion of Initial Eligibility Determination. (1) To satisfactorily complete the initial eligibility determination, a caretaker relative of a child shall meet the following requirements to qualify as a kinship caregiver:

(a) Achieve a satisfactory relative home evaluation, described in Section 4 of this administrative regulation, from cabinet staff;

(b) Meet approval criteria established in Section 3 of this administrative regulation for criminal records checks;

(c) Meet approval criteria established in Section 3 of this administrative regulation for child abuse and neglect checks, conducted by the cabinet; and

(d) Agree to and sign the "KC-01 Kinship Care Program Statement of Rights and Responsibilities".

(2) The child's designated cabinet worker shall utilize Form "KIM-78KC Kinship Care Financial Assistance Application", to refer the caretaker relative[~~kinship caregiver~~] and child to the appropriate cabinet staff for an eligibility determination of the Kinship Care Program's financial assistance for the child.

(3) Prior to the financial assistance eligibility determination by the cabinet for receipt of the Kinship Care Program's financial assistance, the "KIM-78KC Kinship Care Financial Assistance Application" shall be signed and dated by:

(a) The designated cabinet worker assigned to the child; and

(b) 1. The caretaker relative with whom the child is placed; or

2. A representative authorized in writing to act on behalf of the caretaker relative.

(4) A caretaker relative who fails to satisfactorily complete the initial eligibility determination required by subsection (1) of this section to qualify as a kinship caregiver shall not be eligible to receive financial assistance from the Kinship Care Program for the

child.

Section 6. Application Process for the Kinship Care Program.

(1) The date of the "KIM-78KC, Application for Kinship Care Financial Assistance", shall be:

(a) Within the timeframes established in Section 2 of this administrative regulation; or

(b) In accordance with Section 12 of this administrative regulation.

(2) The caretaker relative shall be the primary source of a child's information and shall ~~[be required to]~~:

(a) Furnish verification of income, resources, and technical eligibility, as required by Section 8 of this administrative regulation; and

(b) Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(3) The application shall be processed in the county of residence of the caretaker relative.

(4) If the caretaker relative is unable to go to the local department office to complete the application process, the caretaker relative may:

(a) Designate an authorized representative; or

(b) Request a home visit.

(5) The caretaker relative may be:

(a) Assisted by an individual of his choice in the application process; or

(b) Accompanied by an individual of his choice during a contact with the cabinet.

(6) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(7) Interpreter services shall be provided for a non-English speaking individual as specified in 921 KAR 2:035, Section 1.

(8) If informed in writing of an appointment or necessary information to be provided by the caretaker relative, failure of the caretaker relative to appear for a scheduled interview or provide required information at the time requested shall be a failure to present adequate proof of eligibility.

Section 7. Timeframe for Eligibility Determination. (1) A decision shall be made regarding eligibility for Kinship Care Program financial assistance and payment issued within forty-five (45) calendar days of the date the "KIM-78KC Kinship Care Financial Assistance Application" is signed by the caretaker relative or representative.

(2) Exception to the time standard established in subsection (1) of this section may be provided by the cabinet if the caretaker relative or cabinet requires additional time to obtain verification necessary for an eligibility determination.

(3) The case record shall document the reason for not meeting the timeframe established in subsection (1) of this section.

(4) Failure to process an application within the timeframe shall not be used as a basis for denial for the Kinship Care Program.

(5) Use or disclosure of information obtained from the caretaker relative, child, or household, exclusively for the Kinship Care Program, shall be restricted pursuant to KRS 61.870 to 61.884, 194A.060~~[494B.060]~~, 205.175, 205.177, and 620.050.

Section 8. Eligibility Determination for Financial Assistance Under the Kinship Care Program. (1) Except as provided in this administrative regulation, to be eligible a child shall meet technical eligibility requirements that are established for a K-TAP child in accordance with 921 KAR 2:006.

(2) The resource limit and countable resources of the child shall be the same as a K-TAP child in accordance with 921 KAR 2:016, Section 3.

(3) Except for the maximum payment scale and child's income limit in Section 11(1) of this administrative regulation, countable income of the child shall be the same as a K-TAP child in accordance with 921 KAR 2:016, Section 4(1).

(4) A child eligible for the Kinship Care Program living in the home with a sibling receiving K-TAP shall not be considered a sibling in a K-TAP benefit group in accordance with 921 KAR

2:016.

(5) Income and resources of a caretaker relative shall be disregarded when determining eligibility benefits for the child.

(6) A child shall not be concurrently eligible for a payment from the Kinship Care Program and:

(a) A foster care payment as established in 922 KAR 1:350 or 922 KAR 1:360;

(b) A K-TAP payment as established in 921 KAR 2:016; or

(c) An SSI payment as established in 42 U.S.C. 1382.

(7) The kinship caregiver shall cooperate in the child support activities pursuant to 42 U.S.C. 608(a)(2) and 921 KAR 2:006, Section 18. If the approved kinship caregiver refuses to cooperate with a child support activity, the kinship care financial assistance shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate number of eligible members, as established in Section 11(1) of this administrative regulation; and

~~(b) The cabinet shall attempt to obtain a protective payee to administer the Kinship Care payment on behalf of the child in the same manner as for a K-TAP child in accordance with 921 KAR 2:050, Section 1(5)(b)).~~

(8) The penalty in subsection (7) of this section shall not be applied on a showing of good cause in accordance with 921 KAR 2:006, Section 18(4).

(9) As a condition of eligibility of the Kinship Care Program for a child, the caretaker relative shall make an assignment of rights to the state for support, as required by 42 U.S.C. 608(a)(3) and KRS 205.720(1). The assignment shall:

(a) Include members of the case for whom support rights apply; and

(b) Be completed when applying at the time of application for Kinship Care Program financial assistance.

(10) If all technical and financial eligibility factors are met, the effective date of eligibility for Kinship Care financial assistance shall be the date of placement of the child in the home of the kinship caregiver that is listed on the "KIM-78KC Kinship Care Financial Assistance Application".

Section 9. Ineligible Child for the Kinship Care Program. A child shall not be eligible for the Kinship Care Program if the:

(1) Child applying for the Kinship Care Program does not have a KIM-78KC signed by the cabinet worker designated to monitor the child's permanency, safety, and well being;

(2) Child's parental relative resides with the child or has legal custody of the child, including joint custody ~~Child receiving Kinship Care Program benefits does not have a designated cabinet worker to monitor the child's permanency, safety, and well being, unless the kinship caregiver has pursued permanent custody of the child;~~

(3) Prospective caretaker relative of a child declines by form KC-01 the initial offer of the Kinship Care Program and related benefits;

(4) Child or caretaker relative lives in or relocates to another state;

(5) Child's removal is based on a cabinet finding of dependency, in accordance with 922 KAR 1:330, except for a finding of dependency based on the death of both parents of the child; ~~or~~

(6) Child no longer meets the definition of a "child" in Section 1 of this administrative regulation; ~~or~~

(7) Child's initial eligibility determination for the Kinship Care Program is made on or after April 1, 2013.

Section 10. Permanency for the Child. (1) Pursuant to KRS 620.090, the cabinet shall recommend to the court that the caretaker relative ~~kinship caregiver~~ be granted temporary custody of the child, and the caretaker relative shall agree to take temporary custody of the child.

(2) A judicial authority granting temporary custody to the cabinet, pursuant to KRS 620.080, shall not be used to deny the caretaker relative's access to the Kinship Care Program.

(3) In accordance with 922 KAR 1:140, the child's designated worker shall develop a case permanency plan pursuant to KRS 620.230(2) and conduct regular visits with the child.

(4) Prior to the 12th month of placement into the kinship caregiver's home the cabinet shall:

(a) Review the case permanency plan and placement to determine if Kinship Care is in the best interest of the child;

(b) Prepare a court report recommendation pertaining to permanent custody of the child; and

(c) Request that the case be redocketed for court action to determine permanent custody pursuant to KRS 620.027, if appropriate.

(5) To continue receiving the Kinship Care Program financial assistance, the kinship caregiver shall pursue permanent custody of the child without undue delay on the part of the kinship caregiver.

(6) The kinship caregiver shall meet the criteria of pursuing permanent custody, as required in subsection (5) of this section, if a petition for permanent custody of the child is filed no later than thirty (30) calendar days after the 12th month of:

(a) Receiving financial assistance from the Kinship Care Program; or

(b) Signing the KC-01 ~~KC-14~~.

(7) If the kinship caregiver is not pursuing permanent custody of the child as required in subsections (5) and (6) of this section, the child shall not be eligible for the Kinship Care Program and the cabinet shall:

(a) Discontinue Kinship Care Program benefits for the child;

(b) Notify the overseeing court in accordance with KRS 620.130(2); and

(c) Accept an application for K-TAP for the child in accordance with 921 KAR 2:006 and 921 KAR 2:016.

Section 11. Kinship Care Payment. (1) The maximum monthly payment scale and child's income limit shall be as follows:

| Number of Eligible Children | Maximum Monthly Payment and Income Limit |
|-----------------------------|--|
| 1 Child | \$ 300 |
| 2 Children | \$ 600 |
| 3 Children | \$ 900 |
| 4 Children | \$1,200 |
| 5 Children | \$1,500 |
| 6 or More Children | \$1,800 |

~~(2) [Except as provided by Section 8(7)(b) of this administrative regulation,] The kinship caregiver shall not be eligible for Kinship Care financial assistance, but shall be the payee for the eligible child's kinship care benefits.~~

(3) The caretaker relative shall not receive the Kinship Care financial assistance for a child:

(a) Until approval of an application for the Kinship Care Program's financial assistance; or

(b) Prior to the application date for the Kinship Care Program's financial assistance.

Section 12. Eligibility Shall Follow the Child. To the extent funds are available, a child's initial eligibility determination made prior to April 1, 2013 ~~the initial finding of substantiated abuse or neglect of the child~~, as specified in Section 2 of this administrative regulation, may ~~shall~~ be used for a reapplication and redetermination of eligibility for financial assistance under the Kinship Care Program if:

(1) The child leaves the home of the kinship caregiver and the cabinet:

(a) Places the child with another caretaker relative due to:

1. Death of the kinship caregiver;

2. An illness or injury of the kinship caregiver, as supported by medical documentation, that inhibits adequate care of the child; or

3. Active duty in military service of the kinship caregiver; or

(b) Returns the child to the kinship caregiver if the absence is temporary in accordance with:

1. Section 16(2) of this administrative regulation; or

2. Paragraph (a)2 or 3 of this subsection; or

(2) A child who is discontinued from the Kinship Care Program due to SSI eligibility subsequently becomes ineligible for SSI.

Section 13. Eligibility Redetermination. (1) The cabinet shall redetermine eligibility if a report or information about a change in circumstance is received.

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(2) The cabinet shall redetermine eligibility every twelve (12) months to reassess a Kinship Care case for continued eligibility and financial assistance.

(3) ~~A[The]~~ kinship caregiver shall report[be responsible for reporting] within ten (10) calendar days a change in circumstance that may affect eligibility or the amount of financial assistance.

(4) A kinship caregiver shall be responsible for requirements during eligibility redetermination for continued Kinship Care Program financial assistance pursuant to Sections 6(2) and 6(8) of this administrative regulation.

Section 14. Start-up Costs. (1) To the extent funds are available, a one (1) time start-up amount may be provided prior to April 1, 2013, for the purpose of supplying a child's immediate need for:

- (a) Clothing;
- (b) School supplies;
- (c) Additional furniture;
- (d) A deposit for a larger apartment; or[and]
- (e) An essential documentable cost up to the maximum allowed in subsection (2) of this section.

(2) The total amount of assistance allowed for the Kinship Care case for start-up costs shall not exceed the maximum amount for the appropriate number of eligible children in the Kinship Care case as follows:

| Number of Eligible Children | Maximum Payment Amount |
|-----------------------------|------------------------|
| 1 | \$350 |
| 2 | \$700 |
| 3 | \$1,050 |
| 4 | \$1,400 |
| 5 | \$1,750 |
| 6 or more | \$2,100 |

(3) The amount of an eligible start-up cost payment shall be issued by check directly to a vendor providing the needed service or item listed in subsection (1) of this section.

Section 15. Supportive Services. (1) To the extent funds are available, the following services may be provided as needed on a case-by-case basis to ensure[insure] a placement is not disrupted:

- (a)[Respite care;
- (b)] Family counseling;
- (b)[(e)] Parenting training; or
- (c)[(d)] Referral to an available support group or other community-based services.

(2) The cabinet shall provide services or facilitate access to services, including case-management services, described in the child's case permanency plan for ~~[(a)]~~ at least six (6) months beginning with the date of placement of the child with the caretaker relative ~~[(b)]~~ or (b) Until the caretaker relative has permanent custody of the child].

(3) To the extent funds are available, a child in Kinship Care shall be eligible for an educational bonus under the same conditions as a K-TAP recipient, as described at 921 KAR 2:017, Section 11.

(4)(a) If child care assistance is requested, the cabinet shall refer the kinship caregiver to the area child care broker;

(b) Eligibility for child care assistance shall be determined in accordance with criteria established in 922 KAR 2:160; and

(c) Eligibility for the Kinship Care Program shall not establish entitlement to a child care subsidy payment.

Section 16. Discontinuance from the Kinship Care Program. (1) Financial assistance under the Kinship Care Program shall not be provided to a child:

(a) If the kinship caregiver fails to meet eligibility redetermination requirements as specified in Section 13 of this administrative regulation;

(b) Who meets a criterion in accordance with Section 9 of this administrative regulation; or

(c) Who is absent from the home of the kinship caregiver for a period of thirty (30) consecutive calendar days or more unless the child:

1.[(a)] Is absent due to medical care or school attendance; and

2.[(b)] Continues to be under the care and control of the kinship caregiver.

(2) A child shall be temporarily discontinued from the Kinship Care Program during the period of time the child is residing in:

(a) Foster care as defined in KRS 620.020(5);

(b) A residential treatment facility as defined in KRS 600.020(50)[(48)];

(c) A psychiatric residential treatment facility as defined in KRS 216B.450(5)[(4)];

(d) A parent's home for up to sixty (60) days for reunification purposes on a trial basis; or

(e) Detention as defined in KRS 600.020(20).

Section 17. Overpayment. A Kinship Care Program overpayment, including assistance paid pending a hearing decision, shall be recovered from the kinship caregiver through:

(1) Repayment by the kinship caregiver to the cabinet pursuant to KRS 45.237-45.241 and 205.211;

(2) Reduction of future Kinship Care Program benefits by ten (10) percent of the maximum monthly assistance paid according to the appropriate number of eligible Kinship Care Program children as established in Section 11(1) of this administrative regulation; or

(3) Cabinet initiation of a civil action in the court of appropriate jurisdiction after:

(a) Notice and an opportunity for an administrative hearing in accordance with Section 19 of this administrative regulation is provided to the kinship caregiver; or

(b) The kinship caregiver has exhausted or abandoned the administrative and judicial remedies as specified in 921 KAR 2:055.

Section 18. No Individual or Family Entitlement. (1) The Kinship Care Program shall not entitle an individual or family to receive financial assistance in accordance with 42 U.S.C. 601(b).

(2) The Kinship Care Program financial assistance may be provided to an eligible child only to the extent funds are available, in accordance with KRS 605.120(5).

Section 19. Service Appeal. (1) An administrative hearing or service appeal in accordance with 922 KAR 1:320 may be requested by a kinship caregiver denied:

(a) Supportive services~~[offered]~~ to facilitate the child's placement stability with the kinship caregiver in accordance with Section 15 of this administrative regulation; or

(b) Start-up costs offered to facilitate a[the] child's adjustment to the new environment with the kinship caregiver prior to April 1, 2013.

(2) A kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program shall have rights to a hearing pursuant to 921 KAR 2:055.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KC-01 Kinship Care Program Statement of Rights and Responsibilities," [edition] 07/03["];

(b) ~~"KC-14 Kinship Care Rights and Responsibilities, edition 07/03";~~

(c) ~~"DPP-1276 Relative Home Evaluation," [edition] 07/03["]; and~~

(d) ~~"KIM-78KC Kinship Care Financial Assistance Application," [edition] 07/03["]~~.

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

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 19, 2013

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, August 5, 2013)

922 KAR 1:140. Foster care and adoption permanency services.

RELATES TO: KRS 199.011(2), 199.555, 199.801, 600.020(6), 610.125, 610.127, 620.020(1), ~~(11)(40)]~~, 620.060, 620.090, 620.140(1)(d), 620.180, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1911, 42 U.S.C. 622(b)(9), 670-679b, 1996, 1996b
 STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. Pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. Sections 620 to 679, KRS 199.467 requires the Secretary for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 199.011(2) and 600.020(6).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Concurrent planning" means the cabinet simultaneously plans for:

(a) The return of a child in the custody of the cabinet to the child's parent; and

(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. ~~675(5)(E)]674(a)(16)]~~.

(5) "Parent" is defined by 42 U.S.C. 675(2).

(6) "Reasonable efforts" is defined ~~by~~**[at]** KRS 620.020(11)~~(40)]~~.

(7) "Relative" means an individual related to a child by blood, marriage, or adoption to a child.

(8) "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

(a) Have been unsuccessful; or

(b) Are not required under the provisions of KRS 610.127.

(2) A child shall be removed from the child's home if:

(a) An emergency custody order has been obtained pursuant to KRS 620.060;

(b) A temporary custody order has been obtained pursuant to KRS 620.090; or

(c) A court orders the removal pursuant to KRS 620.140(1)(d).

(3) Upon removal of a child from the child's home~~[-(a)]~~ placement shall be:

~~(a)[4.-]~~ Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and

~~(b)[2.-]~~ Closest in proximity to the child's home, in accordance with KRS 199.801~~[-]~~; and ~~(b) A child placed with a relative shall be considered for the Kinship Care Program, as established in 922 KAR 1:130].~~

(4) In the provision of permanency services, the cabinet shall meet the requirements of the:

(a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1911, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or

(b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(9), 671(a)~~(18)](40)]~~, and 1996b.

(5) An absent parent search shall:

(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;

(b) Be conducted to gather as much information as possible related to the person and the person's location which may include:

1. Date of birth;

2. Social Security number;

3. Present or previous employers; and

4. Present or most recent address; and

(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.

(6) If a relative placement is in the best interest of the child, the cabinet shall:

(a) Use an absent parent search to locate a relative;

(b) Conduct background checks on the relative consistent with a caretaker relative pursuant to 922 KAR 1:490; and

(c) Complete a home evaluation with consideration given to the relative's:

1. Willingness and ability to:

a. Protect the child from abuse or neglect;

b. Participate in the child's case permanency plan;

c. Access:

(i) Transportation;

(ii) Telephone;

(iii) Medical services;

(iv) First aid supplies; and

(v) School;

d. Provide full-time care;

e. Provide for the child's sleeping and eating;

f. Maintain adequate heat and ventilation in the home;

g. Use active smoke detectors in the home; and

h. Assure the child's inaccessibility to:

(i) Medication;

(ii) Alcoholic beverages;

(iii) Poisonous or cleaning materials;

(iv) Firearms or ammunition; and

(v) Unsupervised contact with the birth parent; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.

(7) If the case conference held in compliance with KRS 620.180(2)(a)1 results in the child being placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan, using Form DPP-1281, Family Case Plan.

(8) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

(9) Concurrent planning shall be considered:

(a) During development of the case permanency plan; and

(b) At the six (6) month case review.

Section 4. Permanency Goals. (1) A permanency goal for a child in the custody of the cabinet shall be established according to the particular needs and best interest of the child.

(2) A permanency goal shall include one (1) of the following:

(a) Return to parent;

(b) Adoption;

(c) Permanent relative placement;

(d) Legal guardianship;

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- (e) Another planned permanent living arrangement; or
- (f) Emancipation.

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child in the custody of the cabinet is returned to the parent if the cabinet determines:

- (a) A family has made sufficient progress toward completing the case permanency plan; and
 - (b) Return to the parent is in the best interest of the child.
- (2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:
- (a) A change in the permanency goal; or
 - (b) Termination of parental rights or civil action.
- (3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

- (a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
 - (b) The cabinet pursues involuntary termination of parental rights:
 - 1. Pursuant to KRS 625.090; or
 - 2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).
- (2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:
- (a) A relative placement has been secured;
 - (b) Termination is not in the best interest of the child, for a compelling reason:
 - 1. Documented in the case permanency plan; and
 - 2. Monitored on a continual basis; or
 - (c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.
- (3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child in the custody of the cabinet shall be permanent relative placement if:

- (1) Return to the parent is not in the child's best interest; and
- (2) The cabinet determines that a relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child in the custody of the cabinet shall be legal guardianship if the cabinet determines that:

- (a) Return to the parent or adoption is not in the child's best interest; and
 - (b) There is an identified adult willing to seek legal guardianship of this child; and
 - (c) Legal guardianship by the adult identified in subsection (1)(b) of this section is in the child's best interest.
- (2) Legal guardianship shall be requested pursuant to KRS 620.140(1)(c).

Section 9. Another Planned Permanent Living Arrangement. (1) The permanency goal for a child in the custody of the cabinet shall be another planned permanent living arrangement if:

- (a) An unsuccessful effort has been made to place the child for adoption or with a relative, and the child has been placed on a national adoption register;
- (b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;
- (c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;

(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and

(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.

(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child:

- (a) Under the age of sixteen (16); or
- (b) Placed with a private child caring agency.

Section 10. Emancipation. (1) The permanency goal for a child in the custody of the cabinet shall be emancipation when:

- (a) The youth is age sixteen (16) or older; and
 - (b) Other permanency options have been considered and are not appropriate due to the specific circumstances of the child.
- (2) If emancipation is established as a permanency goal, the youth shall be referred to an independent living program administered by the cabinet.

Section 11. Permanency Services. (1) The cabinet shall provide services for a child in the custody of the cabinet so that permanency is achieved.

(2) Permanency services may include:

- (a) Ongoing case work and monitoring of the family to:
 - 1. Maintain the child safely in the child's home; and
 - 2. Ensure safe return of the child if the goal is return to the parent;
- (b) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;
- (c) Postfinalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;
- (d) Postadoption placement stabilization services as described in 922 KAR 1:530; or
- (e) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal. Other cabinet resources for a prospective or existing permanent relative placement may include:
 - 1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 921/922 KAR 2:006 and 921 KAR 2:016;
 - 2. Health benefits for a child if an application is made in accordance with 907 KAR 1:610, 907 KAR 4:020, or 907 KAR 4:030;
 - 3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030; or
 - 4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available.

Section 12. Incorporation by Reference. (1) "DPP-1281, Family Case Plan", [edition] 9/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 19, 2013

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Commissioner's Office
(As Amended at ARRS, August 5, 2013)

922 KAR 1:320. Service appeals.

RELATES TO: KRS Chapter 13B, 194A.005, 194A.030 ~~(11)(8)~~, 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(43)(42), 605.090(1)(b), (6), 620.020(1), 620.180(2)(a)1, 620.230, 45 C.F.R. 98[98-2], 205.10, 1355.21(b), 1355.30(p), 29 U.S.C. 794, 42 U.S.C. 625, 629a, 671(a)(23), 673, 675, 9858-9858q

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds, including 45 C.F.R. 205.10, made applicable to titles IV-B and IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p). This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 through 5.

Section 1. Definitions. (1) "Adoption assistance" means a payment under:

(a) KRS 199.555(2) and 922 KAR 1:050, State-funded adoption assistance; or

(b) KRS 199.557 and 922 KAR 1:060, Federal Title IV-E adoption assistance.

(2) "Adult" is defined by KRS 209.020(4) or 209A.020(4).

(3) "Caretaker relative" means a relative:

(a) With whom a child is, or shall be, placed by the cabinet; and

(b) Who is seeking to qualify as a kinship caregiver in accordance with 922 KAR 1:130, Kinship Care Program.

(4) "Case plan" is described in 922 KAR 1:430, Child Protective Services In-home Case Planning and Service Delivery, for a child who remains in the home.

(5) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed outside the home.

(6) "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1.

(7) "Child care assistance" means subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.

(8) "Child welfare services" is defined by 42 U.S.C. 625 and described in 42 U.S.C. 629a.

(9) "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(10) "Contract agency" means a business or organization that offers child welfare, adult or domestic violence protective, or child care services to the public through a contract or agreement with the cabinet.

(11) "General adult services" means a voluntary preventative service in accordance with 922 KAR 5:090, General adult services.

(12) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.

(13) "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130, Kinship Care Program.

(14) "Parent" is defined by:

(a) KRS 600.020(43)(42) and 42 U.S.C. 675(2) for child welfare benefits and services; or

(b) 45 C.F.R. 98.2 for child care assistance.

(15) "Protective services" is defined by KRS 209.020(5) or 209A.020(5).

(16) "Registered child care provider" means a caregiver registered under 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

(17) "Resource home" means a home in which an individual has been approved by the cabinet in accordance with 922 KAR 1:350, Family preparation, to:

(a) Provide foster care services for a child placed by the cabinet;

(b) Adopt a child:

1. Whose parents' parental rights have been terminated; and

2. Who is under the custodial control of the cabinet; or

(c) Provide respite service for a family approved to care for a child under the custodial control of the cabinet.

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 11(3); or

2. 922 KAR 1:430, Section 4(4)(b); or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan, or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet the mandated time frames for child protective services specified in 922 KAR 1:330.

(2) A resource home parent or adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to a resource home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050, State funded[Approval of] adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance; or

4. Provide an adoptive parent ~~with~~ except as otherwise required by law, with known relevant facts regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050, State funded[Approval of] adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance;

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child when the[at the time of renewal of an] adoption assistance agreement is renewed under 922 KAR 1:050, State funded[Approval of] adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance; or

(d) Closure of a resource home under 922 KAR 1:350, Family preparation, unless a provision of Section 3(1)(f), (g), (h), or (i) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19[Pursuant to 922 KAR 1:130, Section 19(1), a kinship caregiver may request an administrative hearing under the provisions of this administrative regulation for denial by the cabinet of:

1. Supportive services to facilitate the child's placement with the kinship caregiver; or

2. A request for start-up costs to facilitate the child's adjustment to the new environment with the kinship caregiver.]

(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the

cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055, Hearings and appeals.

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.

(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of general adult services or protective services to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable promptness to a request for:

1. General adult services; or
2. Protective services for an adult.

(8) An applicant for child care assistance or the parent of a child receiving assistance may request an administrative hearing for the denial, reduction, suspension, or termination of benefits pursuant to 922 KAR 2:160, Section 18.

(9) An applicant for child care registration or a registered child care provider may request an administrative hearing in accordance with 922 KAR 2:180, Section 9.

(10) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 through 5 expressly permits the appeal of a cabinet action or alleged act.

(11) A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:

(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 5; or

(b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 5.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or
2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;

(e) A decision to deny:

1. Approval of an individual seeking to provide foster or adoptive services in accordance with 922 KAR 1:350 or 922 KAR 1:310; or

2. A caretaker relative approval as a kinship caregiver if the:

a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or

b. Child is ineligible in accordance with 922 KAR 1:130, Section 9;

(f) Removal of a foster child from a resource home if the resource home parent or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Resource home parent or other individual waived the right to appeal the substantiated incident; or
2. Substantiated incident was upheld after:
 - a. An administrative hearing; or
 - b. Judicial review;

(g) Removal of a child from a resource home for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1:140, Foster care and adoption permanency services; or

2. Uniting or reuniting the child with a sibling at the next placement;

(h) Closure of a resource home if the cabinet has not placed a child in the home within the previous two (2) years;

(i) Closure of a resource home according to the terms of the contract between the cabinet and the resource home;

(j) A situation where state or federal law requires adjustment of a payment or grant, except if/when a payment or grant computation is incorrect;

(k) The per diem rate of reimbursement paid to a resource home parent who provides foster care services; or

(l) Decision to not recommend a resource home parent in accordance with 922 KAR 1:350, Section 9(12) for enrollment in specialized training as an emergency shelter, medically fragile, specialized medically fragile, or care plus resource home.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, caretaker relative, kinship caregiver, or an adult may:

(a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed:

1. By that office; or

2. Pursuant to paragraph (a) of this subsection.

(2)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The commissioner or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

(3)(a) A parent, caretaker relative, kinship caregiver, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) days of receipt of the written response provided in accordance with subsection (2) of this section.

(c) Upon completion of the review, the commissioner shall render a written order regarding the complaint within thirty (30) days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the written order.

(4) The department shall compile data regarding service complaints to:

(a) Fulfill federal and state reporting requirements; and

(b) Use for program development and evaluation.

Section 5. Appeal of a Child Abuse or Neglect Investigative Finding. An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480, Appeal of child abuse and neglect investigative findings.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy of the:

(a) DPP-154, Protection and Permanency Service Appeal Request, to an individual:

1. At each case planning conference;
2. Upon denial, reduction, modification, suspension, or termination by the cabinet of:
 - a. Child welfare services provided by the cabinet;
 - b. General adult services or protective services, if notification does not present a risk of harm to the victim;
 - c. Adoption assistance; or
 - d. Other federally-funded program benefit described in 922 KAR Chapter 1, 3, or 5; or
3. Upon determination that a student is not eligible for a tuition waiver or education and training voucher:

(b) DCC-88, Child Care Service Appeal Request, to an individual:

1. Upon the denial, reduction, or termination of child care assistance;
2. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program for a:
 - a. Withdrawal or denial of child care registration application, not at the request of the applicant; or
 - b. Revocation or closure of a registered child care provider, not at the request of the provider;
3. Upon a reduction or revocation of a child care provider's STARS level in accordance with:
 - a. 922 KAR 2:170, STARS for KIDS NOW Program Type I licensed child-care centers; or
 - b. 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child-care homes; or
4. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.

(2) At least ten (10) days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail a:

- (a) DPP-154A, Protection and Permanency Notice of Intended Action;
- (b) DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or
- (c) Notice in accordance with 922 KAR 2:160, Section 12~~(6)~~~~(7)~~.

(3) The cabinet may take emergency action under KRS 13B.125.

(4) A request for appeal shall:

- (a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;
- (b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection (2) of this section was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action; and

2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (2) of this section, if available.

(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and

2. Resolution of the matter may be pursued through the service complaint process described in Section 4 of this administrative regulation.

(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

Section 7. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

(2) Unless waived by the appellant, final administrative action shall be taken in accordance with the ninety (90) day time frame established by KRS 13B.120(4).

Section 8. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

(a) Section 4 of this administrative regulation; or

(b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written decision rendered by a contract agency in response to a complaint may request that the commissioner review the complaint and the final decision.

(b) A request for review shall be submitted to the commissioner within ten (10) days of the contract agency's final decision.

(c) Upon completion of the review, the commissioner shall render a written order regarding the complaint within thirty (30) days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the client of the need for an extension to the timeframe specified in this subparagraph.

(d) The contract agency shall abide by the order.

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

(a) "DCC-88, Child Care Service Appeal Request", ~~[edition]~~ 11/09;

(b) "DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", ~~[edition]~~ 11/09;

(c) "DPP-154, Protection and Permanency Service Appeal Request", ~~[edition]~~ 11/09; and

(d) "DPP-154A, Protection and Permanency Notice of Intended Action", ~~[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, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 19, 2013

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, August 5, 2013)

922 KAR 1:400. Supportive services.

RELATES TO: KRS ~~45.237-45.241~~, 194A.005(1), 199.011(4), 205.2003(3), 205.211, 205.703, 209.020(2), 209A.020(2), 600.020(1), (6), (8), 610.110(6), 620.020(1), 45 C.F.R. Parts 260-265, 42 U.S.C. 601-679b

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(4), 605.150[, 2006 Ky. Acts ch. 252, Part 1, H.10(9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services[; to a youth currently or formerly in foster care,] necessary for the protection of children.[2006 Ky. Acts Ch. 252 Part 1, H.10(9) requires the cabinet to promulgate an administrative regulation to implement the Foster Youth Transitional Assistance Program.] This administrative regulation establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child's[his or her] home through the cabinet, to the extent funds are available.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1), 600.020(6), 209.020(2), and 209A.020(2).

~~(2) ["Case permanency plan" is defined by KRS 620.020(1).~~

~~(3)]~~ "Child" is defined by KRS 199.011(4), 600.020(8), and as extended by KRS 610.110(6).

~~(3)](4)]~~ (3) "Intensive family-based support services" means the goal of keeping the family united or if removal of a child is necessary, placing the child in the least restrictive setting consistent with his or her individual needs.

~~(4)](5)]~~ (4) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families Program, a money payment program for a child who is deprived of parental support or care, as described at 921 KAR 2:006, Section 1(9).

~~(5)](6)]~~ (5) "Kentucky Works" means a program that assists a:
 (a) Recipient of K-TAP in obtaining education, training, experience, and employment necessary to leave public assistance; or
 (b) Former K-TAP recipient with job retention service.

~~(6)](7)]~~ (6) "Paraprofessional attendant" means a person with a high school diploma or bachelor's degree and training related to the services he or she provides, under the supervision of a licensed professional.

~~(7)](7)]~~ (7) "Preventative assistance" means a service to provide emergency funds to a family during crisis.]

~~(8)]~~ (8) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level.

~~(8)](9)]~~ (9) "Relative placement support benefit" means a monetary benefit to address a child's immediate need during the cabinet's placement of the child with a nonparental relative.

~~(9)](10)]~~ (10) "Safety net services" means:

(a) A short-term intervention or maintenance service to help an individual or family develop and maintain skills and abilities to prevent out-of-home placement for a child in that family; or
 (b) Monetary benefits to assist in maintaining self-sufficiency.

~~(10)](11)]~~ (11) "Targeted case management" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services.~~(11)]~~ (12) "Youth" means a person age eighteen (18) through twenty-three (23) years inclusive.]

Section 2. Child Care Services. The cabinet may refer an individual or family for child care services pursuant to 922 KAR 2:160 if

the individual or family:

- (1) Makes a request for assistance for child care expenses;
- (2) Needs child care for protection or prevention of child abuse, neglect, or exploitation; or
- (3) Needs child care for a child of a teen parent attending high school.

Section 3. Child Support Service. The cabinet may make a referral for child support services, by means of the process described at 921 KAR 1:380[~~Section 2,~~] on behalf of a child entering out-of-home care through a:

- (1) Voluntary commitment agreement; or
- (2) Court order assigning legal responsibility for the child to the cabinet.

Section 4. Intensive Family-based Support Services. (1) Intensive family-based support services shall be provided through a contractual agreement, for the purpose of:

- (a) Stabilizing a child in the child's own home or foster home;
 - (b) Preventing further hospitalization or institutionalization; and
 - (c) Enabling a child and the child's family to improve their lives.
- (2) An intensive family-based support service may be provided to a child with one (1) or more of the following:
- (a) Mental retardation or developmental disability;
 - (b) Emotional or behavioral disturbance;
 - (c) Dual diagnosis;
 - (d) Risk of institutionalization; or
 - (e) Need for aftercare services following release from an institution or other highly structured setting.

(3) Except for the assessment and discharge planning, intensive family-based support services shall not start while a child is in a hospital or an institution.

(4) Intensive family-based support services shall be available to a family with a child living in a:

- (a) Biological home;
- (b) Foster home; or
- (c) Adoptive placement.

(5) The cabinet may make a referral for intensive family-based support services which may include the following:

- (a) A comprehensive assessment, to include:
 1. Review of medical, psychiatric, social, and educational assessments conducted within the last twelve (12) months; and
 2. An in-home assessment;
- (b) If appropriate, discharge planning provided through the service provider's involvement with a foster or biological family, the child, and the hospital or institution to ensure:
 1. A coordinated approach upon discharge; and
 2. That communication is clear regarding behaviors, goals, and recommended interventions;
- (c) Planned support services provided to assist with routine day-to-day activity that is crucial to stabilization of a child within the family unit;
- (d) Family intervention services, such as behavioral and family counseling, to assist a child and family in:

1. Identifying and resolving issues underlying the dysfunctional behaviors within a family; or
2. Eliminating barriers to change;

(e) Respite care services provided to allow a biological or a foster parent relief for a designated period of time from the stress of caring for an emotionally disturbed or physically disabled child or to allow time to attend to other needs;

(f) A paraprofessional attendant to provide direct in-home services to a child, or a biological or foster parent, as identified in the case plan;

(g) Purchase of care in an alternate living unit, as a component of an intensive family-based support services contract;

- (h) Art or music therapy from a qualified professional;
- (i) Educational consultation and support;
- (j) Crisis intervention;
- (k) Skill development; or
- (l) Other service identified in the case plan.

(6) The type, frequency, intensity, and duration of services shall be determined according to each individual situation.

(7) A family case plan shall be developed to address:

- (a) Family strengths and needs;
- (b) Goals, objectives, and tasks;
- (c) Time frames; and
- (d) Anticipated outcomes.

Section 5. Safety Net Services. (1) Safety net services shall be provided for a former K-TAP recipient who:

- (a) Has total income at or below 200 percent of federal poverty level; and
- (b) Is no longer eligible for K-TAP benefits due to:
 1. Failure to comply with Kentucky Works requirements of 921 KAR 2:370, Section 7(2)(b); or
 2. Reaching benefit time limitations established at 921 KAR 2:006, Section 21.

(2) A safety net service shall include contact with the family and may address the following:

- (a) Assistance to the individual or family to identify the problem and resources available to improve the situation;
- (b) Linkage to the appropriate resources; or
- (c) Intervention in a crisis situation including:
 1. Fuel shortage;
 2. Utility shutoff;
 3. Insufficient food, clothing, housing, or employment; or
 4. Response to an inquiry regarding the family situation.

(3)(a) The cabinet may authorize fund distribution to an appropriate vendor, in order to provide for a family's safety net services.

(b) Up to a total of \$635 may be paid over a period of four (4) months during the twelve (12) month period following an event specified in subsection (1)(b) of this section.

Section 6. Medicaid Services. (1) Rehabilitative services shall be provided to a Medicaid-eligible child under the age of twenty-one (21) who meets the Department for Community Based Services' conditions and circumstances as a child in the custody of, or under the supervision of, or at risk of being in the custody of, the cabinet.

(2) Targeted case management services shall be provided to a Medicaid-eligible individual in accordance with 907 KAR 3:020, Section 3(1).

~~Section 7. Preventative Assistance. (1) Preventative assistance services shall be provided in order to:~~

- ~~(a) Assist an individual who is identified at risk and is in need of protective services intervention;~~
- ~~(b) Prevent the removal of a child from his or her home; or~~
- ~~(c) Facilitate the return of a child to his or her natural parents.~~
- ~~(2) Preventative funds may be utilized for:~~

- ~~(a) Shelter;~~
- ~~(b) Food;~~
- ~~(c) Clothing;~~
- ~~(d) Utilities; or~~
- ~~(e) Other necessary services.~~

~~(3) The cabinet may authorize up to \$500 in a state fiscal year to the appropriate vendor for a family.~~

~~Section 8. K-TAP Determination for Domestic Violence Victims. If a report of alleged domestic violence is made the cabinet shall:~~

~~(1) Attempt to arrange a face-to-face interview with the alleged victim to conduct an assessment or investigation, according to the procedure established at 921 KAR 2:006, Section 25, and, if necessary, shall offer protective and general adult services; and~~

~~(2) Upon completion of the assessment or investigation, provide information to K-TAP whether the reported victim:~~

- ~~(a) Is in a domestic violence situation; and~~
- ~~(b) Has agreed to services.~~

Section 8[9]. Assessment of Minor Teenage Parents. (1) If a determination is made that a minor teenage parent is an applicant or recipient of K-TAP and is not living with an adult or legal guardian, the minor teenage parent shall be referred for an assessment of his safety, including assistance with an alternative living arrangement if necessary.

(2) The cabinet shall:

(a) Conduct a face-to-face contact with the minor teenager's parent and the minor parent's child;

(b) Conduct a face-to-face interview with the minor parent in order to assess the minor parent's current situation and the safety issues for the minor teenage parent and child;

(c) Determine if the minor teenager's parent or guardian accepts the minor teenager's living arrangement;

(d) Refer the family to the appropriate services; and

(e) Provide the following to the Division of Family Support:

1. Identification of safety issues;
2. A recommendation regarding opening a protective or preventive services case on the family; and
3. Services to which the minor teenage parent has been referred.

Section 9. Relative Placement Support Benefit. (1) Effective April 1, 2013, to the extent that funds are available, the cabinet shall provide a one (1) time relative placement support benefit:

(a) To facilitate the cabinet's placement of a child with a nonparental relative;

(b) If the cabinet determines that a child is at risk of being placed in foster care, or is in the custody of the cabinet and residing in foster care due to:

1. A cabinet investigation pursuant to 922 KAR 1:330 that resulted in a substantiation of abuse or neglect naming the child's biological or adoptive parent as the perpetrator; or

2. The death of both parents;

(c) That will provide for a child's immediate need for:

1. Clothing;

2. School supplies;

3. Additional furniture;

4. A deposit for a larger apartment; or

5. An essential documentable cost up to the maximum amount allowed in paragraph (d) of this subsection; and

(d) That does not exceed the maximum amount for the appropriate number of eligible children as follows:

| Number of Eligible Children | Maximum Payment Amount |
|-----------------------------|------------------------|
| 1 | \$350 |
| 2 | \$700 |
| 3 | \$1,050 |
| 4 | \$1,400 |
| 5 | \$1,750 |
| 6 or more | \$2,100 |

(2) The relative placement support benefit shall be issued by check directly to a vendor providing the needed service or item listed in subsection (1)(c) of this section.

(3) The cabinet shall indicate the need for a relative placement support benefit in the relative's home evaluation in accordance with 922 KAR 1:140.

(4) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

(a) Placed with a relative whose household income is at or below 200% of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or

(b) Determined eligible for K-TAP.

Section 10[11]. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 11[12]. State Plan. A copy of the state's Title IV-A Temporary Assistance for Needy Families state plan may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621[10. Foster Youth Transitional Assistance (FYTA). (1) In accordance with 2006 Ky. Acts ch. 252, Part 1, H.10, grants or vouchers from the Foster Youth Transitional Assistance program shall be provided to a youth who:

(a) Was in foster care on the youth's eighteenth birthday;

- (b)1. Is currently in foster care; or
- 2. Was formerly in foster care; and
- (c) Is:
 - 1. Currently working;
 - 2. Currently working and attending a community college; or
 - 3. Currently working and attending a four (4) year college or university.
- (2) A recipient in the FYTA program shall submit documentation of program eligibility under paragraph (c) of this section to the cabinet monthly.
- (3) A youth shall utilize funds for transitional assistance into independence for the following:
 - (a) Housing;
 - (b) Clothing;
 - (c) Transportation;
 - (d) Tuition;
 - (e) Medical services;
 - (f) Dental services; or
 - (g) Other expenses that the cabinet may authorize for the youth.
- (4) For each state fiscal year, the cabinet may authorize:
 - (a) Up to \$7,500 per working youth; or
 - (b) Up to \$10,000 per working youth also attending a:
 - 1. Community college; or
 - 2. Four (4) year college or university].

TERESA C. JAMES, Commissioner
 AUDREY TAYSE HAYNES, Secretary
 APPROVED BY AGENCY: March 19, 2013
 FILED WITH LRC: March 28, 2013 at 3 p.m.
 CONTACT PERSON: Tricia Orme, Office of Legal Services,
 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone
 502-564-7905, fax 502-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, August 5, 2013)

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

RELATES TO: KRS Chapter 13B, 45.237-45.241, 194A.060, 45 C.F.R. 98, 45 C.F.R. 205.50, 42 U.S.C. 601-619
 STATUTORY AUTHORITY: KRS 45.237(4), 194A.050(1), 199.8994, 45 C.F.R. 98.60(i)
 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 199.8994 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. 45 C.F.R. 98.60(i) and KRS 45.237(4) require the cabinet, as the lead agency for Kentucky, to recover child care payments that are the result of fraud or improper payment. This administrative regulation establishes procedures for improper payments, claims, and penalties used by the cabinet in the administration of the Child Care Assistance Program (CCAP).

- Section 1. Definitions. (1) "Agency error" means an error on the part of the cabinet or its designee.
- (2) "Cabinet" means the Cabinet for Health and Family Services or its designee.
- (3) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of 922 KAR 2:160, with the financial resources to find and afford quality child care.
- (4) "Child care provider" means the individual, business, or business proprietor who is receiving, or has received, payment for

- child care services under CCAP.
- (5) "Claim" means an amount owed to the cabinet as a result of an overpayment of CCAP.
- (6) "Claimant" means a current or former CCAP recipient or child care provider subject to a claim.
- (7) "Compromise a claim" means accepting less than the full value of a claim.
- (8) "Hearing officer" is defined by KRS 13B.010(7).
- (9) "Improper payment" is defined by KRS 45.237(1)(d) or 45 C.F.R. 98.100(d).
- (10) "Inadvertent error claim" means an overpayment resulting from a misunderstanding or unintended error on the part of a recipient or a child care provider.
- (11) "Intentional program violation" or "IPV" means a CCAP recipient or child care provider having intentionally:
 - (a) Made a false or misleading statement; or
 - (b) Misrepresented, concealed, or withheld facts.
- [(9) "Hearing officer" is defined by KRS 13B.010(7).
- (10) "Improper payment" is defined by KRS 45.237(1)(d) or 45 C.F.R. 98.100(d).
- (11) "Inadvertent error claim" means an overpayment resulting from a misunderstanding or unintended error on the part of a recipient or a child care provider.]
- (12) "Overpayment" means a CCAP payment which exceeded the amount a CCAP recipient or a child care provider was eligible to receive.
- (13) "Recipient" means a family who has been found eligible for CCAP.
- (14) "Terminate a claim" means ceasing all collection actions on a claim.
- (15) "Underpayment" means a payment which was less than the amount a recipient or a child care provider was eligible to receive.

Section 2. Responsibility for a Claim. (1) A parent of a recipient household or a child care provider shall be responsible for paying a claim which resulted from an:

- (a) Overpayment due to an action or inaction on the part of the recipient or the child care provider, including failure to report a change in circumstance in accordance with 922 KAR 2:160, Section 11; or
 - (b) Agency error that provided the recipient or the child care provider with an overpayment.
- (2) The cabinet shall make an exception to subsection 1(b) of this section if the recipient:
- (a) Is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and
 - (b) Complied with the requirements of the recipient's:
 - 1. Case plan developed in accordance with 922 KAR 1:430; or
 - 2. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

Section 3. Claim Category. (1) A claim shall be classified in one (1) of the following three (3) categories:

- (a) A claim resulting from an IPV;
 - (b) Inadvertent error claim; or
 - (c) Agency error claim.
- (2) The cabinet shall establish an IPV against a recipient or a child care provider if:
- (a) A court of appropriate jurisdiction issues a conviction, or accepts an Alford or guilty plea, related to an IPV in CCAP against a parent of the recipient household or the child care provider;
 - (b) A parent of the recipient household or a child care provider completes, signs, and returns the:
 - 1. DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing; or
 - 2. DCC-83, Deferred Adjudication Disqualification Consent Agreement; or
 - (c) A hearing officer or an agency head makes a determination finding an IPV as a result of an administrative disqualification hearing.

Section 4. Action on an Improper Payment. (1) The cabinet shall investigate each:

- (a) Instance of an improper payment; or
- (b) Allegation of an IPV related to a:
 - 1. Recipient; or
 - 2. Child care provider.
- (2) The cabinet shall initiate action to correct an improper payment in a CCAP case.
- (3) If an overpayment has occurred, the cabinet shall:
 - (a) Determine the amount of overpayment in accordance with Section 5 of this administrative regulation; and
 - (b) Categorize and establish a claim to recover the amount of the overpayment.
- (4) If the cabinet has sufficient documentary evidence to confirm[substantiate] that a recipient or child care provider has committed an IPV, the cabinet shall:
 - (a) 1. Refer the case to the cabinet's Office of Inspector General (OIG) for investigation or referral for prosecution if warranted by the facts of the case;
 - 2. Initiate an administrative disqualification hearing in accordance with Section 9 of this administrative regulation; or
 - 3. Accept a parent of a recipient household or a child care provider's waiver of an administrative disqualification hearing through the parent or child care provider's completing, signing, and returning a DCC-84 Supplement A; and
 - (b) Take an action necessary to establish a claim to collect any overpayment resulting from the suspected IPV.

Section 5. Calculating a Claim. (1) The cabinet shall calculate the amount of an overpayment for an:

- (a) Agency error back to the month that the error first occurred, but not more than twelve (12) months prior to the date that the cabinet became aware of the overpayment;
- (b) Inadvertent error back to the month that the misunderstanding or error first occurred, but not more than three (3) years prior to date that the cabinet became aware of the overpayment; and
- (c) IPV back to the month of the fraudulent act first occurred, but not more than five (5) years prior to the date that the cabinet became aware of the overpayment.
- (2) If an overpayment occurred as a result of a change during the period of CCAP eligibility, the first day of the claim shall begin thirty-one (31) days from the date of the change.
- (3) If the overpayment occurred due to the failure of a parent of a recipient household to report information at application or redetermination for eligibility in accordance with 922 KAR 2:160, Section 2 or 8, the claim shall start the first day of the approval of the application or redetermination.
- (4)(a) The cabinet shall:
 - 1. Calculate the amount of CCAP for each month that a recipient or a child care provider received the improper payment; and
 - 2. Subtract the correct amount of CCAP from the CCAP actually received.
- (b) The difference shall be the amount of the overpayment.
- (5) If the overpayment exists for the entire period of CCAP eligibility, the cabinet shall calculate the full amount of benefits overpaid:

- (a) On behalf of the recipient; or
- (b) To the child care provider.
- (6) If an overpayment and an underpayment exist for a recipient or a child care provider, the amounts of the overpayment and the underpayment shall be offset to determine the total amount of the claim.
- (7) The amount of a claim may differ from a calculation obtained through the methods outlined in this section if a different claim amount is ordered by:
 - (a) An administrative hearing officer or agency head in accordance with 922 KAR 1:320; or
 - (b) A court of appropriate jurisdiction.

Section 6. General Claim Notices. (1) A KCD-2, General Claims Notice, shall serve many purposes in the administration of CCAP claims collections, including the use as:

- (a) An appointment letter;
- (b) A demand letter;
- (c) A notification of benefit reduction;
- (d) A past due notice;

- (e) A repayment agreement;
- (f) A claim adjustment notice;
- (g) A claim termination notice;
- (h) A payment receipt;
- (i) Notice of a claim being paid in full; or
- (j) Notice of a delinquent claim's referral for collection in accordance with Section 11(2) of this administrative regulation.
- (2) The language on the KCD-2 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 7. Notification of a Claim. (1) The cabinet shall:

- (a) Provide initial notice in accordance with Section 6 of this administrative regulation to a recipient or a child care provider suspected of having a claim;
- (b) Provide notice of a suspected IPV, if applicable, with a:
 - 1. DCC-84, Notice of Suspected Intentional Program Violation; and
 - 2. DCC-84 Supplement A; and
- (c) Offer the recipient or the child care provider an opportunity to meet with the cabinet to:
 - 1. Discuss the potential claim;
 - 2. Determine the category of the claim as specified in Section 3 of this administrative regulation; and
 - 3. Sign the DCC-84 Supplement A, if an IPV is suspected.
- (2) If a recipient or a child care provider requests to reschedule the meeting within ten (10) days of the date of the notice provided in accordance with subsection (1) of this section, the cabinet shall reschedule the meeting.
- (3) The cabinet shall determine the claim's category in accordance with Section 3 of this administrative regulation and the amount of the claim based on the information available to the cabinet if the recipient or the child care provider:
 - (a) Fails to attend the meeting to discuss the claim; and
 - (b) Does not contact the cabinet to reschedule the meeting in accordance with subsection (2) of this section.
- (4) If the cabinet determines the category and amount of a claim in accordance with subsections (1) through (3) of this section:
 - (a) Collection shall be initiated in accordance with Section 10 of this administrative regulation; and
 - (b) Subsequent notice pursuant to Section 6 of this administrative regulation shall be mailed to the recipient or the child care provider to give the claim:
 - 1. Amount;
 - 2. Time period;
 - 3. Reason; and
 - 4. Classification in accordance with Section 3 of this administrative regulation.
- (5) A recipient or a child care provider shall return the notice made pursuant to subsection (4)(b) of this section within ten (10) days of receipt if the recipient or child care provider chooses to request an administrative hearing on the establishment of the claim in accordance with Section 18 of this administrative regulation.

Section 8. Disqualification Period. (1) A recipient or a child care provider determined to have committed an IPV in accordance with Section 3(2) of this administration regulation shall have a period of disqualification from CCAP pursuant to subsection (2) of this section.

- (2)(a) A disqualification period from CCAP shall adhere to the following guidelines:
 - 1. Three (3) months disqualification for a first occurrence of IPV;
 - 2. Six (6) months disqualification for a second occurrence of IPV; and
 - 3. Permanent disqualification for a third occurrence of IPV.
- (b) The cabinet shall make an exception to paragraph (a) of this subsection if:
 - 1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and
 - 2. CCAP is necessary for the recipient to comply with the requirements of the recipient's:
 - a. Case plan developed in accordance with 922 KAR 1:430; or
 - b. Kentucky Works Program self-sufficiency plan developed in

accordance with 921 KAR 2:370.

(3) If a court of appropriate jurisdiction issues a disqualification period upon conviction of a charge, or acceptance of an Alford or guilty plea, related to the IPV, the cabinet:

(a) May make exception to a disqualification period specified in subsection (2) of this section; and

(b) Shall enforce the court-ordered disqualification period.

(4) Unless subsection 2(b) of this section applies, the disqualification period shall continue uninterrupted until it is completed regardless of the eligibility of the recipient or the child care provider.

(5) Regardless of the disqualification period, the recipient or the child care provider shall continue to be responsible for the payment of a claim resulting from the IPV.

(6) Eligibility of a recipient or payment to a child care provider shall not be affected by a suspected IPV until a disqualification is established in accordance with subsection (1) of this section.

(7) If a court of appropriate jurisdiction fails to impose a disqualification period for an IPV, the cabinet shall impose a penalty in accordance with this section.

(8) The cabinet shall not separate the same act of IPV repeated over a period of time for the imposition of multiple, separate penalties.

Section 9. Administrative Disqualification Hearing. (1) The cabinet shall initiate an administrative disqualification hearing on the establishment of an IPV if the:

(a) Facts of the IPV do not warrant civil or criminal prosecution through a court of appropriate jurisdiction;

(b) Referral for prosecution is declined by prosecutorial authorities;

(c) Referral for prosecution is withdrawn by the cabinet; or

(d) Recipient or child care provider declines to sign the DCC-84 Supplement A.

(2) If the facts of the case arise out of the same or related circumstances, the cabinet shall not initiate an administrative disqualification hearing against a recipient or a child care provider:

(a) Whose case is currently referred for prosecution; or

(b) Subsequent to an action taken against the recipient or the child care provider by the prosecutor or a court of appropriate jurisdiction.

(3) Unless a different procedure is specified in this section, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 922 KAR 1:320 and KRS Chapter 13B; and

(b) Include:

1. The issuance of a recommended order;

2. Procedures for written exceptions; and

3. The issuance of a final order.

(4) The cabinet may initiate an administrative disqualification hearing regardless of the current eligibility of a recipient or the payment status of a child care provider.

(5)(a) In accordance with KRS 13B.050, an administrative disqualification hearing notice shall be sent:

1. By certified mail;

2. To the addressee only; and

3. With a return recipient requested.

(b) An administrative disqualification hearing notice shall provide information in accordance with KRS 13B.050.

(6) Timeframes for an administrative disqualification hearing shall be in accordance with KRS 13B.110 and 13B.120.

(7)(a) The cabinet shall combine a request for an administrative hearing in accordance with Section 16 of this administrative regulation and an administrative disqualification hearing into a single hearing if the:

1. Factual issues arise out of the same or related circumstances; and

2. Recipient or the child care provider receives prior notice that the hearings are being combined.

(b) If the hearings are combined for the purpose of settling the amount of the claim concurrent with a determination of whether an IPV occurred, the recipient or the child care provider subject to the claim shall lose the right to a subsequent administrative hearing on the amount of the claim.

(8) During an administrative disqualification hearing, the hearing officer shall advise the recipient or child care provider accused of an IPV of the option to refuse to answer questions during the hearing.

(9)(a) In accordance with KRS 13B.080(6), if a recipient or child care provider does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:

1. Proceed without recipient or child care provider representation because the return receipt from the hearing notice verified the notice was received by the recipient or the child care provider; or

2. Not be conducted because the hearing notice or return receipt is annotated as unclaimed or undeliverable.

(b) The cabinet shall conduct a new administrative disqualification hearing if the:

1. Recipient or the child care provider was not represented at the hearing;

2. Recipient or the child care provider was determined to have committed an IPV; and

3. Hearing officer determined the household had good cause, in accordance with 922 KAR 1:320, Section 6(7), for not appearing.

(10)(a) The determination of an IPV made through an administrative disqualification hearing shall not be reversed by a subsequent administrative hearing decision.

(b) A recipient or child care provider shall be entitled to seek relief through a court of appropriate jurisdiction in accordance with KRS 13B.140.

Section 10. Collection of a Claim. (1) The cabinet shall collect a claim from a claimant through:

(a) Voluntary payment arrangement, negotiated either orally or in writing, which includes a payment schedule;

(b) Court-ordered repayment;

(c) State tax refund interception in accordance with KRS 45.238;

(d) Lottery offsets;

(e) Wage garnishment; or

(f) Referral to a collection agency.

(2)(a) The cabinet shall accept a lump sum payment on a claim from a recipient or a child care provider.

(b) The lump sum payment may be a full or partial payment.

(3)(a) If a claimant who is a child care provider submits a completed DCC-97 Supplement A, Voluntary Payment Reduction, indicating the amount the provider wishes to have applied to the claim, the child care provider currently receiving CCAP payment may choose to have an amount withheld from the provider's CCAP payment to be applied towards a claim.

(b) The amount indicated on the DCC-97 shall not be less than ten (10) percent of the total CCAP payment.

~~(4) [The cabinet shall direct CCAP withheld in accordance with 922 KAR 2:160, Section 17, towards a child care provider's claim.]~~

~~(5) [The cabinet shall refund to a claimant any amount the claimant pays in excess of the amount of the claim.]~~

Section 11. Delinquent Claims. (1) In accordance with KRS 45.237(4), a claim shall be considered delinquent if:

(a) A claimant has not made a payment or entered into a satisfactory payment arrangement with cabinet sixty (60) calendar days from the date on the notice provided in accordance with Section 7(4)(b) of this administrative regulation; or

(b) Sixty (60) days have lapsed since the claimant has missed a scheduled payment pursuant to the payment arrangement with the cabinet.

(2) The cabinet shall pursue collection on a delinquent claim through a collection method specified in Section 10(1)(b) through (f) of this administrative regulation.

(3)(a) If the cabinet determines that a claimant who is a recipient is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

1. Terminate the recipient's CCAP; and

2. Not reapprove the recipient for CCAP until the recipient has paid two (2) months of delinquent payments.

(b) The cabinet shall make an exception to paragraph (a) of

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this subsection if:

1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

2. CCAP is necessary for the recipient to comply with the requirements of the recipient's:

a. Case plan developed in accordance with 922 KAR 1:430; or

b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

(4) If the cabinet determines that a claimant who is a child care provider is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

(a) Disallow any CCAP payments to the child care provider; and

(b) Not approve the child care provider for further CCAP payments until the provider has paid two (2) months of delinquent payments.

(5) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation prior to an action specified in subsection (3) or (4) of this section.

(6) If the cabinet is unable to determine a claim's delinquency status because the claim collection is coordinated through the court system, the cabinet shall not subject a claim to the requirements for delinquent debts in accordance with this section.

(7) A claim shall not be considered delinquent if:

(a) Another claim for the same claimant is currently being paid through a repayment agreement or court order; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(8)(a) A claim awaiting an administrative hearing shall not be considered delinquent.

(b) If a hearing officer or agency head determines that a claim does exist as result of an administrative hearing, the cabinet shall:

1. Send subsequent notice of the claim in accordance with Section 6 of this administrative regulation; and

2. Base delinquency on the due date of the subsequent notice.

(c) If a hearing officer or agency head determines that a claim does not exist as a result of an administrative hearing, the cabinet shall terminate the claim in accordance with Section 12(2) of this administrative regulation.

Section 12. Compromising or Terminating a Claim. (1) Except for a claim that is established by a court of appropriate jurisdiction, the cabinet may compromise a claim or a portion of a claim if:

(a) A request for a compromise is received from the claimant; and

(b) The cabinet makes a determination that the claimant will be unable to pay the claim within five (5) years.

(2) The cabinet shall terminate a claim if the:

(a) Claim:

1. Is invalid, unless pursuing the overpayment as a different type of claim is appropriate;

2. Balance is twenty-five (25) dollars or less, and the claim has been delinquent for ninety (90) days or more, unless another claim is pending against the same claimant resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years;

(b) Claimant dies; or

(c) Cabinet is unable to locate the claimant.

(3) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation if the cabinet:

(a) Compromises or terminates a claim; and

(b) Has a mailing address for the claimant.

Section 13. Underpayments and CCAP Restoration. (1) If an underpayment has occurred, the cabinet shall issue a payment to the child care provider that includes the difference between the amount that the child care provider:

(a) Was entitled to receive; and

(b) Actually received.

(2) CCAP shall be restored for no more than twelve (12) months to a recipient or a child care provider if benefits were lost:

(a) Due to an agency error; or

(b) By a disqualification period for an IPV that is subsequently reversed through an order of a court of appropriate jurisdiction.

Section 14. Disclosure of Information. The disclosure or the use of CCAP information shall be restricted in accordance with:

(1) KRS 194A.060; and

(2) 45 C.F.R. 205.50(a)(1)(i).

Section 15. Retention of Records. (1) Records for CCAP shall be retained in accordance with 45 C.F.R. 98.90(e).

(2) The cabinet shall retain:

(a) The official records of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A CCAP record with an IPV disqualification indefinitely.

Section 16. A parent in the recipient household or a child care provider may request an appeal of the establishment of a claim in accordance with 922 KAR 1:320, Section 2(10).

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-83, Deferred Adjudication Disqualification Consent Agreement", edition 11/09;

(b) "DCC-84, Notice of Suspected Intentional Program Violation", edition 11/09;

(c) "DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing", edition 11/09;

(d) "DCC-97 Supplement A, Voluntary Payment Reductions", edition 11/09; and

(e) "KCD-2, General Claims Notice", 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 am through 4:30 pm.

922 KAR 2:020

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 19, 2013

FILED WITH LRC: March 27, 2013 at 9 a.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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Child Care

(As Amended at ARRS, August 5, 2013)

922 KAR 2:120. Child-care center health and safety standards.

RELATES TO: KRS Chapter 151, Chapter 186, 189.125, 199.894(1), 199.896(2), (18), (19), 199.898, 211.350-211.380, Chapter 217, 227.220, Chapter 318, 314.011(5), 527.070(1), 620.030, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, quality[quality] for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.894(1).

(2) "Corporal physical discipline" is defined by KRS 199.896(18).

(3) "Developmentally appropriate" means suitable for the spe-

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cific age range and abilities of a child.

(4) "Director" means an individual:

(a) Who meets the education and training requirements as specified in 922 KAR 2:110, Section 4;

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:110, and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at the child-care center.

(5) "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician.

(6) "Infant" means a child who is less than twelve (12) months of age.

(7) "Licensee" means the owner and operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(8) "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.

(9) "Parent" is defined in 45 C.F.R. 98.2.

(10) "Premises" means the building and contiguous property in which child care is licensed[provided].

(11) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(12) "Protective surface" means loose surfacing material not installed over concrete which includes the following:

(a) Wood mulch;

(b) Double shredded bark mulch;

(c) Uniform wood chips;

(d) Fine sand;

(e) Coarse sand;

(f) Pea gravel, except for areas used by children under three

(3) years of age;

(g) Certified shock absorbing resilient material; or

(h) Other material approved by the cabinet or designee.

(13) "Related" means having one (1) of the following relationships with the operator of the child-care center:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Stepchild; or

(g) Child in legal custody of the operator.

(14) "School-age" means a child attending kindergarten, elementary, or secondary education.

(15) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(16) "Transition" means the changing from one (1) child care arrangement to another.

(17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.

(18) "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. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:

| Age of Children | Ratio | Maximum Group Size* |
|-------------------------------|---|---------------------|
| Infant | 1 staff for 5 children | 10 |
| Toddler | 1 staff for 6 children | 12 |
| Preschool-age 2 to 3 years | 1 staff for 10 children | 20 |
| Preschool-age 3 to 4 years | 1 staff for 12 children | 24 |
| Preschool-age 4 to 5 years | 1 staff for 14 children | 28 |
| School-age 5 to 7 years | 1 staff for 15 children | 30 |
| School-age 7 and older | 1 staff for 25 children (for before and after school) | 30 |
| | 1 staff for 20 children (full day of care) | 30 |

*Maximum Group Size shall be applicable only to Type I child-care centers.

(a) In a Type I child-care center, a group size shall:

1. Be separately maintained in a defined area unique to the group; and

2. Have specific staff assigned to, and responsible for, the group.

(b) The age of the youngest child in the group shall determine the:

1. Staff-to-child ratio; and

2. Maximum group size.

(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a center:

1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) years to six (6) years; and

2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child-care program that assures each child will be:

1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:

a. Within scope of vision and range of voice; or

b. For a school-age child, within scope of vision or range of voice; and

2. Protected from abuse or neglect.

(b) The program shall include:

1. A procedure to inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect set forth in KRS 620.030; and

2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:

(a) Posted in writing in a conspicuous location with each age group and followed;

(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 the following:

1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building;
7. Tactile activity;
8. Culture;
9. Indoor or outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity;
11. An opportunity for a child to:
 - a. Have some free choice of activities;
 - b. If desired, play apart from the group at times; and
 - c. Practice developmentally appropriate self-help procedures in respect to:
 - (i) Clothing;
 - (ii) Toileting;
 - (iii) Hand-washing; and
 - (iv) Eating; and
12. Use of electronic viewing and listening devices if the:
 - a. Material is appropriate to the child using the equipment;
 - b. Material does not include any violence, adult content viewing, or inappropriate language;
 - c. Viewing or individual listening is limited to two (2) hours per day;
 - d. Viewing or listening is discussed with parents prior to viewing or listening; and
 - e. Viewing or listening is designed as an educational tool.
- (5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities.
- (6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.
- (7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.
- (8) A child shall not be required to stand or sit for a prolonged period of time:
 - (a) During an activity;
 - (b) While waiting for an activity to start; or
 - (c) As punishment.
- (9) If school-age care is provided:
 - (a) A separate area or room shall be provided in a Type I child-care center; and
 - (b) Each child shall be provided a snack after school.
- (10) A child shall not be subjected to:
 - (a) Corporal physical discipline pursuant to KRS 199.896(18);
 - (b) Loud, profane, threatening, frightening, or abusive language; or
 - (c) Discipline that is associated with:
 1. Rest;
 2. Toileting; or
 3. Food.
- (11) If nontraditional hours of care are provided:
 - (a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;
 - (b) At least one (1) staff member shall be assigned responsibility for each sleeping room;
 - (c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that is developmentally appropriate for the child;
 - (d) A child sleeping three (3) hours or more shall sleep in:
 1. Pajamas; or
 2. A nightgown;
 - (e) If a child attends school from the child-care center, the child shall be offered breakfast; and
 - (f) Staff shall:
 1. If employed by a Type I child-care center, remain awake while on duty; or
 2. If employed by or is the operator of a Type II child-care cen-

ter, remain awake until every child in care is asleep.

(12)(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.

Section 3. General Requirements. (1) Electronic viewing and listening devices shall only be used in the center as a part of the child's planned program of activity described in Section 2(4) of this administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity can be given adequate supervision by staff.

(3) Computer equipment shall be equipped with a monitoring device which limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness based upon their developmental skills; and

(b) Wash his or her hands with liquid soap and warm running water:

1. a. Upon arrival at the center; or
- b. Within thirty (30) minutes of arrival for school-age children;
2. Before and after eating or handling food;
3. After toileting or diaper change;
4. After handling animals;
5. After wiping or blowing nose;
6. After touching items soiled with body fluids or wastes; and
7. After outdoor or indoor play time.

(5) Staff shall:

- (a) Maintain personal cleanliness;
- (b) Conform to hygienic practices while on duty; and
- (c) Wash their hands with liquid soap and running water:

1. Upon arrival at the center;
2. After toileting or assisting a child in toileting;
3. Before and after diapering each child;
4. After wiping or blowing a child's or own nose;
5. After handling animals;
6. After caring for a sick child;
7. Before and after feeding a child or eating;
8. Before dispensing medication; and
9. If possible, before administering first aid.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement from a health professional, if requested.

(7) Except in accordance with subsection (8) of this section, the following shall be inaccessible to a child in care:

- (a) Toxic cleaning supplies, poisons, and insecticides;
- (b) Knives and sharp objects;
- (c) Matches, cigarettes, lighters, and flammable liquids;
- (d) Plastic bags;
- (e) Litter and rubbish;
- (f) Bar soap; and
- (g) Personal belongings and medications of staff.

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

- (a) Knives and sharp objects;
- (b) Litter and rubbish; and
- (c) Plastic bags not used for personal belongings.

(9) In accordance with KRS 527.070(1), firearms and ammunition shall be stored separately in a locked area outside of the designated child care area.

(10) Smoking shall:

- (a) Be permitted in accordance with local ordinances;
- (b) Be allowed only in outside designated areas; and
- (c) Not be permitted in the presence of a child.

(11) While bottle feeding an infant, the:

- (a) Child shall be held; and
- (b) Bottle shall not be:

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1. Propped;
2. Left in the mouth of a sleeping infant; or
3. Heated in a microwave.
- (12) A fire drill shall be:
 - (a) Conducted during hours of operation at least monthly; and
 - (b) Documented.
- (13) An earthquake drill and a tornado drill shall be:
 - (a) Conducted during hours of operation at least quarterly; and
 - (b) Documented.

Section 4. Premises Requirements. (1) The premises shall be:

- (a) Suitable for the purpose intended;
- (b) Kept clean and in good repair; and
- (c) Equipped with a working land-line telephone accessible to a room used by a child.
- (2) A child-care center shall be in compliance with the State Fire Marshal and the local zoning laws.
- (3) Fire and emergency exits shall be kept clear of debris.
- (4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:
 - (a) Uses fuel burning appliances; or
 - (b) Has an attached garage.
- (5) The building shall be constructed to ensure the:
 - (a) Building is:
 1. Dry;
 2. Adequately heated;
 3. Ventilated; and
 4. Well lit, including clean light fixtures that are:
 - a. In good repair in all areas; and
 - b. Shielded or have shattered proof bulbs installed; and
 5. Following are protected:
 1. Windows;
 2. Doors;
 3. Stoves;
 4. Heaters;
 5. Furnaces;
 6. Pipes; and
 7. Stairs.
 - (b) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.
 - (7) Measures shall be utilized to control the presence of:
 - (a) Rodents;
 - (b) Flies;
 - (c) Roaches; and
 - (d) Other vermin.
 - (8) An opening to the outside shall be effectively protected against the entrance of vermin by:
 - (a) Self-closing doors;
 - (b) Closed windows;
 - (c) Screening;
 - (d) Controlled air current; or
 - (e) Other effective means.
 - (9) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.
 - (10) The water supply shall be:
 - (a) Potable;
 - (b) Protected from contamination;
 - (c) Adequate in quality and volume;
 - (d) Under sufficient pressure to permit unrestricted use; and
 - (e) Obtained from an approved public water supply or a source approved by the local health department.
 - (11) Groundwater supplies for a child-care center caring for:
 - (a) More than twenty-five (25) children shall meet the specifications of the Cabinet for Environmental and Public Protection Division of Water, established in KRS Chapter 151; or
 - (b) Twenty-five (25) children or less shall secure approval from the:
 1. Cabinet for Environmental and Public Protection; or
 2. Local health department.
 - (12) Sewage shall be properly disposed by a method approved by the:
 - (a) Cabinet for Environmental and Public Protection; or
 - (b) Cabinet.

- (13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.
- (14) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.
- (15) If a portion of the building is used for a purpose other than child care:
 - (a) Necessary provisions shall be made to avoid interference with the child-care program; and
 - (b) A separate restroom shall be provided for use only by those using the building for its child care purpose.
- (16) The temperature of the inside area of the premises shall be:
 - (a) Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or
 - (b) Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months.
- (17) Outdoor activity shall be restricted based upon:
 - (a) Temperature;
 - (b) Weather conditions; or
 - (c) Weather alerts, advisories, and warnings issued by the National Weather Service.
- (18) A kitchen shall not be required if:
 - (a) The only food served is an afternoon snack to school-age children; and
 - (b) Adequate refrigeration is maintained.
- (19) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.
- (20) An outdoor play area shall be:
 - (a) Except for an after-school child-care program, located on the premises of a public or state-accredited nonpublic school and fenced for the safety of the children;
 - (b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;
 - (c) Free from:
 1. Litter;
 2. Glass;
 3. Rubbish; and
 4. Flammable materials;
 - (d) Safe from foreseeable hazard;
 - (e) Well drained;
 - (f) Well maintained;
 - (g) In good repair; and
 - (h) Visible to staff at all times.
- (21) A protective surface shall:
 - (a) Be provided for outdoor play equipment used to:
 1. Climb;
 2. Swing; and
 3. Slide; and
 - (b) Have a fall zone equal to the height of the equipment.
- (22) If a child-care center does not have access to an outdoor play area, an indoor space shall:
 - (a) Be used as a play area;
 - (b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;
 - (c) Include equipment for gross motor skills;
 - (d) Be well-ventilated;
 - (e) Be heated; and
 - (f) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.
- (23) Fences shall be:
 - (a) Constructed of safe material;
 - (b) Stable; and
 - (c) In good condition.
- (24) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.
- (25) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.
- (26) A sandbox shall be:
 - (a) Constructed to allow for drainage;

- (b) Covered when not in use;
 - (c) Kept clean; and
 - (d) Checked for vermin prior to use.
- (27) Bodies of water that shall not be utilized include:

- (a) Portable wading pools;
- (b) Natural bodies of water; and
- (c) Unfiltered, **nondisinfected/non-disinfected**

[nondisinfected] containers.

(28) A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

(29) Storage space shall be provided:

- (a) In the form of:
 - 1. Shelves; or
 - 2. Other storage device accessible to the children; and
- (b) In sufficient quantity for each child's personal belongings.

(30) Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Infant and toddler inside areas shall:

- (a) Be separate from an area used by an older child;
- (b) Not be an exit or entrance; and
- (c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) Except in accordance with subsection (3) of this section, an infant or toddler shall not participate in an activity with an older child for more than one (1) hour per day.

(3) A toddler may participate in an activity with an older child for more than one (1) hour per day if:

- (a) The toddler is in transition to the pre-school age group;
- (b) The toddler is twenty-one (21) months or older;
- (c) Space for the toddler is available in the preschool-age group;

(d) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;

(e) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and

(f) The child care center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.

(4) If a child-care center provides an outdoor play area for an infant or toddler, the outdoor area shall be:

- (a) Shaded; and
- (b) A separate area or scheduled at a different time than an older child.

(5) Playpens and play yards shall:

- (a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
- (b) Be manufactured for commercial use; and
- (c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements. (1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall include adequate space specified by the child's age as follows:

- (a) For an infant:
 - 1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
 - 2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

- a. Weekly; or
 - b. Immediately if it is soiled or wet;

3. ~~No positioning device or monitor unless the device or monitor is required by the infant's parent or health professional;~~

4. ~~No loose bedding; and~~

5. ~~No toys or other items except the infant's pacifier; or~~

(b) For a toddler or preschool-age child:

- 1. An individual bed, a two (2) inch thick waterproof mat, or cot

in good repair; and

2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

- (a) Drafts;
- (b) Liquid substances;
- (c) Dirt; and
- (d) Dampness.

(8) Cots or mats not labeled for individual use by a child shall be sanitized after each use.

(9) Individual bedding shall be stored in a sanitary manner.

Section 7. First Aid and Medicine. (1) First aid supplies shall:

(a) Be available to provide prompt and proper first aid treatment;

(b) Be stored out of reach of a child;

(c) Be periodically inventoried to ensure the supplies are current;

(d) If reusable, be:

- 1. Sanitized; and
- 2. Maintained in a sanitary manner; and

(e) Include:

- 1. Liquid soap;
- 2. Adhesive bandages;
- 3. Sterile gauze;
- 4. Medical tape;
- 5. Scissors;
- 6. A thermometer;
- 7. Flashlight;
- 8. Cold pack;
- 9. First aid book;
- 10. Disposable gloves; and
- 11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child-care program.

(3) If a child becomes ill while at the child-care center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent shall be contacted immediately; and

(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.

(4) Prescription and nonprescription medication shall be administered to a child in care:

(a) With a daily written request of the child's parent; and

(b) According to the directions or instructions on the medication's label.

(5) The child-care center shall keep a written record of the administration of medication, including:

- (a) Time of each dosage;
- (b) Date;
- (c) Amount;
- (d) Name of staff person giving the medication;
- (e) Name of the child; and
- (f) Name of the medication.

(6) Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) Medication shall not be given to a child if the expiration date on the bottle has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:

- (a) Be clean;

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- (b) Be equipped for proper food:
 - 1. Preservation;
 - 2. Storage;
 - 3. Preparation; and
 - 4. Service;
- (c) Be adequately ventilated to the outside air; and
- (d) Except in a Type II child-care center when a meal is not being prepared, not be used for the activity of a child.
- (2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.
- (3) Convenient and suitable sanitized utensils shall be:
 - (a) Provided; and
 - (b) Used to minimize handling of food during preparation.
- (4) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:
 - (a) Have an indicating thermometer or other appropriate temperature measuring device;
 - (b) Be in a safe environment for preservation; and
 - (c) Be forty (40) degrees Fahrenheit or below.
- (5) Frozen food shall be:
 - (a) Kept at a temperature of zero degrees Fahrenheit or below; and
 - (b) Thawed:
 - 1. At refrigerator temperatures;
 - 2. Under cool, potable running water;
 - 3. As part of the cooking process; or
 - 4. By another method in accordance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217.
- (6) Equipment, utensils, and surfaces contacting food shall be:
 - (a) Smooth;
 - (b) Free of breaks, open seams, cracks, and chips;
 - (c) Accessible for cleaning; and
 - (d) Nontoxic.
- (7) The following shall be clean and sanitary:
 - (a) Eating and drinking utensils;
 - (b) Kitchenware;
 - (c) Food contact surfaces of equipment;
 - (d) Food storage utensils;
 - (e) Food storage containers;
 - (f) Cooking surfaces of equipment; and
 - (g) Nonfood contact surfaces of equipment.
- (8) A single-service item shall be:
 - (a) Stored;
 - (b) Handled and dispensed in a sanitary manner; and
 - (c) Used only once.
- (9) Bottles shall be:
 - (a) Individually labeled;
 - (b) Promptly refrigerated;
 - (c) Covered when not in use; and
 - (d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Meal Requirements. (1) Food shall be:

- (a) Clean;
- (b) Free from:
 - 1. Spoilage;
 - 2. Adulteration; and
 - 3. Misbranding;
- (c) Safe for human consumption;
- (d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
- (e) Obtained from a source that is in compliance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217;
- (f) Acceptable if from an established commercial food store;
- (g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and
- (h) Protected against contamination from:
 - 1. Dust;
 - 2. Flies;

- 3. Rodents and other vermin;
- 4. Unclean utensils and work surfaces;
- 5. Unnecessary handling;
- 6. Coughs and sneezes;
- 7. Cuts in skin;
- 8. Communicable disease;
- 9. Flooding;
- 10. Drainage; and
- 11. Overhead leakage.
- (2) Food shall not be:
 - (a) Used for reward;
 - (b) Used for discipline;
 - (c) Withheld until all other foods are consumed; or
 - (d) Served while viewing electronic devices.
- (3) A serving of milk shall consist of:
 - (a) Breast milk or iron-fortified formula for a child age birth ~~to~~^{through} twelve (12) months;
 - (b) Pasteurized whole milk for children ages ~~twelve (12)~~^{thirteen (13)} months to twenty-four (24) months; or
 - (c) Pasteurized low fat one (1) percent or fat-free skim milk for children ages ~~twenty-four (24) months to school-age~~^{twenty-five (25) months to twelve (12) years of age}.
- (4) Formula or breast milk provided by the parent shall be prepared ~~and~~^{and} labeled~~[-, and provided by the parent]~~.
- (5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
- (6) A serving of bread shall only consist of whole or enriched grain.
- (7) Drinking water shall be freely available to a child throughout the day.
- (8) Food shall be stored on:
 - (a) Clean racks;
 - (b) Clean shelves;
 - (c) Other clean surfaces; or
 - (d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
- (9) Fruits and vegetables shall be washed before cooking or serving.
- (10) Meat salads, poultry salads, and cream-filled pastries shall be:
 - (a) Prepared with utensils that are clean; and
 - (b) Refrigerated unless served immediately.
- (11) An individual portion of food served to a child or adult shall not be served again.
- (12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
- (13) Meals shall be:
 - (a) Served every two (2) to three (3) hours; and
 - (b) Served to a child:
 - 1. Seated with sufficient room to manage food and tableware; and
 - 2. Supplied with individual eating utensils designed for use by a child.
- (14) All children shall be offered the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.
- (15) A child-care center shall serve:
 - (a) 1. Breakfast; or
 - 2. A mid-morning snack;
 - (b) 1. Lunch; or
 - 2. A mid-afternoon snack; and
 - (c) If appropriate, dinner.
- (16) A weekly menu shall be:
 - (a) Prepared;
 - (b) Dated;
 - (c) Posted in advance in a conspicuous place;
 - (d) Kept on file for thirty (30) days; and
 - (e) Amended in writing with any substitutions on the day the meal is served.
- (17) Breakfast shall include:
 - (a) Milk;
 - (b) Bread; and
 - (c) 1. Fruit;
 - 2. Vegetable; or

3. 100 percent juice.
- (18) A snack shall include two (2) of the following:
 - (a) Milk;
 - (b) Protein;
 - (c) Bread; or
 - (d) 1. Fruit;
 2. Vegetable; or
3. 100 percent juice.
- (19) Lunch and dinner shall include:
 - (a) Milk;
 - (b) Protein;
 - (c) Bread; and
 - (d) 1. Two (2) vegetables;
 2. Two (2) fruits; or
 3. One (1) fruit and one (1) vegetable.

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.

- (2) A toilet room shall:
 - (a) 1. Be provided for each gender; or
 2. A plan shall be implemented to use the same toilet room at separate times;
 - (b) Have a supply of toilet paper; and
 - (c) Be cleaned and sanitized daily.
 - (3) A sink shall be:
 - (a) Located in or immediately adjacent to toilet rooms;
 - (b) Equipped with hot and cold running water that allows for hand washing;
 - (c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
 - (d) Equipped with liquid soap;
 - (e) Equipped with hand-drying blower or single use disposable hand drying material;
 - (f) Equipped with an easily cleanable waste receptacle; and
 - (g) Immediately adjacent to a changing area used for infants and toddlers.
 - (4) Each toilet shall:
 - (a) Be kept in clean condition;
 - (b) Be kept in good repair;
 - (c) Be in a lighted room; and
 - (d) Have ventilation to outside air.
 - (5) Toilet training shall be coordinated with the child's parent.
 - (6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.
 - (7) If a toilet training chair is used, the chair shall be:
 - (a) Used over a surface that is impervious to moisture;
 - (b) Out of reach of other toilets or toilet training chairs;
 - (c) Emptied promptly; and
 - (d) Sanitized after each use.
 - (8) Diapers or clothing shall be:
 - (a) Changed when soiled or wet;
 - (b) Stored in a covered container temporarily; and
 - (c) Washed or disposed of at least once a day.
 - (9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.
 - (10) When a child is diapered, the child shall:
 - (a) Not be left unattended; and
 - (b) Be placed on a surface that is:
 1. Clean;
 2. Padded;
 3. Free of holes, rips, tears, or other damage;
 4. Nonabsorbent;
 5. Easily cleaned; and
 6. Free of any items not used for diaper changing.
 - (11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.
 - (12) Staff shall disinfect the diapering surface after each child is diapered.
 - (13) If staff wears[wear] disposable gloves, the gloves shall be changed and disposed after each child is diapered.

- (14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:
 - (a) Individually stored in separate containers; and
 - (b) Plainly labeled with the child's name.
- (15) Toothbrushes shall be:
 - (a) Individually identified;
 - (b) Allowed to air dry; and
 - (c) Protected from contamination.
- (16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 11. Toys and Furnishings. (1) All toys, equipment, and furniture contacted by a child shall be:

- (a) Kept clean and in good repair; and
- (b) Free of peeling, flaking, or chalking paint.
- (2) Indoor and outdoor equipment shall:
 - (a) Be clean, safe, and in good repair;
 - (b) Meet the physical, developmental needs, and interests of children of different age groups;
 - (c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and
 - (d) Be designed to guard against entrapment or situations that may cause strangulation.
- (3) Toys shall be:
 - (a) Used according to the manufacturer's safety specifications;
 - (b) Durable; and
 - (c) Without sharp points or edges.
- (4) Toys and other items that are considered mouth contact surfaces by a child not toilet trained shall be sanitized daily by:
 - (a) Scrubbing in warm, soapy water using a brush to reach into crevices;
 - (b) Rinsing in clean water;
 - (c) Submerging in a sanitizing solution for at least two (2) minutes; and
 - (d) Air dried.
- (5) Tables and chairs shall be of suitable size for children.
- (6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:

- (a) Vehicles;
- (b) Drivers; and
- (c) Insurance.
- (2) A center providing or arranging transportation service shall:
 - (a) Be licensed and approved by the cabinet or its designee prior to transporting a child;
 - (b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and
 - (c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports[transport] children.
- (3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:
 - (a) Type of transportation offered;
 - (b) Type of vehicle used for transportation;
 - (c) Plan for ensuring staff perform duties relating to transportation properly;
 - (d) Full insurance coverage for each vehicle;
 - (e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;
 - (f) Contracts, agreements, or documents detailing arrangements with any third party for services; and
 - (g) Safety procedures for:
 1. Transporting a child;
 2. Loading and unloading a child; and
 3. Providing adequate supervision of a child.
 - (4) A vehicle used to transport children shall be equipped with:
 - (a) A fire extinguisher;
 - (b) First aid supplies as described in Section 7 of this adminis-

trative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.

(6) A vehicle used to transport children shall meet the following requirements:

(a) A twelve (12) or more passenger vehicle shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;
2. Identifying colors; and
3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed and documented for the following:

- (a) Tires;
- (b) Lights, signals, mirrors, gauges, and wiper blades;
- (c) Safety restraints;
- (d) Fuel; and
- (e) Free of debris.

(9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.

(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).

(10) Each child shall:

- (a) Have a seat;
- (b) Be individually belted or harnessed in the seat; and
- (c) Remain seated while the vehicle is in motion.

(11) A child shall not be left unattended:

- (a) [Unattended] At the site of aftercare delivery; or [and]
- (b) [Unattended] In a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) If a vehicle needs to be refueled, it shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver's seat, the:

- (a) Engine shall be turned off;
- (b) Keys shall be removed; and
- (c) Emergency brake shall be set.

(17) Transportation services provided shall:

- (a) Be recorded in writing and include:
 1. The first and last name of the child transported; and
 2. The time each child gets on and the time each child gets off;
- (b) Be completed by a staff member other than the driver; and
- (c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:

- (a) Be at least twenty-one~~[twenty-one]~~ (21) years old;
- (b) Complete:

1. The background checks as described in 922 KAR 2:110; 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 agen-

cy that issued the driver's license;

(c) Hold a current driver's license which 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.

(19) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(20)(a) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall revoke a center's privilege to transport a child or pursue an adverse action in accordance with Section 9, 10, 11, or 12 of 922 KAR 2:090:

1. For a violation of this section; or

2. If the center:

a. Fails to report an accident in accordance with 922 KAR 2:110, Section 6; or

b. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

(b) Revocation of a center's privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:

1. Apply to each site listed under the licensee; and

2. Remain effective for no less than a twelve (12) month period.

(21) A parent may use the parent's vehicle to transport the parent's child during a field trip.

Section 13. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;
2. Written parental consent has been obtained; and
3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:

(a) A part of a planned program activity lead by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

(4) This section shall not apply to wild animals on the outer property of the child-care center which are expected to be found outdoors, such as squirrels and birds, if they are not:

(a) Disturbed; or

(b) Brought indoors.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 19, 2013

FILED WITH LRC: March 27, 2013 at 9 a.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Child Care

(As Amended at ARRS, August 5, 2013)

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 81.010, 194A.060, 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), 205.50(a)(1)(i), 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 neces-

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sary 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.

(15) "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.

(16) "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.

(17) "Infant" means a child who is less than one (1) year old.

(18) "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.

(19) "Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).

(20) "Parent" is defined by 45 C.F.R. 98.2.

(21) "Part day" means child care that is provided for less than five (5) hours per day.

(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23) "Preventive services" is defined by KRS 620.020(10)(9).

(24) "Provider" means the entity providing child care services.

(25) "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14)(15).

(26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "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.

(28) "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.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "Teenage parent" means a parent who is nineteen (19) years of age or younger.

(31) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

(32) "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:

- 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. (a) 150 percent of the federal poverty level at the initial application; or

2. (b) 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 program 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 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 Veterans' 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 Place-

ment 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 ~~[94.334]~~;

(ii) Biweekly amount by ~~[92.167]~~~~[(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 for 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 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 payment shall be in lieu of the family copayment required by subsection (3) of this section.

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(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 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 co-operate 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:

(i) 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)[(e)] "DCC-91, Client Rights and Responsibilities Sheet", edition 04/13 [44/09];

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(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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

AGRICULTURAL EXPERIMENT STATION
(Amended After Comments)

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

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051,
250.061, 250.071, 250.081, 250.091, 250.101,
250.111~~250.081(1)(c)7]~~

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)7 requires the director of the Agricultural Experiment Station to promulgate procedures for obtaining a permit to label, responsibilities of permit holders, method to be used in determining inspection fees, and the procedure for permit holders to make payment of fees for distributing agricultural seed. This administrative regulation fulfills that statutory mandate. ~~To prescribe procedures to obtain a permit to label and distribute agricultural seed in Kentucky; to pay inspection fees for agricultural seed based upon kind and amount of seed distributed; and to obtain a permit to label and distribute vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky.~~

Section 1. Obtaining Permits. (1) Application for permits to label agricultural seed shall be made on Form RS-68-01 (6/13)~~RS-64-04e~~, "Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky."

(2) Application for permits to label vegetable seed, flower seed, or combination mulch, seed and fertilizer products shall be made on Form RS-68-02 (6/13)~~RS-65-04d~~, "Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products Sold in Kentucky."

Section 2. Reporting Sales. (1) A person who has been granted a permit to label agricultural seed under the provisions of this subsection shall submit quarterly reports and pay a labeling and inspection fee determined on the basis of quantity of seed sold and on the fee schedule established herein.

(2) Quarters are January through March, April through June, July through September, and October through December. The minimum fee shall be twenty-five (25) dollars per reporting period. An added assessment of twenty-five (25) dollars or ten (10) percent of the unpaid fee, whichever is greater, shall be made for each seed quarterly report (Form RS-63-01 (8/13)~~(6/13)~~RS-65-02e) received more than forty-five (45) days after the quarter ends.

Section 3. Inspection fee for agricultural seed permit holders shall be:

(1) For packages weighing one (1) pound and up to and including twenty-five (25) pounds: eight (8) cents per package~~(a) Alfalfa, clovers, and grasses (including mixtures): eight (8) cents per package.~~

~~(b) All other seed: four (4) cents per package.~~

(2) For packages or units of seed in excess of twenty-five (25) pounds in weight and up to and including~~but not exceeding~~ 100[fifty (50)] pounds: twelve (12) cents per package or unit.

~~(a) A unit of corn is 80,000 seeds.~~

~~(b) A unit of soybeans is 140,000 seeds.~~~~(a) Alfalfa, clovers, and grasses (including mixtures): sixteen (16) cents per package.~~

~~(b) All other seed: eight (8) cents per package.~~

~~(3) For packages in excess of fifty (50) pounds in weight but not exceeding seventy-five (75) pounds:~~

~~(a) Alfalfa, clovers, and grasses (including mixtures): twenty (20) cents per package.~~

~~(b) All other seed: twelve (12) cents per package.~~

~~(4) For packages in excess of seventy-five (75) pounds in weight but not exceeding 100 pounds:~~

~~(a) Alfalfa, clovers, and grasses (including mixtures): twenty-four (24) cents per package.~~

~~(b) All other seed: sixteen (16) cents per package.~~

~~(3)[(5)] For packages in excess of 100 pounds and seed distributed in bulk:~~

~~(a)[Alfalfa, clovers, and grasses (including mixtures):] Twenty-four (24) cents per 100 pounds; or,]~~

~~(b) Twelve (12) cents per unit[All other seed: sixteen (16) cents per 100 pounds].~~

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

(a) "Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky", RS-68-01, 6/13~~RS-64-04e~~;

(b) "Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products", RS-68-02, 6/13~~RS-65-04d~~; and

(c) "Seed Quarterly Report", RS-63-01, 8/13~~6/13~~~~RS-65-02e~~).

(2) This material~~These documents~~ may be inspected, copied, or obtained, subject to applicable copyright law~~or copied~~ at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.~~Monday through Friday.~~

DR. NANCY M. COX, Director

APPROVED BY AGENCY: August 12, 2013

FILED WITH LRC: August 12, 2013 at 2 p.m.

CONTACT PERSON: Stephen McMurry, Director of Fertilizer and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone (859) 257-2785, fax (859) 257-7351.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to obtain a permit to label and distribute agricultural seed in Kentucky; to pay inspection fees for agricultural seed based upon amount of seed distributed, and how to obtain a permit to label and distribute vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky.

(b) The necessity of this administrative regulation: Pursuant to KRS 250.081, the director is required to establish procedures for obtaining a permit to label, responsibilities of permit holders, method to be used in determining inspection fees, and the procedure for permit holders to make payment of fees for distributing agricultural seed. This regulation satisfies that statutory mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation satisfies the statutory mandate found in KRS 250.081 by establishing a fee structure for permit holders and a method for permit holders to make payment of fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The fee structure provides the necessary funding so the citizens of the Commonwealth have access to seed analyses and for the support of the Division to successfully implement the duties of KRS 250.021 to 250.111.

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

(a) How the amendment will change this existing administrative regulation: The changes will eliminate the breakdown of package sizes over twenty-five (25) pounds to 100 pounds in weight. All seed kinds will have the same fee structure. It will include reporting corn and soybeans on a per unit basis.

(b) The necessity of the amendment to this administrative

regulation: Seed is now sold on a per unit basis for soybeans and corn. Reporting sales in the different weight categories is cumbersome to the industry.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows for the reporting of sales of agricultural seed in a format in which the industry captures their sales.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make reporting and collection of sales more easy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All firms which sell agricultural seed in Kentucky will be affected by the regulation change.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All seed will be reported with the same fee structure. Instead of reporting sales by different package sizes between twenty-five (25) and 100 pounds and by seed kind, a per package inspection fee is established for all seed sold between twenty-five (25) and 100 pounds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): All seed kinds will have the same fee structure. Packages of one (1) pound in weight and up to and including twenty-five (25) pounds, eight (8) cents per package. Packages in excess of twenty-five (25) pounds and up to and including 100 pounds, twelve (12) cents per package. For soybeans and corn sold on a per unit basis, twelve (12) cents per unit. For seed sold in bulk or in excess of 100 pounds, twenty-four (24) cents per pound. For soybeans and corn sold in bulk or in excess of 100 pounds per package, twelve (12) cents per unit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Firms will no longer have to split out package sizes between twenty-five (25) and 100 pounds for reporting purposes. Firms will no longer have to split out seed kinds with different inspection fees.

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

(a) Initially: No cost.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation changes the fee structure reported by labelers of agricultural seed. For alfalfa, clover and grasses the fee structure decreases, for all other seed the fee structure increases.

(9) TIERING: Is tiering applied? No. Tiering does not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky, Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated from this regulation is based on seed sales in Kentucky which is reported quarterly. Based on sales reported for the previous year, this change would generate an additional \$90,000 in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated is based on seed sales in Kentucky. We do not anticipate additional revenue for subsequent years over the first year of implementation.

(c) How much will it cost to administer this program for the first year? This program is already available so no additional cost for the first year.

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

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

Revenues (+/-): \$90,000

Expenditures (+/-): \$0.00

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (Amended After Comments)

201 KAR 45:001. Definitions for 201 KAR Chapter 45.

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. This administrative regulation provides the definitions to be used in those administrative regulations.

Section 1. Definitions. (1) "Apprentice diabetes educator" is defined by KRS 309.325(5).

(2) "Board" is defined by KRS 309.325(1).

(3) "Diabetes education" is defined by KRS 309.325(2).

(4) "Diabetes educator" means:

(a) A "licensed diabetes educator" as defined by KRS 309.325(3);

(b) A "master licensed diabetes educator" as defined by KRS 309.325(4); or

(c) An "apprentice diabetes educator" as defined by KRS 309.325(5).

(5) "Licensed diabetes educator" is defined by KRS 309.325(3).

(6) [(5)] "Master licensed diabetes educator" is defined by KRS 309.325(4).

(7) [(6)] "Supervisor" means a licensed diabetes educator as defined by KRS 309.325(3) in good standing, or a master licensed diabetes educator as defined by KRS 309.325(4) in good standing.

(8) [(7)] "Work experience" means the hours spent performing the services and tasks and drafting documentation and reports necessary for providing diabetes education to a person with diabetes or the caregiver of someone with diabetes, or the hours spent interacting with a supervisor.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: The regulation provides the definitions for the section.
 - (b) The necessity of this administrative regulation: This regulation is necessary because it provides the definitions for the section.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to promulgate regulations in KRS 309.331(1).
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions for the section.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
 - (d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: N/A
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: \$0
 - (b) On a continuing basis: \$0
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There will be no need of a fee increase to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
- (9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? \$0
 - (b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? \$0

(c) How much will it cost to administer this program for the first year? The Board is currently charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses. The Board has and will continue to accrue legal expenses as well.

(d) How much will it cost to administer this program for subsequent years? It is expected the cost will be a minimum of \$1,000. The fee will be reviewed by the Office of Occupations & Professions when the Office is determining its own budget for the next biennium. The legal fees will also continue to accrue as more regulations for licensure implementation are drafted.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Amended After Comments)**

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

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. KRS 309.335 requires the board to promulgate application procedures for currently practicing diabetes educators to apply for licensure. This administrative regulation establishes the application procedures for currently practicing diabetes educators.

Section 1. Persons with experience in the care of people with diabetes~~[under supervision]~~. Prior to July 1, 2014, a person who has a core body of knowledge and skills and experience in the care of people with diabetes~~[under supervision]~~ as specified in KRS 309.335(3) may apply for licensure by submitting the following to the board:

- (1) A completed "Application for Licensure", Form DE-01~~[(06/2013)]~~;
- (2) Payment of the licensure fee as established in 201 KAR 45:100; and
- (3) A letter from the applicant's employer~~[supervisor]~~ verifying the applicant's current scope of practice is within the scope of practice as defined in 201 KAR 45:160.

Section 2. Persons who have practiced diabetes education for the past three (3) years. Prior to May 1, 2014, a person who has practiced diabetes education for a minimum of 1,000 hours per year for the past three (3) years as specified in KRS 309.335(4) may apply for licensure by submitting the following to the board:

- (1) A completed "Application for Licensure", Form DE-01~~[(06/2013)]~~;
- (2) Payment of the licensure fee as established in 201 KAR 45:100;
- (3) Letters from one (1) or more supervisors who can attest that the applicant has practiced diabetes education within the last three (3) years.
- (a) The letters combined shall indicate that the applicant has practiced a total of at least 1,000 hours of diabetes education within the past three (3) years.
- (b) Each letter shall verify that the applicant's practice of diabetes education is within the scope of practice as defined in 201 KAR 45:160; and
- (4) A letter of recommendation from a health care professional who works in the diabetes field.

Section 3. A person who has practiced diabetes education

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between November 1, 2012 and November 1, 2013 may count hours of diabetes education practiced during that time toward the hours of supervised work experience required by 201 KAR 45:110, Section 1, by submitting a letter to the board from that person's employer verifying that the person has performed those hours of diabetes education.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements for currently practicing diabetes educators to apply for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it establishes the requirements for currently practicing diabetes educators to apply for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set application procedures for currently practicing diabetes educators to apply for licensure.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 250 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new apprentice diabetes educators apply for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires currently practicing diabetes educators to file the completed application setting forth how the individual meets the qualifications for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators for licensure will have their applications reviewed by the board.

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

(a) Initially: The budget for the Board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the Board begins to collect fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation is the initial regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees only the work experience and supervision requirements. There will be a fee to apply that is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year?

The revenue generated will depend on the number of [apprentice] diabetes educators for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of [apprentice] diabetes educators for the subsequent years.

(c) How much will it cost to administer this program for the first year? The Board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The Board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (Amended After Comments)

201 KAR 45:100 Fees.

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.335 requires the board to promulgate an administrative regulation establishing the initial fee, annual fee, and late renewal fee for licensure as a diabetes educator. This administrative regulation establishes fees for licensure as a diabetes educator.

Section 1. Licensure Fee. The fee for licensure as a licensed diabetes educator, apprentice diabetes educator, or master licensed diabetes educator shall be fifty (50) dollars.

Section 2. Renewal and Reinstatement.

(1) The renewal date for all licenses issued by the board shall be November 1 of each calendar year.

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(2) The following fees shall be paid for renewals and reinstatements for licenses issued by the board:

~~a)(4)~~ The renewal fee on or before December 2~~(November 4)~~ shall be fifty (50) dollars annually.;

~~b)(2)~~ The renewal fee after December 2 but before January 30 shall be the licensure fee as set forth in Section 1 of this administrative regulation, plus a twenty (20) dollar late fee.

~~c)(3)~~ The reinstatement fee after January 30 of an expired license due to failure to renew shall be \$120.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the fees for licensure, renewal and reinstatement.

(b) The necessity of this administrative regulation: This regulation is necessary because it states the cost to obtain and maintain the license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the fees in KRS 309.335(1)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the fees for licensure, renewal and reinstatement.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires applicants to pay a fee for initial licensure, renewal and reinstatement of the license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial licensure fee will be fifty (50) dollars. The renewal fee will be fifty (50) dollars plus twenty (20) dollars if the renewal is late. The reinstatement fee will be \$120.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be issued a license if the applicant meets the requirements.

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

(a) Initially: The budget for the Board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the Board begins to collect fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish fees for licensure, renewal and reinstatement.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of applicants for the year. However, it is estimated the regulation will generate \$15,000 annually.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of applicants for the subsequent years. However, it is estimated the regulation will generate \$15,000 a year.

(c) How much will it cost to administer this program for the first year? The Board is currently charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses. The Board has and will continue to accrue legal expenses as well.

(d) How much will it cost to administer this program for subsequent years? It is expected the cost will be a minimum of \$1,000. The fee will be reviewed by the Office of Occupations & Professions when the Office is determining its own budget for the next biennium. The legal fees will also continue to accrue as more regulations for licensure implementation are drafted.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Amended After Comments)

201 KAR 45:110. Supervision and work experience.

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Accumulation of Work Experience. An apprentice diabetes educator shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of appli-

cation for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

Section 2. Supervision. (1) (a) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours per month **in any month in which the apprentice accumulates work experience** to discuss the apprentice diabetes educator's work with clients and review the apprentice diabetes educator's provision of diabetes self-management education.

(b) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours quarterly while being physically present in the same room.

(2) The hours of work experience and verification by the apprentice diabetes educator and supervisor shall be documented on the "Application for Licensure," Form DE-01 ~~[(09/2012)]~~.

(3) A supervisor shall not serve as a supervisor for more than four (4) apprentice diabetes educators at a time.

(4) The supervision process shall focus on:

(a) Identifying strengths, developmental needs, and provide direct feedback to foster the professional development of the apprentice diabetes educator;

(b) Identifying and providing appropriate resources to facilitate learning and professional growth;

(c) Developing awareness of professional and ethical responsibilities in the practice of diabetes education; and

(d) Ensuring the safe and effective delivery of diabetes education services and fostering the professional competence and development of the apprentice diabetes educator.

Section 3. Documentation requirements. The documentation required by the "Supervised Work Experience Report", Form DE-05, ~~[(06/2013)]~~ shall be maintained for a period of five (5) years and provided to the board at the request of the board.

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

(a) "Application for Licensure", Form DE-01, 06/2013; and

(b) **"Supervised Work Experience Report[Supervision Log]", Form DE-05, 06/2013; and**

(c) "Apprentice Log", Form DE-XX, 06/2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the work experience and supervision required for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains the amount of work experience needed for licensure and the standards for supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish administrative regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements of work experience and supervision for apprentice diabetes educators.

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

(a) How the amendment will change this existing administrative

regulation: This is a new regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new apprentice diabetes educators apply for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires apprentice diabetes educators to file a completed application setting forth how the individual meets the qualifications for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to apply for licensure and receive supervision.

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

(a) Initially: The budget for the board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the board cannot be estimated for the future until the board begins to collect fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. There will be a fee to apply that is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of apprentice diabetes educators for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of apprentice diabetes educators for the subsequent years.

(c) How much will it cost to administer this program for the first year? The board is charged an annual fee of \$1,000 by the Office

of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Amended After Comments)**

201 KAR 45:120 Renewal, Reinstatement, and Inactive Status.

RELATES TO: KRS 309.331, 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations establishing procedures for annual renewal and reinstatement of licenses. This administrative regulation establishes procedures for annual renewal and reinstatement of licenses.

Section 1. Regular License Renewal. (1) A licensed diabetes educator or master licensed diabetes educator shall submit the following to the board by November 1 of each year:

(a) A completed "Renewal Application," Form DE-02[(06/2013)];

(b) Proof of the required continuing education as set forth in 201 KAR 45:130; and

(c) The renewal fee as set forth in 201 KAR 45:110.

(2) If a license is not renewed by January 30 of the new licensure year, it shall automatically expire.

Section 2. Reinstatement. (1) An expired license shall be reinstated upon the licensee:

(a) Paying the required fees set forth in 201 KAR 45:110; and

(b) Submitting proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as set forth in 201 KAR 45:130 for each year since the last date the license was active.

(2) An expired license may be reinstated within five (5) years of the date of expiration.

Section 3. Inactive Status. (1) A licensee may place his license in inactive status by submitting written notice to the board prior to November 1.

(2) An individual with an inactive license shall not be permitted to practice diabetes education while the license is inactive. A licensee may remain in inactive status for a maximum of five (5) years.

(3) During the period of inactive status, the licensee shall not be required to meet the annual continuing education requirements as established in 201 KAR 45:130. Upon the licensee's request for licensure reactivation, the licensee shall provide proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as set forth in 201 KAR 45:130 for each year the license was inactive.

(4) An individual shall submit in writing a request to the board to be placed back in active status. The request shall be submitted at least one (1) week in advance of the board's regularly scheduled board meeting.

Section 4. Regular Permit Renewal. (1) An apprentice diabetes educator shall submit the following to the board by November 1 of each year:

(a) A completed "Renewal Application," Form DE-02[(06/2013)];

(b) Proof of the required continuing education as set forth in 201 KAR 45:130; and

(c) The renewal fee as set forth in 201 KAR 45:100.

(2) If a permit is not renewed by January 30 of the new licensure year, it shall automatically expire, and the apprentice diabetes educator **shall[~~must~~]** reapply for a permit as provided in KRS **309.334[309.XXX]**. No work experience accumulated shall carry over between permits.

Section 5. Incorporation by Reference. (1) "Renewal Application". Form DE-02, 06/2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the process to renew and reinstate a license and place a license into inactive status.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains how a licensee can renew his license before it expires, reinstate the license once it has expired and place it into an inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish administrative regulations for the licensing of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process to renew and reinstate a license and place a license into inactive status.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires licensees to fill out an application for renewal and reinstatement, along with paying a fee. The licensee applying for inactive status will provide written notice to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensee will be able to continue to practice diabetes education. The inactive license holder

will not have to meet the regular requirements for licensure.

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

(a) Initially: The budget for the board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the board cannot be estimated for the future until the board begins to collect fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees but there will be a fee applied that is set in a separate regulation for renewal and reinstatement.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of applicants for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of applicants for the subsequent years.

(c) How much will it cost to administer this program for the first year? The board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (Amended After Comments)

201 KAR 45:130. Continuing education.

RELATES TO: KRS 309.337

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.337 requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative

regulation establishes continuing education requirements for licensed diabetes educators.

Section 1. Accrual of Continuing Education Hours. (1)(a) The annual continuing education accrual period shall be from November 1 of each year to October 31 of the next year.

(b) Prior to renewal of a license for the next licensure period, a licensee shall have earned fifteen (15) hours of approved continuing education.

(2) No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period.

(3) It shall be the responsibility of each licensee to finance the costs of continuing education.

Section 2. Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours for license renewal shall be applicable to diabetes and presented at a professional level that enhances the quality and effectiveness of diabetes self-management education.

(2) **A licensee**[Licensees] shall obtain **[their]** continuing education courses from any of the following continuing education providers or programs approved by the providers:

- (a) American Association of Diabetes Educators (AADE);
- (b) American Diabetes Association (ADA);
- (c) Academy of Nutrition and Dietetics (AND);
- (d) Accreditation Council for Pharmacy Education (ACPE);
- (e) Accreditation Council for Continuing Medical Education (ACCME-AMA);
- (f) American Nurses Credentialing Center (ANCC);
- (g) American Academy of Family Physicians (AAFP);
- (h) American Academy of Nurse Practitioners (AANP);
- (i) American Academy of Optometry (AAO);
- (j) American Academy of Physician Assistants (AAPA);
- (k) American Association of Clinical Endocrinologists (AACE);
- (l) American College of Endocrinology (ACE);
- (m) American College of Sports Medicine (ACSM);
- (n) American Medical Association (AMA) or its Kentucky affiliate;
- (o) American Nurses Association (ANA);
- (p) American Occupational Therapy Association (AOTA);
- (q) American Physical Therapy Association (APTA);
- (r) American Psychological Association (APA);
- (s) Commission on Dietetic Registration (CDR);
- (t) Council on Continuing Medical Education (CCME-AOA);
- (u) Council on Podiatric Medical Education (CPME-APMA);
- (v) International Diabetes Federation (IDF);
- (w) National Association of Clinical Nurse Specialists (NACNS);
- (x) National Association of Social Workers (NASW);
- (y) Kentucky Board of Nursing (KBN);
- (z) Kentucky Board of Pharmacy;
- (aa) Kentucky Board of Medical Licensure; **or**[and]
- (bb) Kentucky Nurses Association (KNA).

Section 3. Recordkeeping of Continuing Education Hours. (1) A licensee shall maintain a record of all continuing education courses attended for two (2) years after attending the course.

(2) Appropriate documentation to be kept shall include:

- (a) Proof of attendance;
- (b) Date of activity;
- (c) Description of activity;
- (d) Total hours of instruction, excluding breaks; and
- (e) Names and professional qualifications of the presenters.

(3)(a) Each licensee shall sign a statement on the Renewal Application form incorporated by reference in 201 KAR 45:120, indicating compliance with the continuing education requirements.

(b) A license shall not be renewed without the licensee signing this sworn statement.

Section 4. Reconsideration. (1) A licensee may request the board reconsider its denial of a continuing education course by filing a written request with the board and any additional documentation on the course in support of approval.

(2)(a) A licensee shall file the request for reconsideration within

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thirty (30) calendar days of notification of the denial.

(b) The request will be reviewed by the board at its next regularly scheduled meeting.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the continuing education required to maintain licensure.

(b) The necessity of this administrative regulation: Since licensees are required to obtain continuing education, they must know what will be accepted for continuing education credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish regulations setting the requirements for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the activities that are acceptable for continuing education and the licensee's duty to maintain records regarding the courses attended.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board had not licensed any individuals yet, but it is estimated that 300 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires applicants to obtain continuing education to maintain their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of continuing education will vary based on the provider.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to maintain licensure and stay aware of the developments in the profession of diabetes educator.

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

(a) Initially: The budget for the board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the board cannot be estimated for the future until the board begins to collect fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new or by the change if it is an amendment: No increase in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.337

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

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

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

(c) How much will it cost to administer this program for the first year? The board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Amended After Comments)**

201 KAR 45:140. Code of ethics.

RELATES TO: KRS 309.331, 309.339

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION AND CONFORMITY KRS 309.331(1) requires the board to promulgate a code of ethics for licensed diabetes educators. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Patients. (1) A diabetes educator shall:

(a) Provide services with respect for the uniqueness, dignity, and autonomy of each individual; and

(b) Advance and protect the welfare of the patient.

(2) A diabetes educator shall not recommend the use of a specific product or service based solely on the educator's relationship with the manufacturer of the product or provider of the service.

Section 2. Confidentiality A diabetes educator shall respect and guard the confidences of each patient, maintaining all records according to state and federal law. (1) A diabetes educator shall not disclose a patient confidence except:

- (a) As mandated or permitted by law;
 - (b) If the diabetes educator is a defendant in a civil, criminal, or disciplinary action arising from services provided, confidences may be disclosed only in the course of that action; or
 - (c) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver.
- (2) A diabetes educator may use patient or clinical materials in teaching, writing, and public presentations if:
- (a) A written waiver has been obtained in accordance with subsection (1)(c) of this section; or
 - (b) Appropriate steps have been taken to protect patient identity and confidentiality.

Section 3. Professional Competence and Integrity. A diabetes educator shall maintain standards of professional competence and integrity and hold himself or herself out in a manner that demonstrates honesty, integrity, and fairness and shall be subject to disciplinary action for:

- (1) Having been subject to disciplinary action by another regulatory agency;
- (2) Impairment due to mental incapacity or the abuse of substances which negatively impacts the practice of diabetes education;
- (3) Conviction, as used in KRS 309.339, of a felony or a misdemeanor;
- (4) Refusing to comply with an order or request from the board;
- (5) Failure to cooperate with the board by not:
 - (a) Furnishing in writing a complete explanation to a complaint filed with the board; or
 - (b) Appearing before the board at the time and place designated; or
- (6) Failure to provide the board with new contact information within thirty (30) business days the changes is effective.

Section 4. Supervisor's Responsibility. A supervisor shall not permit an apprentice diabetes educator[educators] under the supervisor's supervision to hold himself or herself[themselves] out as competent to perform professional services beyond the apprentice's[their] level of training, experience, and competence. A supervisor shall promptly notify the board in writing if an apprentice diabetes educator under the supervisor's supervision holds himself or herself out as competent to perform professional services beyond the apprentice's level of training, experience, and competence.

Section 5. **[Apprentice]** Diabetes Educator's Responsibility. A[An-apprentice] diabetes educator shall not represent that he or she is competent to perform professional services beyond his or her level of training, experience, and competence.

Section 6. Financial Arrangements. (1) A diabetes educator shall make financial arrangements with a patient, apprentice diabetes educator, or third party payor that are reasonably understandable and conform to accepted professional practices.

- (2) A diabetes educator shall:
- (a) Not offer or accept payment for referrals;
 - (b) Not charge excessive fees for services;
 - (c) Disclose his or her fees to patients at the beginning of services; and
 - (d) Represent facts truthfully to patients and third party payors regarding services rendered.

Section 7. Advertising. A diabetes educator shall:

- (1) Accurately represent his or her education, training, and experience relevant to the practice of diabetes education;
- (2) Not make false, fraudulent, misleading, or deceptive claims or any statement intended to or likely to create an unjustified expectation.

Section 8. Board Member Responsibilities. (1) A board member shall recuse himself or herself in matters in which:

(a) The board member is the supervisor of the apprentice diabetes educator at issue; and

(b) The board member will be providing a course in diabetes education pursuant to KRS 309.335(1)(b)1.

(2) A board member shall not receive compensation for providing a board-approved course in diabetes education pursuant to KRS 309.335(1)(b)1. that is excessive.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: The regulation establishes the code of ethics which all licensees shall abide by.
 - (b) The necessity of this administrative regulation: This regulation is necessary because it explains the standards to which each licensee will be held.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish a code of ethics for the profession.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the behavior considered to be ethical and the behavior considered unethical and subject to discipline.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
 - (d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure within the next fiscal year. This regulation will also continue as new applicants apply for licensure.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires applicants to maintain confidentiality, report discipline from other licensing agencies, truthfully advertise services and make financial arrangements that are reasonable.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All licensees will be held to the same standard of practice and know the actions that are subject to discipline.
 - (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: N/A
 - (b) On a continuing basis: N/A
 - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.
 - (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No fees are necessary to implement this administrative regulation.
 - (8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.339

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to administer this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (Amended After Comments)

201 KAR 45:150. Complaint procedures.

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. This administrative regulation provides for the complaint procedures to be used by the board in the enforcement of those statutes and administrative regulations promulgated thereunder.

Section 1. Complaints. A complaint:

(1) Shall be submitted by completing a "Complaint Form", Form DE-06[(06/2013)] and signed by the person offering the complaint; or[-]

(2) May be filed by the board based upon information in its possession.

Section 2. Receipt of Complaints. ~~[Upon receipt of a complaint:]~~ (1) A copy of the complaint shall be mailed[sent] to the individual named in the complaint along with a request for that individual's response to the complaint.

(2) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response to the board.

(3) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

(4) The complainant shall have seven (7) days from receipt to submit a written reply to the response to the board.

Section 3. Initial Review. (1)(a) After the receipt of the com-

plaint and the expiration of the period for the individual response, the board shall consider the individual's response, complainant's reply to the response, and any relevant material available.

(b) The names of the individuals and other identifying information shall be redacted to provide anonymity.

(c) The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall conduct a formal investigation into the matter.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the board shall determine whether there has been a prima facie violation of KRS 309.325 to 309.339 or the administrative regulations promulgated thereunder. If so, a formal complaint shall be filed.

(2) If the board determines that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board shall issue a written admonishment to the license holder.

(a) A copy of the written admonishment shall be placed in the permanent file of the license holder.

(b) The license holder shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in the license holder's permanent file.

(c) Alternatively, the certificate holder may file a request for a hearing with the board within thirty (30) days of the admonishment.

(d) Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4)(a) If the board determines that a complaint warrants the issuance of a formal complaint against the license holder, the board or its counsel shall prepare a formal complaint that states clearly the charge or charges to be considered at the hearing.

(b)1. The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B.

2. The formal complaint shall be processed in accordance with KRS Chapter 13B.

Section 5. Settlement by Informal Proceedings. (1) The board, through counsel, may at any time during this process enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the chair and the individual who is the subject of the complaint.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Incorporation by Reference. (1) "Complaint Form", Form DE-06, 06/2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: The regulation establishes disciplinary complaint procedures for the board.
 - (b) The necessity of this administrative regulation: This regulation is necessary because it provides the procedures for the board to follow in receiving and resolving complaints.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish regulations in KRS 309.331(1).
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides complaint procedures for the board to follow.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
 - (d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: They will have to comply with any requests for investigation or hearings made by the board.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It may cost them the expenses associated with a complaint or hearing and any fines resulting from the complaint or hearing.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the benefit of an opportunity to file formal complaints and have an opportunity to be heard regarding any complaints that may be filed against them.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: \$0
 - (b) On a continuing basis: \$0
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation is the initial regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
- (9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

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

- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? \$0
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? \$0
 - (c) How much will it cost to administer this program for the first year? The board is currently charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses. The board has and will continue to accrue legal expenses as well.
 - (d) How much will it cost to administer this program for subsequent years? It is expected the cost will be a minimum of \$1,000. The fee will be reviewed by the Office of Occupations & Professions when the Office is determining its own budget for the next biennium. The legal fees will also continue to accrue as more regulations for licensure implementation are drafted.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
- Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Amended After Comments)

201 KAR 45:160 Scope of practice.

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. This administrative regulation establishes the functions that a diabetes educator may perform.

Section 1. A person holding a license or a permit from the board may perform the following functions:

- (1) Provide education and support for people with diabetes, people at risk for diabetes, and caregivers of those with diabetes;
- (2) Communicate and coordinate with other health care professionals to provide education and support for people with diabetes, people at risk for diabetes, and caregivers of those with diabetes;
- (3) Provide diabetes self-management services, including activities that assist a person in implementing and sustaining the behaviors needed to manage diabetes on an ongoing basis;
- (4) Determine the persons to whom diabetes education and services will be provided, how those education and services may be best delivered, and what resources will assist those persons;
- (5) Develop a program for diabetes management, which may include:
 - (a) Describing the diabetes treatment process and treatment options;
 - (b) Incorporating nutritional management into lifestyle;
 - (c) Incorporating physical activity into lifestyle;
 - (d) Using medications safely and **effectively**[for maximum therapeutic effectiveness];
 - (e) Monitoring blood glucose and other parameters and interpreting and using the results for self-management and decision making;
 - (f) Preventing, detecting, and treating acute and chronic complications of diabetes;
 - (g) Developing personal strategies to address psychosocial issues and concerns;
 - (h) Developing personal strategies to promote health and behavior change;
- (6) Develop an individualized education and support plan focused on behavior change, which will be documented in an education/health record;

(7) Develop a personalized follow-up plan for ongoing self-management support, and communicate that follow-up plan to other health care providers as necessary;

(8) Monitor whether participants are achieving their personal diabetes self-management goals and other outcomes using **the following** appropriate frameworks and measurement techniques[**such as**]:

- (a) Physical activity;
- (b) Healthy eating;
- (c) Taking medication;
- (d) Monitoring blood glucose;
- (e) Diabetes self-care related problem solving;
- (f) Reducing risks of acute and chronic complications of diabetes;
- (g) Evaluation of the psychosocial aspects of living with diabetes; **or**
- (9) Evaluate the effectiveness of the education and services, and engage in a systematic review of process and outcome data.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation defines the scope of practice of a licensed diabetes educator.

(b) The necessity of this administrative regulation: This regulation is necessary because it describes which functions a licensed diabetes educator may perform.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to regulate the practice of diabetes education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the actions that a licensed diabetes educator may perform.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 300 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires applicants to maintain confidentiality, report discipline from other licensing agencies, truthfully advertise services and make financial arrangements that are reasonable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All licensees will know the scope of practice that they may engage in as a licensed diabetes educator.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to administer this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Technical and Administrative Support (Amended After Comments)

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

RELATES TO: KRS 45.450, 146.550-146.570, 382.800-382.860

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations on acquisition. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

Section 1. An applicant shall attempt to acquire:

- (1) Land at a price below its fair market value; and
- (2) Available matching funds for the purchase of land from a public or private entity.

Section 2. Transfer of Funds. An expenditure approved by the board shall be disbursed promptly after a Memorandum of Agree-

ment has been signed by the grant applicant and the board and all procedures in 418 KAR 1:040 and in the application have been followed.

Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years of board approval of the acquisition. An extension shall[may] be granted by the board upon receipt of a written request for extension.

Section 4. Verification. (1) Within ninety (90) days of purchase, a recipient of fund money shall provide to the board, a copy of the recorded deed of conveyance for land acquired.

(2) The deed shall indicate:

(a)[Indicate] That it has been filed of record in the courthouse of the county where the real estate is located; and

(b)[Indicate] The amount of consideration paid for the real estate, in accordance with KRS 45.450.

Section 5. Deed Restriction. A state agency that has been awarded grant funds pursuant to KRS 146.570(4) shall include in all deeds conveying ownership of property to that agency, as grantee, the following language: "Grantor and grantee hereby acknowledge that a source of funding for the purchase of the property is the Kentucky Heritage Land Conservation Fund, and that as consideration for receiving said funding, Grantee, including its successors and assigns, is required to maintain the property in perpetuity in accordance with the purpose, intent and requirements of the Kentucky Heritage Land Conservation Fund set forth at KRS 146.570 and 418 KAR Chapter 1. Grantee, including its successors and assigns, further acknowledges that it is prohibited from selling, exchanging, encumbering or disposing of any interest in the property without the prior written consent of the Kentucky Heritage Land Conservation Fund, its successors and assigns, and the Kentucky Finance and Administration Cabinet, and that the Grantee, including its successors and assigns, shall ensure that any future owner of the property agrees in writing to be bound in perpetuity to the same restrictions and terms as stated herein."

Section 6. Conservation Easements. (1) A local government, state college,~~or~~ state university, or LTO that has been awarded grant funds pursuant to KRS 146.570(4)(f) shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds.

(a) This conveyance shall occur simultaneously with the conveyance of the property to the applicant.

(b) The conservation easement shall meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560.

(2) Matching Funds. (a) No later than ninety (90) days after board approval of an application from an LTO, the applicant shall deposit into a non-lapsing escrow account the matching funds required by KRS 146.560(2)(d). The board shall deny a grant application submitted by an LTO if the LTO fails to deposit the matching funds required by KRS 146.560(2)(d).

(b) An LTO shall submit to the board for prior review and approval instructions for the disbursement from the escrow account[~~to the escrow holder of each dollar-for-dollar match~~], and shall ensure in writing that the escrow account remains open until all disbursements have been made[~~stays open for a long enough period of time to allow for withdrawals and disbursements to be made after board approval~~].

(c) A final report detailing each disbursement from the account shall be provided to the board within sixty (60) days of the final disbursement.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 12, 2013

FILED WITH LRC: August 14, 2013 at 9 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the acquisition of land purchased, in whole or in part, with Fund money

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on the acquisition of land purchased with fund money and also provides information on the how the funds will be transferred as well as information related to deed restrictions and conservation easements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) directs the board to promulgate administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by governing the acquisition of lands purchased in whole or in part with fund money.

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

(a) How the amendment will change this existing administrative regulation: This amendment introduces procedures for private, nonprofit land trust organizations to follow in order to set up and manage escrow accounts which is required in order to meet the dollar for dollar match required in KRS 146.560. The amendments made to the administrative regulation in response to comments allows the board to deny a grant application if the LTO refuses deposit matching funds required by KRS 16.560(2)(d), requires LTOs to submit for board review and approval the instructions for disbursements which ensures the escrow account remains open until all disbursements have been made, and requires a final report detailing each disbursement from the account be provided to the board within 60 days. The regulation was also amended to correct various issues related to compliance with KRS 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide private, nonprofit land trust organizations the necessary information for meeting the dollar for dollar match required by statute. These amendments were necessary to amend the administrative regulation in response to comments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the new requirements of KRS 146.560 by providing the method for private, nonprofit land trust organizations to meet the dollar for dollar match requirement.

(d) How the amendment will assist in the effective administration of the statutes: This amendment requires private, nonprofit land trust organizations to use escrow accounts to make the dollar for dollar match.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact private, nonprofit land trust organizations that are interested in applying for grants from the Heritage Land Conservation Fund.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment requires private, nonprofit land trust organizations to set up escrow accounts to make the dollar for dollar match required by KRS 146.560.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the regulated entity an additional amount to comply with this amendment.

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

entities identified in question (3): Private, nonprofit land trust organizations could receive grants from the HLCF.

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

(a) Initially: This amendment will not cost the administrative body additional funds to implement.

(b) On a continuing basis: This amendment will not cost the administrative body additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate funds for use by the cabinet on a continuing basis.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amended After Comments)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 156.070(2)

STATUTORY AUTHORITY: KRS 156.070(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an

agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools, including a private school desiring to associate with KHSAA or[and] to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control~~(governing body)~~;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide, following a grandfathering period for prior participants, for students desiring to participate at the high school level (regardless of level of play) to be enrolled in at least grade seven (7);

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by ~~December~~October 31;

~~(7) [(6)]~~ Advise the Department of Education of all legal action brought against the KHSAA~~[by October 31];~~;

~~(8) [(7)]~~ Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

~~(9) [(8)]~~ Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

~~(10) [(9)]~~ Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

~~(11) [(10)]~~ Permit the Board of Control to assess fines on a member high school;

~~(12) [(11)]~~ Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility~~[an]~~ appeal;

~~(13) [(12)]~~ Establish a philosophical statement of principles to use as a guide in a high school~~[an]~~ eligibility case;

~~(14) [(13)]~~ Conduct continual cycles of field audits of the association's entire high school membership such that each high school is audited over a five (5) year period regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports including the highlighting of any potential deficiencies in OCR compliance~~[on a regular (not less than three (3) times annually) basis]~~ to the Kentucky Board of Education~~[as requested]~~;

~~(15) [(14)]~~ As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

~~(16) [(15)]~~ Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

~~(17) [(16)]~~ Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public~~;~~~~;~~ and

~~(18) [(17)]~~ Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA

final decision on eligibility.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, beginning with the 2014-2015 school year, the KHSAA shall implement the following requirements for all participants in middle school athletics and distribute these requirements to all middle schools and publish via the KHSAA Web site:

(1) Require that any coach (head or assistant, paid or unpaid) desiring to coach interscholastic athletics at the middle school level meet the following requirements:

(a) Shall be **twenty-one (21)** years of age;

(b) Shall not be a violent offender or convicted of a sex crime as defined by KRS 17.165 that is classified as a felony;

(c) Shall submit to a criminal record check under KRS 160.380; and

(d) Shall have graduated from a public or accredited high school;

(2) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination performed and signed by a physician, physician assistant, advanced practice registered nurse, or chiropractor (if performed within the professional's scope of practice), for each student seeking eligibility to participate in any school athletic activity or sport using the form approved for use at the high school level;

(b) All participants at the middle school level shall adhere to all sports medicine policies in use at the high school level including:

1. Heat index and heat illness programs;
2. Wrestling weight management programs; and
3. Concussion and other head injury policies;

(3) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of regionally distributed middle school administrators from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies; make recommendations for changes in statute, administrative regulation, or policy related to middle school interscholastic athletics; and assist in the development of model guidelines for schools, districts, conferences and associations to be used in implementing a middle school athletic program; and

(e) Report regularly to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the Kentucky Board of Education with recommendations for changes in statute, administrative regulation, or policy;

(4) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published on the KHSAA Web site:

(a) Financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(5) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of Title IX;

(6) Provide a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445, and other requirements for coaches at the middle school level;

(7) Require that no student be able to compete in middle school competition that is repeating a grade for any reason;

(8) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time prior to the season in any sport or sport activity, such limit not to exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of scrimmages and regular contests in each sport or sport-activity, such limit not to exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the competitive season in each sport or sport-activity, including any invitational activity following the season, such limit not to exceed the allowable number of contests for that sport or sport-activity at the high school level;

(8) [(9)] Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(9) [(10)] Require that the common schools at the middle school level may only compete in contests against schools that adhere to these provisions; and

(10) [(11)] Issue an annual report to the Kentucky Board of Education on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy.

Section 4. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control [by December 31], audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 5[4]. The materials incorporated by reference in Section 6[5] shall apply to middle and high school interscholastic athletics in Kentucky.

Section 6[5]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KHSAA Constitution", 6/2013[4/2009];
- (b) "KHSAA Bylaws", 6/2013[5/2012];
- (c) "KHSAA Due Process Procedure", 6/2013[5/2012];
- (d) "KHSAA Board of Control and Officials Division Policies", 6/2013[5/2012];
- (e) ["KHSAA Officials Division Guidebook", 5/2012; (f)] "KHSAA Form BA101- Baseball Pitching Limitation", 4/2009;
- (f) [(g)] "KHSAA Form FB102- Football Financial Report", 9/7/2009;
- (g) [(h)] "KHSAA Form FB103- Football Spring Football Practice", 4/2011;
- (i) "KHSAA Form FB109- Football Scrimmage Report", 7/2009;
- (j) "KHSAA Form FB122- Football Contact Practice Log",

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6/2009;
—(k) "KHSAA Form GE1- Membership Renewal",
6/2013[5/2012];
(h)[(h)] "KHSAA Form GE2- New Membership Application",
6/2013[5/2012];
(i)[(m)] "KHSAA Form GE3- Participation List", 4/2009;
(j)[(n)] "KHSAA Form GE4- Physician & Parental Permission
Form", 6/2013[5/2012];
(k)[(o)] "KHSAA Form GE6- Domestic Transfer",
6/2013[3/2012];
(l)[(p)] "KHSAA Form GE7- Non Domestic Eligibility",
6/2013[3/2012];
(m)[(q)] "KHSAA Form GE14- Contract for Athletic Contests",
4/2009;
(n)[(r)] "KHSAA Form GE16- Statutory Waiver of Bylaw 3",
3/2012;
(o)[(s)] "KHSAA Form GE18- Survey for Sports Offerings",
3/2012;
—(t) "KHSAA Form GE19-Title IX Procedures Verification",
5/2011;
(p)[(u)] "KHSAA Form GE20- Heat Index Record", 4/2009;
(q)[(v)] "KHSAA Form GE26- Financial Aid Report", 5/2011;
(r)[(w)] "KHSAA Form GE35- Waiver - 20 Day Notice", 5/2011;
(s)[(x)] "KHSAA Form GE36- Add. Info for Appeal", 5/2011;
(t)[(y)] "KHSAA Form GE39- Report of Need Based Financial
Aid Awarded", 5/2011;
(z) "KHSAA Form GE40- Request for a Statutory Waiver of
Bylaw 27", 2/2012;
(u)[(aa)] "KHSAA Form GE52- District Tournament Financial
Report", 5/2011;
(v)[(bb)] "KHSAA Form GE53- Region Tournament Financial
Report", 3/2012;
(w)[(cc)] "KHSAA Form GE69- Waiver – 15 Day Exceptions",
5/2011;
(x)[(dd)] "KHSAA Form SO103- Soccer Section/SubSection
Financial Report", 5/2011;
(y)[(ee)] "KHSAA Form T1- Title IX Accom. Of Interests & Abili-
ties", 5/2011;
(ff) "KHSAA Form T2- Title IX Accom. Of Interests & Abilities",
5/2011;
(gg) "KHSAA Form T3- Title IX Accom. Of Interests & Abilities",
5/2011;
(hh) "KHSAA Form T35- Title IX Actual Expenditures Compari-
son 1 + Booster Club", 5/2011;
(ii) "KHSAA Form T36- Title IX Actual Expenditures Compari-
son 2 + Booster Club", 5/2011;
(jj) "KHSAA Form T4- Title IX Accom. Of Interests & Abilities",
5/2011;
(kk) "KHSAA Form T41- Title IX Athletics Audit Checklist",
5/2011;
(ll) "KHSAA Form T50- Title IX Re-Visit", 5/2011;
(mm) "KHSAA Form T60- Title IX Corrective Action", 5/2011;
(nn) "KHSAA Form T61- Title IX Interscholastic Athletics Stu-
dent Survey", 5/2011;
(oo) "KHSAA Form T63- Title IX Interscholastic Athletics Sur-
vey", 5/2011;
(pp) "KHSAA Form T70- Title IX Participation Opportunities",
5/2011;
(qq) "KHSAA Form T71- Title IX Benefits – Summary 1",
5/2011;
(rr) "KHSAA Form T72- Title IX Benefits – Summary 2", 5/2011;
(ss) "KHSAA Form T73- Title IX Re-Visit – Publicity Support
Group", 5/2011;
(tt) "KHSAA Form T74- Title IX Re-Visit – Corrective Action
Summary Chart", 5/2011;
(uu) "KHSAA Form WR101- Wrestling Permission Form",
12/2009;
(z)[(vv)] "KHSAA Form WR111- Wrestling Skin Condition &
Unconscious", 5/2011; and
(aa)[(www)] "KHSAA Form WR126- Wrestling Weight Certif.
Program Assessor", 3/2012.

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Office of Legal and Legisla-
tive Services, Department of Education, First Floor, Capital Plaza

Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m.
to 4:30 p.m.

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

TERRY HOLLIDAY, PH.D., Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 15, 2013 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commis-
sioner and General Counsel, Office of Guiding Support Services,
Kentucky Department of Education, 500 Mero Street, First Floor,
Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-
4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070
requires the Kentucky Board of Education (KBE) to manage and
control the common schools, including interscholastic athletics in
the schools, and authorizes the KBE to designate an agency to
manage athletics. This regulation designates the Kentucky High
School Athletic Association (KHSAA) as the agent to manage high
school and middle school interscholastic athletics, and incorpo-
rates by reference the bylaws, procedures and rules governing
interscholastic sports.

(b) The necessity of this administrative regulation: This regula-
tion is necessary to designate the agency to provide the day-to-day
management activities of interscholastic athletics in Kentucky; to
set forth the financial, planning and review processes governing
the agent; and to incorporate by reference the bylaws, procedures
and rules of the agent.

(c) How this administrative regulation conforms to the content
of the authorizing statutes: The regulation designates the agency
to manage interscholastic athletics, as authorized by the authoriz-
ing statute, and outlines the conditions under which this authority is
granted.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: It designates
the KHSAA as the agent to manage interscholastic athletics in the
schools and districts, and publishes changes in bylaws, procedures
and rules for affected schools and districts.

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

(a) How the amendment will change this existing administrative
regulation: These amendments make changes to the documents
incorporated by reference, in the KHSAA Constitution and in
KHSAA Bylaws 5, 7, 9, 11, 14, 18, 21, 22, 23, 24, 25, 28, 29, 30,
and 31 as adopted by the KHSAA Delegate Assembly. The
KHSAA is also newly designated as the agent to manage inter-
scholastic athletics at the middle school level.

(b) The necessity of the amendment to this administrative
regulation: Pursuant to the KHSAA Constitution, which is incorpo-
rated by reference in this regulation, the members are required to
have an annual meeting to discuss and recommend any needed
changes to the Constitution and Bylaws. While they are not re-
quired to make changes to the Constitution and Bylaws, changes
must be made through this process. This amendment incorporates
changes approved at the annual meeting of the Delegate Assem-
bly. This amendment also is necessary to designate the KHSAA as
the agent to manage interscholastic athletics at the middle school
level.

(c) How the amendment conforms to the content of the author-
izing statutes: The statute authorizes the KBE to designate an
agency to manage interscholastic athletics in the common schools.
The regulation designates the KHSAA as that agent, and incorpo-
rates by reference the KHSAA Handbook, which consists of the
KHSAA Constitution, Bylaws, and Due Process to provide rules
and guidance to the member schools and districts governing sport-
ing events. The amendments in the Bylaws are made annually,

according to the process outlined in the Constitution, and reflect input member schools and districts on changes that need to be made to provide a more sound structure of governance.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 School Districts

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation. There will be some additional requirements placed on schools and coaching personnel, however the training required to meet these new requirements will be provided at no costs to the schools or the coaching personnel.

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

(a) Initially: Minimal

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as from gate receipts from sporting events.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School Districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 702 KAR 7:065.

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

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

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

(c) How much will it cost to administer this program for the first year? The costs associated to the KHSAA in administering this program for the first year are minimal.

(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administering this program in subsequent first years are minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of the Kentucky Health Benefit Exchange (Amended After Comments)

900 KAR 10:010. Exchange Participation Requirements and Certification of Qualified Health Plans and Qualified Dental Plans.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

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

Section 1. Definitions. (1) "Actuarial value" means the percentage of the total allowed costs of benefits paid by a health plan.

(2) "Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act, Public Law 111-148, enacted March 23, 2010 as amended by the Health Care and Education Reconciliation Act, Public Law 111-152, enacted March 30, 2010.

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

(4) "Annual open enrollment period" except for the initial open enrollment period, is defined by 45 C.F.R. 155.410(e).

(5) "Benefit year" means a calendar year for which a health plan provides coverage for health benefits.

(6) "Catastrophic plan" means a health plan that is described in and meets the requirements of 45 C.F.R 156.155.

(7) "Certificate of authority" is defined by KRS 304.1-110.

(8) "Certification" means a determination by the Kentucky Health Benefit Exchange that a health plan or a stand-alone dental plan has met the requirements in Sections 2 through ~~20(17)~~ of this administrative regulation.

(9) "Child-only plan" means an individual health policy that provides coverage to an individual under twenty-one (21) years of age and meets the requirements of 45 C.F.R 156.200(c)(2).

(10) "Consumer Operated and Oriented Plan" or "CO-OP" means a private, non-profit health insurance issuer established in Section 1322 of the Affordable Care Act that has a certificate of authority.

(11) "Dental Insurer" means an insurer defined by KRS 304.17C-010(4), which offers a limited health service benefit plan for dental services.

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

(13) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(14) "Enrollee" means an eligible individual enrolled in a qualified health plan.

(15) "Essential community provider" means either a: (a) Provider determined and approved by HHS as an essential community provider for the Commonwealth of Kentucky; or (b) Regional community services program for mental health or individuals with an intellectual disability established pursuant to KRS 210.370 through KRS 210.480, operating in Kentucky, and licensed pursuant to 900 KAR 20:091.

(16) "Essential community provider category" means a provider as described in "Chapter 7: Instructions for the Essential Community Providers Application Section", as incorporated by reference in this administrative regulation.

(17) "Essential health benefits" means benefits as identified by 42 U.S.C. 18022 and approved by the Secretary of HHS for the Commonwealth of Kentucky.

- (18) "Health plan" is defined by 42 U.S.C. 18021(b)(1).
- (19) "Indian" is defined by 25 U.S.C. 450b(d).
- (20) "Issuer" is defined by 45 C.F.R. 144.103.
- (21) "Health plan form" or "form" is defined by 806 KAR 14:007.
- (22) "Individual exchange" means the Kentucky Health Benefit Exchange that serves the individual health insurance market.
- (23) "Individual market" is defined by KRS 304.17A-005(26).
- (24) "Initial open enrollment period" means the period beginning October 1, 2013, and extending through March 31, 2014, during which a qualified individual or qualified employee may enroll in health coverage through an exchange for the 2014 benefit year.
- (25) "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.
- (26) "Metal level of coverage" means health care coverage provided within plus or minus two (2) percentage points of the full actuarial value as follows:
- (a) Bronze level with an actuarial value of 60 percent;
 - (b) Silver level with an actuarial value of 70 percent;
 - (c) Gold level with an actuarial value of 80 percent; and
 - (d) Platinum level with an actuarial value of 90 percent.
- (27) "Multi-state plan" means a health plan that is offered under a contract with the U.S. Office of Personnel Management in accordance with Section 1334 of the Affordable Care Act.
- (28) "Office of the Kentucky Health Benefit Exchange" or "Office" means the office created to administer the Kentucky Health Benefit Exchange.
- (29) "Participating agent" means an agent as defined by KRS 304.9-020(1) who has been certified by the office to participate on the KHBE.
- (30) "Participation agreement" means an agreement between the office and the issuer to offer a QHP or qualified dental plan on the KHBE.
- (31) "Pediatric dental essential health benefit" means a dental service to prevent disease and promote oral health, restore an oral structure to health and function, and treat an emergency condition provided to an individual under the age of twenty-one (21) years that meets the requirements of 45 C.F.R. 156.110(a)(10).
- (32) "Plan management data template" means the data collection templates used to facilitate data submission for certification of qualified health plan issuers and qualified health plans as established in CMS Form Number CMS-10433, as amended.
- (33) "Plan year" means a consecutive twelve (12) month period during which a health plan provides coverage for health benefits.
- (34) "Premium" is defined by KRS 304.14-030.
- (35) "Provider network" is defined by KRS 304.17A-005(35).
- (36) "Qualified dental plan" means a dental plan certified by the office[KHBE] that provides a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), limited to a pediatric dental essential health benefit which complies with the requirements of 45 C.F.R. 156.110(a)(10).
- (37) "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.
- (38) "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.
- (39) "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 office[KHBE].
- (40) "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market.
- (41) "Service area" means a geographical area in which an issuer may offer a QHP.
- (42) "SHOP" means a Small Business Health Options Program operated by the KHBE through which a qualified employer can provide a qualified employee and their dependents with access to one (1) or more QHPs.
- (43) "Small group" is defined by KRS 304.17A-005(42).
- (44) "Stand-alone dental plan" means a dental plan as de-

scribed by 45 C.F.R. 155.1065.

(45) "Summary of Benefits and Coverage" or "SBC" means a standard format, created in accordance with 42 U.S.C. 300gg-15, for providing information to consumers about a health plan's coverage and benefits.

(46) "System for Electronic Rate and Form Filing" or "SERFF" means an online system established and maintained by the National Association of Insurance Commissioners (NAIC) that enables an issuer to send and a state to receive, comment on, and approve or reject rate and form filings.

Section 2. QHP Issuer General Requirements. In order for an issuer to participate in the KHBE beginning January 1, 2014, the issuer shall:

- (1) Hold a certificate of authority and be in good standing with the Kentucky Department of Insurance;
- (2) Be authorized by the office to participate on the KHBE;
- (3) **By April 1 of each year, submit Form KHBE-C1 Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;**
- (4) Enter into a participation agreement with the office[KHBE];
- (5) Offer KHBE certified QHPs in the individual exchange or the SHOP exchange;
- (6) ~~(5)~~ Comply with benefit design standards as established in 45 C.F.R. 156.20;
- (7) ~~(6)~~ Provide coverage of the:
 - (a) Essential health benefits; or
 - (b) If stand-alone pediatric dental essential health benefit is offered in the KHBE in accordance with 45 C.F.R. 155.1065, essential health benefits excluding pediatric dental essential health benefits;
- (8) ~~(7)~~ Implement and report on a quality improvement strategy or strategies consistent with the standards of 42 U.S.C. 18031(g);
- (9) ~~(8)~~ Comply with applicable standards described in 45 C.F.R. Part 153;
- (10) ~~(9)~~ For the individual exchange, offer at least a:
 - (a) QHP with a silver metal level of coverage;
 - (b) QHP with a gold metal level of coverage;
 - (c) Child-only plan; and
 - (d) Catastrophic plan.
- (11) ~~(10)~~ For the SHOP exchange, offer at least a:
 - (a) QHP with a silver metal level of coverage; and
 - (b) QHP with a gold metal level of coverage;
- (12) ~~(11)~~ For the individual and SHOP exchange, offer no more than four (4) QHPs within a specified metal level of coverage. For the purposes of establishing the number of QHPs offered in a metal level, the office[KHBE] shall consider the same plan offered with dental benefits and offered without dental benefits as one (1) QHP;
- (13) ~~(12)~~ Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity or sexual orientation;
- (14) ~~(13)~~ Assure that the non-discrimination requirements in 42 U.S.C. 300gg-5 are met;
- (15) ~~(14)~~ If participating in the small group market, comply with KHBE processes, procedures, and requirements established in accordance with 42 C.F.R. 155.705 for the small group market;
- (16) ~~(15)~~ Allow a participating agent to:
 - (a) Enroll individuals, employers, and employees in QHPs offered on the exchange;
 - (b) Enroll qualified individuals in a QHP in a manner that constitutes enrollment through the KHBE; and
 - (c) Assist individuals in applying for advance payments of premium tax credit and cost sharing reductions; **and**
- (17) ~~(16)~~ (a) Offer a QHP in a statewide service area, except as allowed under paragraph (b) of this subsection; or
 - (b) Offer a QHP in a service area less than statewide if:
 - 1. A QHP is available statewide;
 - 2. The issuer's service area includes one (1) or more counties;
 - 3. The issuer's service area is approved by the DOI; and
 - 4. The issuer's service area is established in a nondiscriminatory manner without regard to:
 - a. Race;

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- b. Ethnicity;
- c. Language;
- d. Health status of an individual in a service area; or
- e. A factor that excludes a high utilizing, high cost or medically-underserved population; **and**

(18) Comply with the requirements of KRS Chapter 304.

Section 3. QHP Rate and Benefit Information. (1) A QHP issuer shall:

- (a) Comply with the provisions of 45 C.F.R. 156.210 and KRS 304.17A-095(4);
 - (b) Submit to DOI through the SERFF system:
 - 1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;
 - 2. Rate filings in compliance with KRS 304.17A-095 and applicable administrative regulations promulgated thereunder;
 - 3. Plan management data templates;
 - (c) Receive approval from DOI for a rate filing prior to implementation of the approved rate; and
 - (d) For a rate increase, post the justification prominently on the QHP issuer's Web site.
- (2) A CO-OP, multi-state plan, and qualified dental plan shall comply with requirements identified by subsection (1) of this section.

Section 4. QHP Certification and Recertification Timeframes. (1) The **office[KHBE]** will take final action on the request for certification **no later than September 30 for the following plan year** or recertification of QHPs no later than **September 15[August 31]** for the following plan year.

(2) A QHP not certified **by September 30** or recertified by **September 15[August 31]** may not be offered on the exchange at any time during the following calendar year.

Section 5. Transparency in Coverage. (1) A QHP issuer shall provide the following information to the office in accordance with the standards established by subsection (2) of this section:

- (a) Claims payment policies and practices;
- (b) Periodic financial disclosures;
- (c) Data on enrollment;
- (d) Data on disenrollment;
- (e) Data on the number of denied claims;
- (f) Data on rating practices;
- (g) SBC;
- (h) Information on cost-sharing and payments for out-of-network coverage; and
- (i) Information on enrollee rights under Title I of the Affordable Care Act.

(2) A QHP issuer shall:

- (a) Submit, in an accurate and timely manner, to be determined by HHS, the information described in subsection (1) of this section to the KHBE, HHS, and DOI; and
- (b) Provide public access to the information described in subsection (1) of this section.

(3) A QHP issuer shall ensure that the information submitted under subsection (1) of this section is provided in plain language as the term is defined by 45 C.F.R. 155.20.

(4)(a) A QHP issuer shall make available, in a timely manner, information about the amount of enrollee cost-sharing under the enrollee's plan or coverage relating to provision of a specific item or service by a participating provider upon the request of the enrollee.

(b) The information shall be made available to an enrollee through:

- 1. An Internet Web site; and
- 2. Other means if the enrollee does not have access to the Internet.

Section 6. Marketing and Benefit Design of QHPs. A QHP issuer and its officials, employees, agents, and representatives shall:

- (1) Comply with issuer marketing practices provided under KRS 304.17A and 806 KAR 12:010; and
- (2) Not employ marketing practices or benefit designs that will

have the effect of discouraging the enrollment of individuals with complex health care needs in QHPs.

Section 7. Network Adequacy Standards. (1) A QHP issuer shall ensure that the provider network of a QHP is available to all enrollees within the QHP service area, and:

(a) Includes essential community providers in the QHP provider network in accordance with 45 C.F.R. 156.235 and meets the network adequacy standards for essential community providers as established in Section 8 of this administrative regulation;

(b) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be provided in a timely manner; and

(c) Meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515.

(2) A QHP issuer shall make its provider directory for a QHP available:

- (a) To the KHBE for online publication;
 - (b) To potential enrollees in hard copy upon request; and
 - (c) In accordance with KRS 304.17A-590.
- (3) A QHP issuer shall identify in the QHP provider directory a provider that is not accepting new patients.

Section 8. Network Adequacy Standards for Essential Community Providers for Coverage Year 2014. A QHP issuer shall:

(1)(a) Demonstrate a provider network, which includes at least twenty (20) percent of available essential community providers in the QHP service area participate in the issuers provider network; and

(b) Offer a contract to:

1. At least one (1) essential community provider in each essential community provider category in each county in the service area where an essential community provider in that category is available; and

2. Available Indian providers in the service area, using the Model Indian Addendum as developed by The Centers for Medicare and Medicaid Services and identified in the "Supplementary Response: Inclusion of Essential Community Providers" form incorporated by reference in this administrative regulation; or

(2) If unable to comply with the requirements in subsection (1) of this section:

(a) Demonstrate a provider network which includes at least ten (10) percent of available essential community providers in the QHP service area; and

(b) Submit a supplementary response as identified in "Supplementary Response: Inclusion of Essential Community Providers" as incorporated by reference in this administrative regulation.

Section 9. Health Plan Applications and Notices. A QHP issuer shall provide an application, including the streamlined application designated by the office, and notices to enrollees pursuant to standards described in 45 C.F.R. 155.230.

Section 10. Consistency of Premium Rates Inside and Outside the KHBE for the Same QHP. A QHP issuer shall charge the same premium rate without regard to whether the plan is offered:

- (1) Through the KHBE;
- (2) By an issuer outside the KHBE; or
- (3) Through a participating agent.

Section 11. Enrollment Periods for Qualified Individuals. (1) A QHP issuer participating in the individual market shall:

(a) Enroll a qualified individual during the initial and annual open enrollment periods described in 45 C.F.R. 155.410(b) and (e) and comply with the effective dates of coverage established by the **office[KHBE]** in accordance with 45 C.F.R. 155.410(c)(1) and (f); and

(b) Make available, at a minimum, special enrollment periods described in 45 C.F.R. 155.420(d), for QHPs and comply with the effective dates of coverage established by the KHBE in accordance with 45 C.F.R. 155.420(b).

(2) A QHP issuer shall notify a qualified individual of the effective date of coverage.

(3) Notwithstanding the requirements of this section, coverage shall not be effective until premium payment is submitted by the individual.

Section 12. Enrollment Process for Qualified Individuals. (1) A QHP issuer shall process enrollment of an individual in accordance with this section.

(2) A QHP issuer participating in the individual market shall enroll a qualified individual if the KHBE:

(a) Notifies the QHP issuer that the individual is a qualified individual; and

(b) Transmits information to the QHP issuer in accordance with 45 C.F.R. 155.400(a).

(3) If an applicant initiates enrollment directly with the QHP issuer for enrollment in a plan offered through the KHBE, the QHP issuer shall either:

(a) Direct the individual to file an application with the KHBE in accordance with 45 C.F.R. 155.310; or

(b) Ensure the applicant received an eligibility determination for coverage through the KHBE through the KHBE Internet Web site.

(4) A QHP issuer shall accept enrollment information in accordance with the privacy and security requirements established by the **office[KHBE]** pursuant to 45 C.F.R. 155.260 and in an electronic format pursuant to with 45 C.F.R. 155.270.

(5) A QHP issuer shall follow the premium payment process established by the KHBE in accordance with 45 C.F.R. 155.240.

(6) A QHP issuer shall provide new enrollees with an enrollment information package that complies with the accessibility and readability requirements established by 45 C.F.R. 155.230(b).

(7) A QHP issuer shall reconcile enrollment files with the KHBE no less than once a month in accordance with 45 C.F.R. 155.400(d).

(8) A QHP issuer shall acknowledge receipt of enrollment information transmitted from the KHBE in accordance with KHBE requirements established by 45 C.F.R. 155.400(b)(2).

Section 13. Termination of Coverage for Qualified Individuals.

(1) A QHP issuer may terminate coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2).

(2) If an enrollee's coverage in a QHP is terminated for any reason, the QHP issuer shall:

(a) Provide the enrollee with a notice of termination of coverage that includes the reason for termination at least thirty (30) days prior to the final day of coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);

(b) Notify the KHBE of the termination effective date and reason for termination; and

(c) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.

(3) Termination of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall:

(a) Include the grace period for enrollees receiving advance payments of the premium tax credits as described in 45 C.F.R. 156.270 (d); and

(b) Be applied uniformly to enrollees in similar circumstances.

(4) A QHP issuer shall provide a grace period of three (3) consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one (1) full month's premium during the benefit year. During the grace period, the QHP issuer:

(a) 1. Shall pay claims for services provided to the enrollee in the first month of the grace period; and

2. May suspend payment of claims for services provided to the enrollee in the second and third months of the grace period;

(b) Shall notify HHS of the non-payment of the premium due; and

(c) Shall notify providers of the possibility for denied claims for services provided to an enrollee in the second and third months of the grace period.

(5) For the three (3) months grace period described in subsection (4) of this section, a QHP issuer shall:

(a) Continue to collect advance payments of the premium tax credit on behalf of the enrollee from the U.S. Department of the Treasury; and

(b) Return advance payments of the premium tax credit paid on behalf of the enrollee for the second and third months of the grace period if the enrollee exhausts the grace period as described in subsection (7) of this section.

(6) If an enrollee is delinquent on premium payment, the QHP issuer shall provide the enrollee with a notice of the payment delinquency.

(7) If an enrollee receiving advance payments of the premium tax credit exhausts the three (3) months grace period in subsection (4) of this section without paying the outstanding premiums, the QHP issuer shall terminate the enrollee's coverage on the effective date of termination described in 45 C.F.R. 155.430(d)(4) if the QHP issuer meets the notice requirement specified in subsection (2) of this section.

(8) A QHP issuer shall maintain records in accordance with KHBE requirements established pursuant to 45 C.F.R. 155.430(c).

(9) A QHP issuer shall comply with the termination of coverage effective dates as described in 45 C.F.R. 155.430(d).

Section 14. Accreditation of QHP Issuers. (1) A QHP issuer shall:

(a) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 156.275(a)(1); and

(b) Pursuant to 45 C.F.R. 156.275(a)(2) authorize the accrediting entity that accredits the QHP issuer to release to the KHBE and HHS:

1. A copy of the most recent accreditation survey; and

2. Accreditation survey-related information that HHS may require, including corrective action plans and summaries of findings.

(2)(a) A QHP issuer shall be accredited **prior to the fourth year off[within three (3) years of initial]** QHP certification **and in every subsequent year of certification** in accordance with requirements identified by 45 C.F.R. 155.1045; **and**

(b) A QHP issuer seeking certification of a QHP that has not received accreditation for the QHP shall submit evidence to support that the issuer has a plan for obtaining accreditation of the QHP within the timeline identified in paragraph (a) of this subsection.

(3) The QHP issuer shall maintain accreditation so long as the QHP issuer offers QHPs.

Section 15. Recertification, Non-renewal, and Decertification of QHPs. (1) A QHP shall be recertified in accordance with the requirements of this administrative regulation every two (2) years no later than **September 15[August 31]** for the following plan year.

(2) An issuer shall submit to the exchange a request for recertification of a QHP at least **120[ninety (90)]** days prior to an expiration of a certification.

(3) If a QHP issuer elects not to seek recertification with the **office[KHBE]**, the QHP issuer, at a minimum, shall:

(a) Notify the **office[KHBE]** of its decision prior to the beginning of the recertification process and follow the procedures adopted by the KHBE in accordance with 45 C.F.R. 155.1075;

(b) Provide benefits for enrollees through the final day of the plan or benefit year;

(c) Submit reports as required by the **office[KHBE]** for the final plan or benefit year of the certification;

(d) Provide notices to enrollees in accordance with Section 13 of this administrative regulation;

(e) Terminate coverage of enrollees in the QHP in accordance with 45 C.F.R. 156.270, as applicable; and

(f) Comply with requirements of KRS 304.17A-240 and 304.17A-245, **as applicable**.

(4) If a QHP is decertified by the **office[KHBE]** pursuant to 45 C.F.R. 155.1080, the QHP issuer shall terminate coverage of enrollees only after:

(a) The KHBE has provided notification as required by 45 C.F.R. 155.1080(e);

(b) Enrollees have an opportunity to enroll in other coverage; and

(c) The QHP issuer has complied with the requirements of KRS 304.17A-240 and 304.17A-245, **as applicable**.

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Section 16. General Requirements for a Stand-alone Dental Plan. (1) In order for a dental insurer to participate in the KHBE beginning January 1, 2014 and offer a stand-alone dental plan, the dental insurer shall:

(a) Hold a certificate of authority to offer dental plans and be in good standing with the Kentucky Department of Insurance;

(b) Be authorized by the office to participate on the KHBE;

(c) **By April 1 of each year, submit Form KHBE-C1 Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;**

(d) Enter into a participation agreement with the ~~office~~[KHBE];

(e)~~(d)~~ Offer a pediatric dental plan certified by the ~~of-~~
~~ice~~[KHBE] in accordance with this administrative regulation in the individual exchange or SHOP exchange that shall:

1. Comply with the requirements of KRS Chapter 304 Subtitle 17C;

2. Submit to DOI through the SERFF system:

a. Form **filings in compliance with KRS Chapter 304;**

~~b.~~~~[and]~~ Rate filings in compliance with KRS~~[Chapter]~~ 304.17-380; and

~~c.~~~~[b.]~~ Dental plan management data templates;

(f)~~(e)~~ Offer a stand-alone dental plan that shall:

1. Be limited to a pediatric dental essential health benefit required by 42 U.S.C. 18022(b)(J) for individuals up to twenty-one (21) years of age;

2. Pursuant to 45 C.F.R. 156.150, provide within a variation of plus or minus two (2) percentage points:

a. A low level of coverage with an actuarial value of seventy (70) percent; and

b. A high level of coverage with an actuarial value of eighty five (85) percent; and

3. Have an annual limitation on cost-sharing at or below:

a. \$1,000 for a plan with one (1) child enrollee; or

b. \$2,000 for a plan with two (2) or more child enrollees;

(g)~~(f)~~ Comply with the:

1. Provider network adequacy requirements identified by KRS 304.17C-040 and maintain a network that is sufficient in number and types of dental providers to assure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 156.230;

2. Requirements for stand-alone dental plans referenced in 45 C.F.R. 156 Subpart E; and

3. Essential community provider requirement in 45 C.F.R. 156.235;~~[and]~~

(h)~~(g)~~ Not discriminate, with respect to a pediatric dental plan, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation; ~~and~~

(i) **Make its provider directory for a QHP available:**

1. To the KHBE for online publication;

2. To potential enrollees in hard copy upon request; and

3. In accordance with KRS 304.17A-590.

(2) The dental insurer offering a stand-alone dental plan participating in the KHBE beginning January 1, 2014:

(a) May offer a stand-alone dental plan which includes coverage for individuals regardless of age which includes at a minimum a pediatric dental essential health benefit required by 42 U.S.C. 18022(b)(J) coverage for individuals up to twenty-one (21) years of age; and

(b) If electing to offer the plan specified in paragraph (a) of this subsection, shall comply with the requirements of subsection (1) of this section.

Section 17. Essential health benefits for individuals up to twenty-one (21) years of age. The KHBE shall ensure that an individual up to age twenty-one (21) years of age eligible to enroll in a QHP shall obtain coverage for pediatric dental coverage.

Section 18. Enforcement. The DOI shall be responsible for enforcing the requirements of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 19. Issuer Appeals. (1) An issuer may appeal the office's decision to:

(a) Deny certification of a QHP;

(b) Deny recertification of a QHP; or

(c) Decertify a QHP.

(2) An issuer appeal identified in subsection (1) of this section shall be made to the office in accordance with KRS Chapter 13B.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Chapter 7: Instructions for the Essential Community Providers Application Section", April 2013 version;~~[and]~~

(b) **"Form KHBE-C1 Issuer Participation Intent Form", revised August, 2013; and**

(c) "Supplementary Response: Inclusion of Essential Community Providers", April 2013 version.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Health Benefit Exchange, 12 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.healthbenefitexchange.ky.gov.

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at 1 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 criteria for certification as a qualified health plan or a qualified dental plan to be offered on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform issuers of the requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that issuers are aware of the requirements for certification of a health plan as a qualified health plan or dental plan as a qualified dental plan to be offered 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 requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange to comply with the statute.

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

(a) How the amendment will change this existing administrative regulation: This 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 fifteen (15) issuers that may request certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered 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 entity will submit information electronically through the SERFF system related to rate and form filings to the Department of Insurance for review by DOI and OKHBE.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$1,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each issuer that may request certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit by providing detailed instructions regarding certification of Qualified Health Plans.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of the Kentucky Health Benefit Exchange within the Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. § 18031, and 45 C.F.R. Parts 155 and 156.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a 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 the certification, recertification, and decertification of health plans as qualified health plans. The Affordable Care Act allows for Exchanges to certify health plans as qualified health plans. This certification may be done if: the health plan meets the rules for certification by the U. S. Department of Health and Human Services; and the Exchange determines that making such health plan available through the Exchange is in the interests of qualified individuals and qualified employers in the state or states in which the Exchange operates. The Exchange must require health plans seeking certification as qualified health plans to submit a justification for any premium increase prior to implementation of the increase. These plans must prominently post such information on their websites.

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

(Amended After Comments)

902 KAR 30:001. Definitions for 902 KAR Chapter 30.

RELATES TO: KRS 200.650-200.676, 20 U.S.C. Chapter 33[1431-1444], 34 C.F.R. Part 303

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the definitions for 902 KAR Chapter 30 pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Definitions. (1) "Ability to pay" means a family has an income at 200 percent of the poverty level or above.

(2) "Assessment" means the ongoing procedures used by appropriate qualified service providers throughout the child's period of eligibility in First Steps to identify:

(a) The child's unique strengths and needs, and the services appropriate to meet those needs;

(b) The resources, priorities, and concerns of the family; and

(c) The supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability.

(3)[(2)] "Assistive technology device" means any item, piece of equipment, or product system:

(a) Whether acquired commercially off the shelf, modified, or customized;

(b) That is ~~used~~needed to:

1. Increase, maintain, or improve the functional capabilities of a child with a disability; and

2. Implement the individualized family service plan; and

(c) Except for a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g. mapping), maintenance, or replacement of that device[, whether acquired commercially off the shelf, modified, or customized, that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan].

(4)[(3)] "Assistive Technology Service" means a service that directly assists the child with a disability in the selection, acquisition, or use of an assistive technology device in accordance with 20 U.S.C. 1401(2).

(5)[(4)] "Cabinet-approved criterion referenced instrument" means any of the three (3) assessments, incorporated by reference in 902 KAR 30:120, used to assess children from birth to three (3) years of age.

(6)[(5)] "Cabinet-approved screening protocol" means a screening protocol that is:

(a) Designed to evaluate the developmental status of children; and

(b) Used by the cabinet.

(7)[(6)] "Child find" is defined by KRS 200.654(3).

(8) "Consent" is defined by 34 C.F.R. 303.7.

(9) "Destruction" means the physical destruction of the record or ensuring that personal identifiers are removed so that the record is no longer personally identifiable under 34 C.F.R. 303.29.

(10)[(7)] "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families.

(11)[(8)] "District Early Intervention Committee" or "DEIC" is defined by KRS 200.654(6).

(12) "Early intervention record" means all records, electronic and hard copy, regarding a child that are required to be collected, maintained, or used under part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1400-1482, and 902 KAR Chapter 30.

(13) "Early intervention service provider" is defined by 34 C.F.R. 303.12.

(14)[(9)] "Early intervention services" is defined by 34 C.F.R. 303.13[KRS 200.654(7)].

(15)[(10)] "Established risk" means a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

(16)[(11)] "Evaluation" means the use of procedures to determine eligibility for First Steps services in accordance with 902 KAR 30:120.

(17)[(12)] "Family-centered" means practices that:

(a) Are driven by the family's priorities and concerns;

(b) Support the family's role as the constant in a child's life;

(c) Complement a family's natural activity settings and daily routines; and

(d) Support, respect, encourage, and enhance the strengths, competence, and confidence of the family.

(18)[(13)] "First Steps" means Kentucky's early intervention system, which is defined by KRS 200.654(8).

(19)[(14)] "First Steps data management system" means the online data system that consists of each child's early intervention record and financial management data.

(20)[(15)] "Homeless child" means a child who meets the federal definition of homeless children and youths established in 42 U.S.C. 11434a(2).

(21) "Inability to pay" means a family's income is below 200 percent of the poverty level.

(22)[(16)] "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented

with children and families.

(23)[(17)] "Individualized family service plan" or "IFSP" means an individual family service plan as defined by 34 C.F.R. 303.340[KRS 200.654(9)].

(24) "Initial assessment" means the assessment of the child and family assessment conducted prior to the child's first IFSP meeting.

(25)[(18)] "Kentucky Early Childhood Data System" or "KEDS" means the internet based[a web-based] data collection system to provide data for analysis to determine the degree to which Kentucky's children are meeting the major child outcomes and learning standards required by the Office of Special Education Programs (OSEP) in the United States Department of Education and the state early childhood standards.

(26)[(19)] "Multidisciplinary team" is defined by 34 C.F.R. 303.24[KRS 200.654(11)].

(27)[(20)] "Natural environments" is defined by 34 C.F.R. 303.26[means settings, such as the home and the community, in which the child's same age peers who have no disability normally participate].

(28)[(21)] "Parent" means:

(a) A natural, adoptive, or foster parent of a child;

(b) A guardian, except for the state if the child is a ward of the state[but not the state if the child is a ward of the state];

(c) An individual acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(d) An individual assigned as a surrogate parent pursuant to 20 U.S.C. [4415(b)(2) or] 1439(a)(5).

(29)[(22)] "Part C Coordinator" means the individual designated by the cabinet to be Kentucky's liaison with the federal Department of Education, Office of Special Education Programs (OSEP) to oversee the state's implementation of the early intervention system.

(30) "Participating provider or agency" is defined by 34 C.F.R. 303.403(c).

(31)[(23)] "Period of eligibility" means the time from referral to First Steps to termination of services due to:

(a) Failure to meet initial program eligibility requirements;

(b) Attainment of age three (3);

(c) Documented refusal of service by the child's parent or legal guardian, inclusive of disappearance; or

(d) Change of residence to another state.

(32)[(24)] "Point of entry" or "POE" is defined by KRS 200.654(12).

(33)[(25)] "Prematurity" means a gestational age, at birth, of less than thirty-seven (37) weeks.

(34) "Primary referral source" is defined by 34 C.F.R. 303.302(c) and 34 C.F.R. 303.303(c).

(35)[(26)] "Primary service provider" means a professional who is a member of the IFSP team and is selected by the parent as the team lead to provide regular support to the family.

(36)[(27)] "Qualified service provider" means a provider who meets the qualifications listed in 902 KAR 30:150[is defined by KRS 200.654(13)].

(37)[(28)] "Record review team" means a group of early intervention experts representing each discipline of early intervention providers as listed in 902 KAR 30:150, Section 2(1)(a)-(r)[(e)], who are utilized by the state lead agency to review complex cases for eligibility and service provision, and make recommendations to IFSP teams.

(38)[(29)] "Referral" means a child identified between birth and three (3) years of age who is:

(a) A Kentucky resident or a homeless child within the boundaries of the Commonwealth; and

(b) Suspected of having an established risk diagnosis or a developmental delay[as confirmed by the cabinet approved screening protocol].

(39)[(30)] "State Lead Agency" means the designated staff in the Department for Public Health who are responsible for implementing the First Steps Program in accordance with 34 C.F.R. 303.22[Part 303], 20 U.S.C. Chapter 33[1431 to 1444], and KRS 200.650 to 200.676.

~~(40) [(31) "Transdisciplinary team" means professionals from various disciplines working together cooperatively by educating one another in the skills and practices of their disciplines and a commitment to work together across traditional discipline boundaries being consistent with the training and expertise of the individual team members. (32)] "Ward of the state" means a child declared by a circuit court judge to be a ward of the state pursuant to KRS 625.043(2) or 625.100(2).~~

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 13, 2013 at 4 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: Paula Goff

(1) Provide a brief summary of 902 KAR 30:001:

(a) What this administrative regulation does: This administrative regulation provides definitions unique to the early intervention system as defined by Pub.L. 108-446, the Individuals with Disabilities Education Improvement Act.

(b) The necessity of this administrative regulation:

902 KAR 30:001 is necessary to define specific terminology used in the early intervention system.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650 requires that the Cabinet for Health and Family Services be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the following definitions: ability to pay, early intervention provider, early intervention record and destruction, inability to pay, participating provider or agency and primary referral source. The amendment expands the following definitions: assessment, assistive technology device. The term transdisciplinary team is deleted from this regulation.

(b) The necessity of the amendment to this administrative regulation: KRS 200.650 (6) requires compliance with federal law. KEIS needs to update the state regulations to stay in compliance with the updated federal regulations, 34 C.F.R. Part 303 released in September 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment adds or expands the definitions related to early intervention services to conform with the updated definitions in federal regulation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the 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: Regulated entities will continue to provide early intervention services as they currently practice.

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

amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for continued funding and participation in First Steps.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis: There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees? No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the fifteen (15) local Point of Entry offices, 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. Chapter 33, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 provides clarification of program terms.

(a) How much 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 new revenue generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during the 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: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal Statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart A—General list the definitions commonly used in early intervention services. As a recipient of federal Part C monies, Kentucky Early Intervention Services is mandated to fully comply with all federal statutes. The changes in the definitions bring KEIS into full compliance with this federal statute and are required for continued receipt of those funds.

2. State compliance standards.KRS 200.650 charges the Cabinet for Health and Family Services and the Department for Public Health to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding definitions the state will be in full compliance under this part of the federal statute.

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

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(Amended After Comments)

902 KAR 30:130. Assessment, service planning, and assistive technology.

RELATES TO: KRS 200.660(6), 200.664, 34 C.F.R. 303.321[303.322], 303.340-303.346, 20 U.S.C. 1435, 1436, 1437

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(8),[34 C.F.R. 303.500,] 20 U.S.C. 1436

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the requirements for assessment, the Individualized Family Service Plans used in First Steps, and assistive technology.

Section 1. Child Assessment. (1) Assessment shall be an ongoing procedure used by personnel meeting the qualifications established in 902 KAR 30:150, Section (2)(a)-(p), throughout the child's period of eligibility for First Steps. An assessment shall reflect:

(a) The child's unique strengths and needs; and
(b) The services appropriate to meet those needs[; ~~(c) The family's resources, priorities and concerns which shall be:~~

~~1. Voluntary on the part of the family;~~

~~2. Family-directed; and~~

~~3. Based on information provided by the family through personal interview; and~~

~~(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's child].~~

(2) All evaluations and assessments of the child and family shall be conducted in a nondiscriminatory manner and selected and administered so as not to be racially or culturally discriminatory.

(3) Unless clearly not feasible to do so, all assessments of a child shall be conducted in the native language of the child.

(4) Assessments shall be ecologically valid and reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program.

(a) Assessment methods shall include direct assessment and at least one (1) of the following:

1. Observations;

2. Interview and parent reports; or

3. Behavioral checklist and inventories.

(b) Direct assessment shall include one (1) or more instruments that are:

1. Appropriate for an infant or toddler and allow for adaptations for a disability as needed; and

2. Criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

(5)[(3)] If, after the initial evaluation and assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The IFSP team's reasons for an additional assessment;

(b) Whether a current provider on the IFSP team can assess the area or areas of concern; and

(c) Circumstances relating to the child's ability or the family's capacity to address the child's developmental needs that warrant the subsequent assessment.

(6) POE staff[(4) A service coordinator] shall obtain a physician's or advanced practice registered nurse's (APRN's) written approval in order to complete an assessment on a child deemed medically fragile. The approval shall be specific as to the modifications needed to accommodate the child's medical status.

(7)[(5)] A formal, direct assessment shall include a written report if performed for initial assessment, the annual assessment, or exit assessment[progress monitoring], or if authorized by the IFSP[in accordance with subsection (3) of this section]. This report shall include:

(a) A description of the assessment instruments used in accordance with subsection (4)(b)[(2)(b)] of this section;

(b) A description of the assessment activities and the information obtained, including information gathered from the family;

(c) Identifying information, including:

1. The child's First Steps identification number;

2. The name of the child;

3. The child's age at the date of the assessment;

4. The name of the service provider and discipline;

5. The date of the assessment;

6. The setting of the assessment;

7. The state of health of the child during the assessment;

8. The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

9. The medical diagnosis if the child has an established risk condition;

~~10.[The formal and informal instruments and assessment methods and activities used; and~~

~~11.] Who was present for the assessment; and~~

(d) A profile of the child's level of performance, in a narrative form which shall indicate the:

1. Concerns and priorities;

2. Child's unique strengths, needs, and preferences;

3. Skills achieved since the last report, if applicable;

4. Current and emerging skills, including skills performed independently and with assistance; and

5. Recommended direction for future service delivery[; and

~~(e) Recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information, the evaluation, and the assessment].~~

(8) Item level data from[(6) A copy of] the cabinet-approved criterion referenced assessment protocol, in accordance with 902 KAR 30:130, shall be submitted electronically to the Kentucky Early Childhood Data System within five (5) working[ten (10) calendar] days of the completion of the assessment.

(9)[(7)](a) The initial or other formal assessments, with written reports, shall be completed and recorded in the child's record using the First Steps data management system within five (5) working [ten (10) calendar] days of the provider completing the assessment.

(b) The provider who performed the assessment shall:

1. Verbally share the assessment report with the family and shall document the contact in the assessor's notes;

2. Provide the written report to the family[and the service coor-

dinator] within the time frame established in paragraph (a) of this subsection; and

3. Write the report in family-appropriate language that the child's family can easily understand.

(c) If the time frame established in paragraph (a) of this subsection is not met due to illness of the child or a request by the parent, the assessor shall document the delay circumstances in staff notes with supportive documentation made in the child's record by the service coordinator[, and the report shall be provided to the service coordinator within five (5) calendar days of completing the assessment].

(10)(8)(a) An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be considered early intervention, not an assessment.

(b) Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(11) Five (5) working(9) Ten (10) calendar days prior to either the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall complete[supply] progress reports in the online data management system and provide a copy to the[to the primary service coordinator and] family.

(12)(10)(a) Within thirty (30)[420] days prior to exiting the First Steps program at age three (3), each child shall receive an assessment in all five (5) developmental domains by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument, in accordance with 902 KAR 30:130.

(b) The assessment used for annual redetermination of eligibility may be used to meet the assessment required by paragraph (a) of this subsection if it is completed within ninety (90)[420] days prior to the child's exit from the First Steps Program.

Section 2. Family Assessment. (1) The family assessment shall be conducted with the family of a child eligible for early intervention services to identify the family's resources, priorities, and concerns for their child.

(2) The identification of the family's resources, priorities, and concerns shall be:

(a) Voluntary on the part of the family;

(b) Family directed;

(c) Based on information provided by the family through an assessment tool and personal interview with those members who elect to participate in the assessment; and

(d) Used to determine the supports and services necessary to enhance the family's capacity to meet the developmental needs of the eligible child.

(3) Unless clearly not feasible to do so, the family assessment shall be conducted in the native language of the family members being assessed.

(4) POE staff shall provide a written report of the family assessment to the family within five (5) working days of the parent interview.

(5) The family assessment report shall contain recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information.

(6) The family assessment shall be updated prior to the six (6) month IFSP meeting and shall be re-administered prior to the annual IFSP meeting.

Section 3. Individualized Family Service Plan (IFSP). (1) For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120, a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

(2) The IFSP shall be reviewed by convening a meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

(a) A periodic IFSP review meeting is requested by:

1. The family; or

2. The family and a team member; or

(b) An early intervention service is added or increased.

(3) The signed IFSP shall be a contract between the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service

and this choice is documented in the child's record.

(4) The IFSP shall include:

(a) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status;

2. Cognitive development that includes skills related to the child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;

4. Social and emotional development that includes skills related to the ability of the child to successfully and appropriately select and carry out their interpersonal goals; and

5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions;

(b) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;

(c) A description of:

1. Underlying factors that may affect the child's development including the established risk condition; and

2. What motivates the child, as determined on the basis of observation in natural settings, during child interaction, and through parent report;

(d) With concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child;

(e)1. A statement of the measurable results or measurable outcomes expected to be achieved for the child, including pre-literacy and language skills as developmentally appropriate for the child, which shall:

a. Be functionally stated;

b. Be representative of the family's own priorities;

c. Fit naturally into the family's routines or schedules;

d. Reflect the use of the family's own resources and social support network; and

e. Be flexible to meet the child and family's needs in current and possible future environments;

2. The criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made; and

3. A statement indicating whether modifications or revision of the outcomes or services are necessary;

(f) At least one (1) measurable transition outcome that addresses any upcoming changes relevant to the child and family or, if the child is two (2) years or older, addresses transition to pre-school or other related services, and includes:

1. A description of types of information the family might need to assist in preparing for the upcoming changes and in relation to future placements;

2. Activities to be used to help prepare the child for changes in the service delivery;

3. Specific steps that will help the child adjust to and function in the new setting or activity; and

4. A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement;

(g) The statement of the specific early intervention services, based on peer-reviewed research to the extent practicable, that are necessary to meet the unique needs of the child and family to achieve the results or outcomes and which:

1. Are stated in length, frequency, intensity, duration, location and method of delivering services; and

2. Include payment arrangements;

(h)1. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

2. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment;

3. How the child's services may be integrated into a setting in which other children without disabilities participate; and

4. If the service cannot be provided in a natural environment, the reason, including:

- Why the early intervention service cannot be achieved satisfactorily in a natural environment;
- How the service is supported by the peer reviewed research;
- How the service provided in this location or using this approach will support the child's ability to function in his or her natural environment; and
- A timeline as to when the service might be expected to be delivered in a natural environment approach;

(i) The dates for initiation of the services and the anticipated duration of those services;

(j) 1. Other services that the child needs that are not early intervention services, such as medical services or housing for the family; and

2. Identification of the funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources;

(k) The name of:

- The service coordinator representing the child's or family's needs who shall be responsible for the implementation of the IFSP and coordination with other agencies and person in accordance with 902 KAR 30:110, Section 2; and
- The primary service provider;

(l) A review of the Family Rights Handbook; and

(m) A statement signed by the parent that complies with KRS 200.664(6).

(5) The IFSP shall be finalized within five (5) working days of the meeting.

(6)(a) An authorized IFSP shall be valid for a period not to exceed six (6) months. An amendment that is made to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(7) In the development and implementation of the IFSP, IFSP team members shall:

- Provide a family-centered approach to early intervention;
- Honor the racial, ethnic, cultural, and socioeconomic diversity of families;
- Show respect for and acceptance of the diversity of family-centered early intervention;
- Allow families to choose the level and nature of their involvement in early intervention services;
- Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;
- Plan and implement the IFSP using a team approach;
- Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;
- Determine the settings for service delivery based on the child's results or outcomes that are identified by the team; and
- Ensure that families have access and knowledge of services that shall:
 - Be provided in as normal a fashion and environment as possible;
 - Promote the integration of the child and family within the community;
 - Be embedded in the family's normal routines and activities; and
 - Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community setting which includes children without disabilities.

(8) If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless:

- The IFSP team:
 - Considers the recommendation;
 - Determines that it relates to a chosen outcome or result, and family priority; and
 - Agrees that it is a necessary service; and

(b) The service is not covered by another payor source{(1) The signed IFSP shall be a contract between the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service and this choice is documented in the child's record.

(2) The IFSP shall be completed within five (5) calendar days of the meeting and shall include:

(a) Appropriate evaluation and assessment reports in accordance with 902 KAR 30:120, Section 2;

(b) A statement of the specific early intervention services, founded on scientifically-based research to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the outcomes identified, including the frequency, intensity, and method of delivering the services;

(c) Service delivery settings; and

(d) A list of IFSP team members and how they participated in the meeting.

(3)(a) An authorized IFSP shall be valid for a period not to exceed six (6) months. An amendment that is made to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(4) If the family or service provider is unable to keep a scheduled appointment due to illness or any other reason, the service provider shall document the circumstances in staff notes.

(5) In the development and implementation of the IFSP, IFSP team members shall:

(a) Provide a family-centered approach to early intervention;

(b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;

(c) Show respect for and acceptance of the diversity of family-centered early intervention;

(d) Allow families to choose the level and nature of their involvement in early intervention services;

(e) Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) Plan and implement the IFSP using a team approach;

(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;

(h) Ensure that First Steps services are flexible, accessible, founded on scientifically-based research to the extent practicable, and are necessary to meet the unique needs of the child and family to achieve the outcomes identified, including the frequency, intensity, and method of delivery of the services; and

(i) Ensure that families have access and knowledge of services that shall:

1. Be provided in as normal a fashion and environment as possible;

2. Promote the integration of the child and family within the community;

3. Be embedded in the family's normal routines and activities; and

4. Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community setting which includes children without disabilities.

(6) For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120, a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

(7) The IFSP shall be reviewed by convening a meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

(a) A periodic IFSP review meeting is requested by:

1. The family; or

2. The family and a team member; or

(b) An early intervention service is added or increased.

(8) The IFSP shall include:

(a) 1. A summary of the Family Rights Handbook;

2. A signed Statement of Assurances – Procedural Safeguards by the family; and

3. A statement signed by the parent that complies with KRS 200.664(6);

(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status;
2. Cognitive development that includes skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;
3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;
4. Social and emotional development that includes skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals; and
5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions;

(c) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;

(d) A description of:

1. Underlying factors that may affect the child's development including the established risk condition; and
2. What motivates the child, as determined on the basis of observation in appropriate natural settings, during child interaction, and through parent report;

(e) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;

(f) A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome statements shall:

1. Be functionally stated;
2. Be representative of the family's own priorities;
3. Fit naturally into the family's routines or schedules;
4. Reflect the use of the family's own resources and social support network; and
5. Be flexible to meet the child and family's needs in expanded current and possible future environments;

(g) The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes.

1. Service documentation shall be stated in frequency, intensity, duration, location, and method of delivering services, and shall include payment arrangements, if any; and

2. With the exception of group intervention, and unless prior authorization is granted in accordance with 902 KAR 30:200, Section 4, based on individual needs of the child, the frequency and intensity for early intervention for each child shall not exceed one (1) hour per discipline per day for the following disciplines:

- a. Audiologist;
- b. RN or LPN;
- c. Nutritionist or dietician;
- d. Occupational therapist or occupational therapist assistant;
- e. Orientation and mobility specialist;
- f. Physical therapist or physical therapist assistant;
- g. Psychologist, psychological practitioner, certified psychologist with autonomous functioning, psychological associate, family therapist, licensed social worker, or licensed professional clinical counselor;
- h. Speech language pathologist;
- i. Vision specialist including a teacher of the visually impaired;
- j. Teacher of the deaf and hard of hearing; or
- k. Developmental interventionist;

(h) 1. a. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

2. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment;

3. How the child's services may be integrated into a setting in which other children without disabilities participate; and

4. If the service cannot be provided in a natural environment,

the reason, including:

- a. Why the early intervention service cannot be achieved satisfactorily in a natural environment;
- b. How the service is supported by the peer reviewed research;
- c. How the service provided in this location or using this approach will support the child's ability to function in his or her natural environment; and
- d. A timeline as to when the service might be expected to be delivered in a natural environment approach;

(i) The projected dates for initiation of the services, and the anticipated length, duration, and frequency of those services;

(j) Other services that the child needs that are not early intervention services, such as medical services or housing for the family. The funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(k) The name of the service coordinator representing the child's or family's needs and the primary service provider. The service coordinator shall be responsible for the implementation of the IFSP and coordination with other agencies and persons in accordance with 902 KAR 30:110, Section 2;

(l) At least one (1) transition outcome that addresses transition to preschool services to the extent that those are appropriate or to other services that may be available, if appropriate, as a part of every IFSP and is supported by steps that may include:

1. A description of types of information the family might need in relation to future placements;
2. Activities to be used to help prepare the child for changes in the service delivery;
3. Specific steps that will help the child adjust to and function in the new setting;
4. How and when assistive technology equipment will be returned and how it will be replaced in the next setting, if appropriate; and
5. A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement; and

(m) Documentation substantiating the following if the child is being provided group intervention:

1. If the child is enrolled in day care or attending a group during normal routines, why the early intervention cannot be provided in the child's current group setting; and

2. Early intervention during group shall be directly related to the child's individualized strategies and activities as identified on the IFSP.

(9) If the IFSP team determines that an early intervention service shall be provided using a transdisciplinary team approach, the IFSP, provider notes and progress documentation shall include:

(a) Which disciplines are providing the therapy using this approach;

(b) Evidence of transdisciplinary planning and practice, including documentation of how role release is occurring;

(c) How the skills are being transferred so that one (1) provider is capable of providing the services previously provided by the team;

(d) Statements showing that the service is individualized to the particular family and child's needs; and

(e) If more than one (1) provider is present and providing early intervention services at the same time using a co-treatment approach:

1. Why this approach is being used;
2. The outcomes and activities;
3. Who is performing what activities; and
4. That the service providers involved are providing or learning about the early intervention at the same time.

(10) The family shall be encouraged to discuss the family's child's activities, strengths, and likes and dislikes exhibited at home.

(11) The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits.

(12) Every attempt shall be made to explain the child assessment process by using language the family uses and understands.

(13) The family may agree, disagree, or refute the assessment

information:

(14) ~~The family interpretation and perception of the assessment results shall be ascertained and the family's wishes and desires shall be documented as appropriate.~~

(15) ~~If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless the IFSP team:~~

- ~~(a) Considers the recommendation;~~
- ~~(b) Determines that it relates to a chosen outcome, and family priority; and~~
- ~~(c) Agrees that it is a necessary service].~~

Section 4[3]. Assistive Technology. (1) To access[assess] assistive technology services and devices, the child shall:

- (a) Be eligible for First Steps; and
- (b) Have the[a] need for and use of assistive technology devices and services documented in the IFSP.

(2) Prior to submitting a request for purchase of an assistive technology device, the service coordinator shall attempt to obtain funding from at least two (2) sources outside the First Steps and Medicaid systems[To be an approved assistive technology review team, an assistive technology center shall:

- (a) Submit to the cabinet the credentials and documentation of experience in providing services to the birth to three (3) age population for each proposed team member; and
- (b) Contract with the cabinet to conduct reviews of requests for assistive technology devices in accordance with this section].

(3) The First Steps assistive technology review team shall review:

- (a) Each equipment request for which the purchase price exceeds \$100; or
- (b) A request submitted by the service coordinator, other POE staff, or state lead agency staff.

(4)[(3)] A request shall be processed within ten (10) work-ing[calendar] days of the receipt of required information. The required information shall include:

- (a) A current IFSP;
- (b) Assessments with recommendations;
- (c) Justification statement for each device based on needs, including documentation of attempts to find alternative funding sources;

(d) Information regarding the equipment or device request, including information regarding the training of the family on the use of equipment; and

(e) Documentation of safety and approved uses in the birth to three (3) age population.

(5)[(4)] The decision made through the review process may be appealed to the Part C Coordinator who shall:

- (a) Consult with the monitoring assistive technology review team; and
- (b) Issue the final decision.

(6)[(5)] If the IFSP team is not in agreement with the decision of the Part C Coordinator:

- (a) The child's IFSP team shall reconvene for an IFSP meeting with a representative from the assistive technology review team and a representative of the state lead agency; and

(b) If the IFSP team concludes at that IFSP meeting that the assistive technology device is still needed, payment for the device shall be authorized for the duration of the current IFSP.

(7) A request for purchase shall be made no later than ninety (90) days prior to the child's third birthday.

(8) Assistive technology devices purchased solely through First Steps funding shall be the property of the program. At the time the child exits the program, the family shall:

- (a) Return the item to the POE office for the district where the child resides; or

(b) Purchase the item from the program at a depreciated cost.

(9) Assistive technology devices may be rented through a contracted assistive technology provider to:

- (a) Determine the appropriateness of the requested item prior to purchase;

(b) Assist the child in achieving the IFSP outcomes or results;

or

(c) Address short term needs of the child while awaiting receipt of a purchased device.

(10) The payment for assistive technology devices shall be made in accordance with 902 KAR 30:200, Section 2(5)(a) and (b).

(11) Items that cannot be returned for sanitary reasons, such as adapted utensils, shall not be rented.

Section 5[4]. Incorporation by Reference.

(1) "Individualized Family Service Plan", September 2012[December 2008], is incorporated by reference.

(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 HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 13, 2013 at 4 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: Paula Goff

(1) Provide a brief summary of 902 KAR 30:130:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for assessment, service planning through the development of an individualized family service plan and assistive technology within the Kentucky Early Intervention System.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators, primary level evaluation providers, intensive level evaluation teams and other service providers on child assessments, service planning and assistive technology. Assessment is a service that all children in the Kentucky Early Intervention System receive and provides the foundational information to develop service plans. This regulation outlines new requirements for a family assessment. This regulation also lists the requirement for assistive technology service and devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 200.650 (6) requires the state to be in compliance with federal statute and regulations.

KRS 200.664 outlines the legal requirements for the development of an individualized family service plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation adds guidance for the required family assessment. It also provides greater detail for the requesting of assistive technology devices. The language regarding service planning is not new language but has been revised to align the state requirements to the newly released federal regulations.

(b) The necessity of the amendment to this administrative regulation: Language consistent with applicable federal regulations and statute is added to ensure compliance with federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 (6) and KRS 200.652 (3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor. The changes to the requirements for the IFSP will bring IFSPs into alignment with federal regulations. Also, regu-

lations will now reflect the current practices assistive technology thus eliminating confusion between regulation and practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

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

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services. This increased knowledge of the early intervention system may lead to increased supports and progress for their children.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes an fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the fifteen (15) local Point of Entry, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1435, 1436, 1437, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 new revenue generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation 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: Changes to this administrative regulation will save an estimated \$10,000 per year by reducing the number of unnecessary plan revisions and duplicate service assessments.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the states responsibilities in the development and implementation of the Individual Family Service Plan. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health with the development of the IFSP for eligible children.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with the federal statutes.

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

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Administration and Financial Management

(Amended After Comments)

907 KAR 1:563. Medicaid covered services~~hearings and~~ appeals ~~and hearings unrelated to managed care.~~

RELATES TO: KRS Chapter 13B, 194A.025, 205.231, 205.237, 42 C.F.R. Part 475, 483.12, 431 Subpart E, 483 Subpart E, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(2) and (3), 205.6315, 42 U.S.C. 1396[(3), 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 has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes policies and requirements[provisions] relating to an adverse action, an appeal, or a hearing regarding[the] Medicaid covered services that are not the responsibility of a managed care organization[hearing and appeal process for applicants and recipients].

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Section 1. Definitions. (1) "1915(c) home and community based waiver service" means a service available or provided via a 1915(c) home and community based waiver services program.

(2) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(3) "Applicant" means an individual who has applied for Medicaid covered services.

(4) ~~[(2)]~~ "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity [or guardian] acting on behalf of, and with written consent from, the [a] recipient or the applicant; or

(b) A legal guardian.

(5) "Cabinet" means the Cabinet for Health and Family Services.

(6) ~~[(3)]~~ "Department" means the Department for Medicaid Services or its designee.

(7) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program covered services.

(8) "Final order" is defined by KRS 13B.010(6).

(9) "Hearing" means cabinet level administrative hearing.

(10) ~~[(9)]~~ "ICF IID" means intermediate care facility for an individual with an intellectual disability.

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

(12) ~~[(41)]~~ [(4)] "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(13) ~~[(42)]~~ "PASRR" means preadmission screening and residential review.

(14) ~~[(43)]~~ "Patient liability" means the financial obligation of a recipient towards the cost of the recipient's nursing facility services.

(15) ~~[(44)]~~ "Provider" is defined by KRS 205.8451(7).

(16) ~~[(45)]~~ "QIO" or "quality improvement organization" means an entity that meets the requirements established in 42 C.F.R. 475.101.

(17) ~~[(46)]~~ "Recipient" is defined by KRS 205.8451(9).

(18) "Recommended order" is defined by KRS 13B.010(5).

(19) ~~[(47)]~~ [(5) "Member" means a Medicaid recipient who is enrolled in a partnership or a managed behavioral healthcare organization.

(6) "Peer review organization" means a federally designated organization that is performing the utilization review functions for the department.

(7) "Recipient" means an individual who receives Medicaid.

(8) ~~[(9)]~~ "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(18) ~~[(9)]~~ "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage Hearing Rights. (1) An applicant, recipient, or authorized representative [guardian] shall be informed, in writing, of the applicant's or recipient's right to a hearing [of his right to a cabinet level administrative hearing in writing] if an adverse action is taken affecting covered services.

(2) An applicant, recipient, or authorized representative [guardian] shall be informed of the method by which the applicant or recipient [he] may obtain a hearing and that the applicant or recipient [he] may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) A [Other] spokesperson not listed in paragraph (a), (b), (c), (e), or (f);

(e) An authorized representative; or

(f) Himself or herself.

(3) An adverse action [The] notice shall contain a statement of:

(a) The Medicaid adverse action;

(b) The reason for the action;

(c) The specific federal or state law or administrative regulation that supports the action; and

(d) An explanation of the circumstances under which payment for services shall be continued if a hearing is requested in a timely manner pursuant to [timely in accordance with] Section 5 of this administrative regulation.

Section 3. Notification Process. (1) An adverse action notice regarding an applicant or a recipient shall be mailed to the applicant, recipient, or authorized representative of the applicant or recipient using:

(a) The United States Postal Service; and

(b) A return receipt requested format.

(2) Refusal by an applicant, a recipient, or an authorized representative to confirm receipt of an adverse action notice shall be considered receipt of the adverse action notice [an applicant or a recipient using the United States Postal Service.

(2) An adverse notice to an applicant, recipient or responsible party covered under Section 5(1) of this administrative regulation shall be sent using a return receipt requested format].

Section 4. Request for a Hearing. (1) An applicant, recipient, or an authorized representative may request a hearing by filing a written request with the department.

(2) If an applicant, recipient, or authorized representative requests a hearing, the request shall:

(a) Be in writing and clearly specify the reason for the request;

(b) Indicate the date of service or type of service for which payments may be denied; and

(c) Be postmarked within thirty (30) calendar days from the date of the department's written notice of adverse action of:

1. Discontinuance of services;

2. Adverse determination made with regard to the PASRR requirements of 42 U.S.C. 1396(e); or

3. Patient liability.

Section 5. Continuation of Medicaid Covered Services. (1) **(a) Except as established in paragraphs (b) or (c) of this subsection or subsections (2), (3), or (4) of this section, if a [the] request for a [cabinet level administrative] hearing is postmarked or received within ten (10) days of the advance notice date of denial [for any of the following types of denials], the individual shall remain eligible for the care, program participation, or service denied until the date that the final [hearing decision] order is rendered in accordance with Section 9 of this administrative regulation.**

(b) The individual shall not remain eligible for the care, program participation, or service denied if:

1.a. It is determined at the hearing that the sole issue is one of federal or state law or policy; and

b. The department promptly informs the individual in writing that the services shall be terminated or reduced pending the hearing decision;

2. The individual's eligibility for time-limited benefits has expired; or

3. The individual has already received in full the specified amount of care or number of services that were authorized by the department.

(c) A request for an amount of care or number of services subsequent to receiving a previously authorized amount of care or number of services in full shall not be considered a continuation of the previously authorized amount of care or number of services; (a) Denial that an individual meets patient status criteria to qualify for nursing facility services pursuant to 907 KAR 1:022;

(b) Denial that an individual meets patient status criteria to qualify for ICF IID services pursuant to 907 KAR 1:022;

(c) Denial that an individual meets nursing facility level of care criteria, nursing facility patient status criteria, or ICF IID patient status criteria pursuant to 907 KAR 1:022 to qualify for home and community based waiver services; or

(d) Denial of a home and community based waiver service [specified on the notice for denial of level of care, a Medicaid vendor payment for nursing facility, intermediate care facility for the

mentally retarded and developmentally disabled, or home- and community-based waivers services shall continue until the date the final cabinet-level hearing decision order is rendered in accordance with Section 9 of this administrative regulation].

~~(2) [Subsection (1) of this section shall not apply to a Medicaid Program service not stated in subsection (1) of this section.~~

~~(3) [Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.~~

~~(3) [(4)] Time-limited benefits shall not be extended based on a request for a hearing.~~

~~(4) [(5)] If a request for a [the request for a cabinet-level administrative] hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, the department shall continue to reimburse [a Medicaid vendor payment] for nursing facility services [shall continue] until the date that the final order [the cabinet-level administrative] [hearing decision] is rendered.~~

Section 6. Notice of Scheduled Hearing. (1) A [The] scheduled hearing notice shall contain:

(a) The date, time, and place of the scheduled hearing; and

(b) A statement that the local Department for Community Based Services [Social Insurance] office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(2)(a) A [cabinet-level administrative] hearing shall be conducted within thirty (30) days of the date of the request for a hearing.

(b) [and] A decision shall be issued within thirty (30) days of the hearing date, except for a hearing decision regarding:

1. A nursing facility level of care or patient status decision;

2. An ICF IID patient status decision;

3. A nursing facility level of care, nursing facility patient status, or ICF IID patient status decision related to 1915(c) home and community based waiver program participation; or

4. A 1915(c) home and community based waiver service.

(c) A hearing decision regarding an item listed in paragraph (b) of this subsection shall be issued within fifteen (15) calendar days of the date of request for the hearing [that a hearing decision regarding vendor payments to the following shall be issued within fifteen (15) days:

(a) Nursing facilities;

(b) Intermediate care facility for the mentally retarded and developmentally disabled; or

(c) Community-based waiver services].

(3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

(a) Legal counsel or other representation;

(b) Review the case record relating to the issue; and

(c) Submit additional information in support of the applicant's or recipient's [his] claim.

(4) If a [the] hearing involves medical issues:

(a) A medical assessment by an independent physician participating in the Medicaid Program shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review;

(b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be established [set forth] in writing.

Section 7. Conduct of a Hearing. (1) A [The cabinet-level administrative] hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) A [Impartiality. The cabinet-level] hearing officer shall be impartial and shall disqualify himself or herself as required by KRS 13B.040.

(3) A [The cabinet-level administrative] hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) A [The] hearing officer shall offer to transmit a [the] hearing decision by electronic format.

(5) If necessary to receive full information on the issue, a [the administrative] hearing officer may examine each party who appears and the party's [his] witnesses.

(6)(a) A [The administrative] hearing officer may reopen the hearing and take additional evidence as is deemed necessary.

(b) Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Withdrawal or Abandonment of Request. (1) A [The] recipient or authorized representative:

(a) May withdraw the appeal for a hearing prior to the release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with the recipient's [his] legal counsel or authorized representative prior to finalizing the action.

(2) [Abandonment of request.] A hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the hearing.

Section 9. Recommended Order [The Cabinet-Level Decision]. (1) After a [the] hearing is concluded, the hearing officer shall issue a recommended order [decision].

~~(2) [If a party wishes to file an exception, the exception] [Exceptions] [shall be filed with the cabinet within fifteen (15) days from the recommended decision.~~

~~(3) A final order shall be issued within ninety (90) days from the date of the request for a hearing.~~

(4) A copy of the recommended order [decision] and a copy of the final order shall be mailed to the recipient and the recipient's authorized representative if applicable [his representative].

(5) If requested during the hearing, a copy of the recommended order [decision] and the final order shall be electronically transmitted to a site specified by the applicant or recipient on the:

(a) Date the recommended order [decision] is rendered; and

(b) Date the final order is rendered [dates the recommended decision is rendered and the date the final order is rendered to a site specified by the applicant or recipient].

Section 10. Appeal of Recommended Order [Cabinet-Level Hearing Decision]. (1) A [The] final order, with respect to the issue considered, shall be final regarding continuation of a service or service reimbursement [vendor payments].

~~(2) If a party wishes to file an exception to the recommended order, the exception shall be filed with the cabinet within fifteen (15) days from the date that the recommended order is mailed.~~

~~(3) A final order shall be issued within ninety (90) days from the date of the request for a hearing.~~

~~(4)(a) In accordance with 42 C.F.R. 431.233, an applicant or recipient shall have a right to request a:~~

~~1. Cabinet level review of the record of the hearing; or~~

~~2. De novo hearing at which the party may offer:~~

~~a. Evidence not presented at the hearing below; and~~

~~b. The evidentiary record of the fair hearing.~~

~~(b) If the applicant or recipient does not specifically request a de novo hearing, the cabinet level review shall determine whether the:~~

~~1. Recommended order was supported by substantial evidence in the record; and~~

~~2. Law was applied correctly.~~

(5) A further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the final order [decision] in accordance with KRS 13B.140 and 13B.150.

(6) [(3)] Information regarding free legal aid and welfare rights organizations may be obtained in accordance with Section 6(1) of this administrative regulation.

Section 11. Medicaid Case Actions Following Circuit Court Level Appeal Decision. (1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to:

(a) Remain in a nursing facility or an ICF IID during the circuit court appeal process, the department shall reimburse for the nurs-

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ing facility services or ICF IID services which occurred during the circuit court appeal process; or

(b) Receive a 1915(c) home and community based waiver service during the circuit court appeal process, the department shall reimburse for the service which occurred during the circuit court appeal process[remain in or continue to receive services from a nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, or community-based waiver services, a vendor payment shall be authorized to reimburse the provider for services rendered during the circuit court appeal process].

Section 12. Special Procedures Relating to a Managed Care Participant. (1) For an adverse action toward an enrollee regarding a service that is within the scope of managed care, the requirements governing the MCO internal appeal process and the department's [state fair] hearing process for the enrollee shall be as established in 907 KAR 17:010.

(2) For an adverse action by the department toward an enrollee regarding a service that is not within the scope of managed care, the appeals policies and requirements established in this administrative regulation shall apply[Special Procedures Relating to A Managed Care Participant. (1) A Medicaid recipient shall be informed in writing of the requirements for making a complaint, filing a grievance and requesting a hearing:

(a) By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and

(b) By the managed behavioral healthcare organization in which a member is enrolled in accordance with 907 KAR 1:740.

(2) If the decision of the partnership or the managed behavioral healthcare organization is adverse to the member, the member or his authorized representative:

(a) May request a hearing regarding the action or inaction on the part of the partnership, the managed behavioral healthcare organization or its subcontracted provider to the department in accordance with Section 3 of this administrative regulation; and

(b) Shall not be required to employ or exhaust the other complaint or grievance resolution processes contained within the partnership or managed behavioral healthcare organization plan.

(3) A cabinet level appeal shall be processed as established in Sections 3, 4, 6, 7, 8, and 9 of this administrative regulation].

Section 13. Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court; or

(c) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2)(a) Enforcement of payment of a fee shall:

1. Not be a matter for the department or the cabinet; and

2. Be a matter between the counsel or agent and the recipient.

(b) The fee[shall be a matter entirely between the counsel or agent and the recipient. The fee] shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

(3)(a) The fee limitations stated in subsection (1) of this section shall:

1. Apply to the amount an attorney may charge a recipient or applicant; and

2. Not apply to the amount an attorney may collect from another entity or person who represents the recipient or applicant in all categories of Medicaid.

(b) The amount an attorney may collect from an entity or person who is not a recipient or applicant for representing the recipient or applicant in all categories of Medicaid shall:

1. Be a matter between the attorney and other entity or person; and

2. Not be a matter that involves the department or cabinet.

Section 14. A hearing or an appeal relating to a decision to reclassify or transfer a person with an intellectual disability[mental

retardation] in a state institution shall be in accordance with the requirement of KRS 210.270.

Section 15. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 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, email 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 establishes Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

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

(a) How the amendment will change this existing administrative regulation: The amendment replaces the reference to an obsolete agency, Department for Social Insurance, with the current hearing agency; establishes that state fair hearings (cabinet level hearings) requirements for managed care enrollees and managed care appeals requirements for managed care enrollees shall be as established in another administrative regulation (907 KAR 17:010, Managed care organization requirements and policies relating to enrollees); inserts definitions for clarity and clarifies policies; and contains language and formatting revisions to comply with KRS Chapter 13A as this administrative regulation has not been amended since 1993. The amendment after comments alters the definition of "authorized representative" to include legal guardians as authorized representatives and to clarify that written consent is required for individuals who are permitted by Kentucky law to provide written consent. The amendment after comments establishes that the option to continue to receive services during an appeal process exists for individuals unless it's determined at the hearing that the sole issue is one of federal or state law or policy and the Department for Medicaid Services (DMS) informs the individual in writing that services will be terminated or reduced pending the hearing decision [this mirrors the federal requirement stated in 42 C.F.R. 431.230(a)(1)], the individual's eligibility for time-limited Medicaid benefits has expired, or the individual has already received the specified amount of care or services authorized by the department. The amendment after comments elaborates by establishing that a request for an amount of care or services subsequent to receiving a previously authorized amount in full shall not be considered a continuation of the previously authorized amount of services. The prior version of the administrative regulation stated that continuation of services during an appeal was only available regarding nursing facility services, home and community based waiver services, and services provided in an intermediate care facility for individuals with an intellectual disability. The amendment after comments also adds a subsection regarding the maximum amount

an attorney can charge a Medicaid recipient or Medicaid applicant for representing the recipient/applicant. The new subsection establishes that the amount an attorney may collect from an entity or person (other than the recipient or applicant) is not subject to the limit established for applicants/recipients, is a matter between the attorney and other entity/person, and is not a matter that involves DMS or the Cabinet for Health and Family Services. Additionally, the amendment after comments changes the term "final hearing decision" to "final order" and "recommended decision" to "recommended order" (and inserts a definition for each term) as those are the terms used in the applicable statute – KRS 13B.010, moves two (2) provisions regarding appeals of a recommended order from Section 9 to Section 10 as Section 10 is a more appropriate locale for the provisions, removes the definition of "secretary" as the term is not used in the administrative regulation, and inserts an option for a recipient to request a de novo hearing/review of the record of a hearing.

(b) The necessity of the amendment to this administrative regulation: The amendment regarding managed care enrollee appeals and state fair hearings (cabinet level hearings) is necessary as a new administrative regulation now establishes those policies and requirements; some amendments are necessary to clarify policy; some amendments are necessary to ensure that language and formatting comply with KRS Chapter 13A standards; and one amendment (replacing the agency title Department of Social Insurance with Department for Community Based Services) is necessary to correct an obsolete reference. The amendment after comments is necessary to accommodate scenarios where an individual is prohibited by Kentucky law from granting written consent to another individual (due to not being deemed competent of doing so.) The amendment after comments regarding continuation of services during an appeal is necessary to maintain conformity with federal requirements. The amendment after comments that allows an attorney to collect, from an entity or individual other than the Medicaid recipient or applicant, an amount higher than the limit imposed on what can be collected of recipients or applicants is necessary to accommodate scenarios where an individual or entity chooses to represent an applicant or recipient and pay the attorney fees. The amendments after comments which changes the term "final hearing decision" to "final order" and "recommended decision" to "recommended order" are necessary to ensure consistency with the applicable statute – KRS 13B.010. The amendment regarding a de novo hearing/review of the record of a hearing is necessary to comport with the federal requirement.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying policy and revising language and formatting to ensure that it complies with KRS Chapter 13A standards. The amendment after comments conforms to the content of the authorizing statutes by accommodating scenarios where an individual is prohibited by Kentucky law from granting written consent to another individual (due to not being deemed competent of doing so.) The amendment after comments conforms to the content of the authorizing statutes by ensuring conformity with federal requirements, enhancing the ability for entities or individuals to represent Medicaid applicants or recipients (and assume the legal costs), and to ensure consistency of the term "final order" and "recommended order" to ensure consistency with the applicable statute.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by clarifying policy and revising language and formatting to ensure that it complies with KRS Chapter 13A standards. The amendment after comments will assist in the effective administration of the authorizing statutes by accommodating scenarios where an individual is prohibited by Kentucky law from granting written consent to another individual (due to not being deemed competent of doing so.) The amendment after comments will assist in the effective administration of the authorizing statutes by ensuring conformity with federal requirements, enhancing the ability for entities or individuals to represent Medicaid applicants or recipients (and assume the legal costs), and to ensure consistency of the term "final order" and "recommended order" with the applicable statute.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects recipients of Medicaid services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A recipient who wishes to appeal a Medicaid service denial shall comply with the appeal provisions established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DMS anticipates no cost imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The clarifications should benefit recipients in being able to better understanding the appeals policies and requirements.

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

(a) Initially: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(b) On a continuing basis: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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: This administrative regulation does not impose or increase any fees.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration 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?

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, KRS 194A.030(2), 194A.050(1), 205.231, 205.237, 205.520(3), 42 C.F.R. 431 Subpart E and 42 C.F.R. 483 Subpart E.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost as a result of the amendment including the amendment after comments.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost as a result of the amend-

ment including the amendment after comments.

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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431 Subpart E, 42 C.F.R. and 483 Subpart E.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.237 establishes that "any individual claiming public assistance in any proceeding before the appeal board or a court may be represented by counsel; but no counsel shall either charge or receive for such service more than an amount established by the secretary by administrative regulation." KRS 205.231 establishes appeals, hearing officer and related provisions as follows:

"(1) The secretary shall appoint one (1) or more impartial hearing officers to hear and decide upon appealed decisions.

(2) Any applicant or recipient who is dissatisfied with the decision or delay in action on his application for public assistance or the amount granted to him may appeal to a hearing officer, except that an appeal and a hearing need not be granted if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients of the Kentucky medical assistance program so long as advance notice of the change, with an explanation of appeal rights, is provided to all affected recipients. However, a recipient may appeal whether the cabinet is accurately interpreting a change in federal or state law which may adversely affect the recipient. On receipt of an appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(3) The secretary may appoint an Appeal Board for Public Assistance composed of the secretary and two (2) other members. The secretary shall be chairman, and he and one (1) other member constitute a quorum.

(4) Any applicant or recipient who is dissatisfied with the decision of a hearing officer may appeal to the appeal board in the manner and form prescribed by administrative regulation. The board may on its own motion affirm, modify, or set aside any decision of a hearing officer on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence, or may permit any of the parties to the decision to initiate further appeals before it. The board may remove itself or transfer to another hearing officer the proceedings on any appeal pending before a hearing officer. The board shall promptly notify the parties to any proceedings of its findings and decisions.

(5) The manner in which appeals are presented and hearings and appeals conducted under subsection (4) of this section shall be in accordance with administrative regulations promulgated by the secretary.

(6) After a decision by the appeal board, any party aggrieved by the decision 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."

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 431, Subpart E requires the Medicaid program's hearing system to provide for a hearing before the agency or an evidentiary hearing at the local level, with a right of appeal to a State agency hearing and the hearing system must meet the due process standards established in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in 42 C.F.R. 431, Subpart E. Additionally, the Medicaid program must satisfy various notice requirements as well as hearing conduct requirements among other related requirements. Included among the requirements in 42 C.F.R. 431, Subpart E are the following regarding the right to continue to receive services pending an appeal of denied services:

42 C.F.R. 431.220 states the following:

"(a) The State agency must grant an opportunity for a hearing to the following:

(1) Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness.

(2) Any recipient who requests it because he believes the agency has taken an action erroneously.

(3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged.

(4) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.

(5) Any MCO or PIHP enrollee who is entitled to a hearing under subpart F of part 438 of this chapter.

(6) Any PAHP enrollee who has an action as stated in this subpart.

(7) Any enrollee who is entitled to a hearing under subpart B of part 438 of this chapter.

(b) The agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients."

42 C.F.R. 431.230 states the following:

"(a) If the agency mails the 10-day or 5-day notice as required under §431.211 or §431.214 of this subpart, and the recipient requests a hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless—

(1) It is determined at the hearing that the sole issue is one of Federal or State law or policy; and

(2) The agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision.

(b) If the agency's action is sustained by the hearing decision, the agency may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished the recipient, to the extent they were furnished solely by reason of this section."

42 C.F.R. 483, Subpart E requires the Medicaid program to provide a system for a resident of a skilled nursing facility (SNF) or a nursing facility (NF) to appeal a notice from the SNF or NF of intent to discharge or transfer the resident, and for an individual adversely affected by any pre-admission screening resident review (PASRR) determination made by the State in the context of either a pre-admission screening or an annual resident review under subpart C of part 483 to appeal that determination. Additionally, the Medicaid program must provide an appeals system that meets the requirements of this 42 C.F.R. 483, Subpart E and 42 C.F.R. 431, Subpart E.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 3:225. Specialty intermediate care (IC) clinic service and coverage policies and requirements.

RELATES TO: KRS 205.520(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), and 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes Medicaid program service and coverage policies and requirements regarding specialty intermediate care clinic services.

Section 1. Definitions. (1) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Audiologist" is defined by KRS 334A.020(5).

(3) "Behavior Analyst Certification Board" means the nonprofit corporation:

(a) Established in 1998; and

(b) Known as the Behavior Analyst Certification Board®, Inc.

(4) "Board certified behavior analyst" means an individual who is currently certified by the Behavior Analyst Certification Board as a certified behavior analyst.

(5) "Clinical laboratory" means a medical laboratory pursuant to KRS 333.020(3).

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

(7) "Developmental disability" means a severe chronic disability which:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22);

(b) Is likely to continue indefinitely;

(c) Results in substantial limitations in three (3) or more areas of major life activity including:

1. Self-care;

2. Receptive and expressive language;

3. Learning;

4. Self direction;

5. Mobility; and

6. Capacity for independent living and economic sufficiency; and

(d) Requires individually planned and coordinated services of a lifelong or extended duration.

(8) "Enrollee" means an individual who is enrolled with a managed care organization for the purposes of receiving Medicaid program or KCHIP program covered services.

(9) "Epileptologist" means a physician who specializes in treating patients who have epilepsy.

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

(11) "Functional assessment" means an assessment performed using evidenced-based tools, direct observation, and empirical measurement to obtain and identify functional relations between behavioral and environmental factors.

(12) "Licensed psychological associate" means an individual who is currently licensed in accordance with KRS 319.064.

(13) "Licensed psychological practitioner" means an individual who is currently licensed in accordance with KRS 319.053.

(14) "Licensed psychologist" means an individual who is currently licensed in accordance with KRS 319.050.

(15) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to

serve as a managed care organization as defined in 42 C.F.R. 438.2.

(16) "Medically necessary" means determined by the department to be needed in accordance with 907 KAR 3:130.

(17) "Neurologist" means a physician who specializes in neurology.

(18) "Occupational therapist" is defined by KRS 319A.010(3).

(19) "Occupational therapist assistant" is defined by KRS 319A.010(4).

(20) "Ophthalmic dispenser" means an individual licensed to perform ophthalmic dispensing in accordance with KRS 326.030.

(21) "Ophthalmic dispensing" is defined by KRS 326.010(2).

(22) "Physical therapist" is defined by KRS 327.010(2).

(23) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(24) "Physical therapy" is defined by KRS 327.010(1).

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

(26) "Physician services" means the practice of medicine or osteopathy provided by a physician.

(27) "Positive behavior support specialist" means an individual who:

(a) Provides:

1. Evidence-based individual interventions that assist a recipient with acquiring or maintaining skills for community living; and

2. Behavioral intervention to reduce maladaptive behaviors;

(b) Has a master's degree in a behavioral science and one (1) year of experience in behavioral programming; and

(c) Has at least one (1) year of direct services with individuals with an intellectual or developmental disability.

(28) "Practice of medicine or osteopathy" is defined by KRS 311.550(11).

(29) "Practice of psychology" is defined by KRS 319.010(6).

(30) ~~["Primary care provider" means:~~

~~(a) A licensed primary care physician who is a:~~

~~1. Doctor of medicine or osteopathy; and~~

~~2. General practitioner, family practitioner, pediatrician, internist, obstetrician, or gynecologist;~~

~~(b) A licensed, certified advanced practice registered nurse who:~~

~~1. Has a "Collaborative Practice Agreement for Prescriptive Authority" in accordance with KRS 314.042; and~~

~~2. Has a signed written agreement with a primary care physician for backup twenty-four (24) hours per day seven (7) days a week for needed prescriptions and other primary care services outside the scope of practice of the advanced practice registered nurse;~~

~~(c) A physician group practice which bills the department using a group practice Medicaid provider number;~~

~~(d) A licensed primary care center operating under physician supervision which has at least one (1) full-time equivalent primary care physician who is a general practitioner, family practitioner, doctor of osteopathy, pediatrician, internist, obstetrician, or gynecologist;~~

~~(e) A licensed rural health clinic operating under physician supervision by a primary care physician who is a general practitioner, family practitioner, doctor of osteopathy, pediatrician, internist, obstetrician, or gynecologist; or~~

~~(f) A licensed physician specialist who is a doctor of medicine or osteopathy if the specialist agrees to serve as a primary care provider.~~

~~(31) "Psychiatrist" is defined by KRS 504.060(8).~~

~~(31) [(32)] "Psychological services" means the practice of psychology.~~

~~(32) [(33)] "Psychotropic medication" means a medication that is:~~

~~(a) Prescribed to treat the symptoms of a psychiatric disorder;~~

~~or~~

~~(b) Utilized emergently to address psychiatric symptoms.~~

~~(33) [(34)] "Recipient" is defined by KRS 205.8451(9).~~

~~(34) [(35)] "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).~~

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(35)(36) "Specialty intermediate care clinic" or "specialty IC clinic" means a clinic licensed pursuant to 902 KAR 20:410.

(36)(37) "Speech-language pathologist" is defined by KRS 334A.020(3).

Section 2. Conditions of Participation. A specialty intermediate care clinic service shall be provided by an individual:

- (1) Employed by a specialty intermediate care clinic; or
- (2) Working for a specialty intermediate care clinic via a contractual agreement.

Section 3. Eligible Population. (1) To be eligible to receive specialty IC clinic services, an individual shall:

- (a) Be a recipient;
 - (b) Have a mental illness, intellectual disability, or developmental disability; and
 - (c) Meet the patient status criteria established in:
 1. Section 4(4) of 907 KAR 1:022; or
 2. Section 4(5) of 907 KAR 1:022.
- (2)(a) A recipient shall be eligible to receive services stated in Section 6 of this administrative regulation and in accordance with the requirements established in Section 6 of this administrative regulation if the recipient is:
1. Eligible in accordance with subsection (1) of this section;
 2. Not receiving services via:
 - a. A 1915(c) home and community services waiver program; or
 - b. An intermediate care facility for individuals with an intellectual disability; and
 3. Enrolled with a managed care organization.
- (b) A recipient shall be eligible to receive services stated in Section 5 of this administrative regulation and in accordance with the requirements established in Section 5 of this administrative regulation if the recipient is:
1. Eligible in accordance with subsection (1) of this section;
 2. Receiving services via:
 - a. A 1915(c) home and community services waiver program; or
 - b. An intermediate care facility for individuals with an intellectual disability; and
 3. Not enrolled with a managed care organization.

Section 4. General Requirements Regarding Services. (1)(a) The department shall:

1. Reimburse for a specialty IC clinic service if the service was:
 - a. Medically necessary; and
 - b. Provided:
 - (i) By a specialty IC clinic; and
 - (ii) To an individual who is eligible to receive specialty IC clinic services pursuant to Section 3(1) and (2)(b) of this administrative regulation; or
 2. Not reimburse for a specialty intermediate care clinic service if the service does not:
 - a. Meet the criteria established in paragraph (a) of this subsection; or
 - b. Comply with subsection (2) of this section.
- (b) A managed care organization shall:
1. Reimburse for a specialty IC clinic service if the service was:
 - a. Medically necessary; and
 - b. Provided:
 - (i) By a specialty IC clinic; and
 - (ii) To an individual who is eligible to receive specialty IC clinic services pursuant to Section 3(1) and (2)(a) of this administrative regulation; or
 2. Not reimburse for a specialty intermediate care clinic service if the service does not:
 - a. Meet the criteria established in paragraph (a) of this subsection; or
 - b. Comply with subsection (2) of this section.
- (2) Services provided at a specialty IC clinic shall comply with the requirements established in 42 C.F.R. 440.90.

Section 5. Specialty Intermediate Care Clinic Services for Recipients Who are Not Enrolled with a Managed Care Organization. The following shall be the covered specialty intermediate care clinic services for an individual who is

not enrolled with a managed care organization and who is eligible in accordance with Section 3(1) and (2)(b) of this administrative regulation:

- (1) Dental services provided:
 - (a) By an authorized practitioner in accordance with 907 1:026; and
- (b) In accordance with the limits established in 907 KAR 1:026;
- (2) Psychiatric services provided:
 - (a) By a:
 1. Psychiatrist or physician in accordance with the psychiatric service limit established in 907 KAR 3:005; or
 2. Advanced practice registered nurse in accordance with the psychiatric service limit established in 907 KAR 1:104(Physician; and
 - ~~(b) In accordance with the psychiatric service limit established in 907 KAR 3:005];~~
 - (3) Psychological services provided by a licensed psychologist, licensed psychological practitioner, or licensed psychological associate;
 - (4) Psychotropic medication management provided by an advanced practice registered nurse, physician, or psychiatrist;
 - (5) Neurology services provided by a neurologist;
 - (6) Epileptology services provided by an epileptologist;
 - (7) Preventive health care;
 - (8) Primary and sub-specialist medical assessment and treatment;
 - (9) Occupational therapy provided:
 - (a) By an occupational therapist or occupational therapist assistant; and
 - (b) In accordance with the limits and requirements established in Section 6 of this administrative regulation;
 - (10) Physical therapy provided:
 - (a) By a physical therapist or physical therapist assistant; and
 - (b) In accordance with the limits and requirements established in Section 6 of this administrative regulation;
 - (11) Speech therapy provided:
 - (a) By a speech-language pathologist; and
 - (b) In accordance with the limits and requirements established in Section 6 of this administrative regulation;
 - (12) Nutritional or dietary consultation;
 - (13) Mobility evaluation or treatment;
 - (14) Positive behavioral support services which shall:
 - (a) Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
 - (b) Be provided to assist a recipient to learn a new behavior that is directly related to existing challenging behaviors or a functionally equivalent replacement behavior for identified challenging behaviors;
 - (c) Include a functional assessment of the recipient's behavior which shall include:
 1. An analysis of the potential communicative intent of the behavior;
 2. The history of reinforcement for the behavior;
 3. The critical variables that preceded the behavior;
 4. The effects of different situations on the behavior;
 5. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;
 - (d) Include the development of a positive behavioral support plan which shall:
 1. Be developed by a behavioral support specialist;
 2. Be implemented by staff in all relevant environments and activities;
 3. Be revised as necessary at least once every six (6) months;
 4. Define the techniques and procedures used;
 5. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;
 6. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
 7. Reflect the use of positive behavioral approaches; and
 8. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, or any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
 - (e) Include the provision of competency-based training to other

providers concerning implementation of the positive behavioral support plan;

(f) Include the monitoring of a recipient's progress which shall be accomplished through:

1. The analysis of data concerning the frequency, intensity, and duration of behavior; and

2. The reports of a provider involved in implementing the positive behavioral support plan;

(g) Provide for the design, implementation, and evaluation of systematic environmental modifications;

(h) Be provided by a behavioral support specialist; and

(i) Be documented by a detailed staff note which shall include:

1. The date of the service;

2. The beginning and end time;

3. The signature, date of signature, and title of the behavior support specialist;

(15) Audiology provided by an audiologist and in accordance with the following:

(a) The limits established in 907 KAR 1:038 for services provided to an individual under the age of twenty-one (21) years shall be the limits for audiology services provided in a specialty intermediate care clinic regardless of the recipient's age; and

(b) The restriction established in 907 KAR 1:038 of not covering audiology services for an individual who is at least twenty-one (21) years of age shall not apply to audiology services provided in a specialty intermediate care clinic;

(16) Ophthalmic dispensing provided by an ophthalmic dispenser;

(17) A prescribed drug covered in accordance with 907 KAR 1:019;

(18) Medication consultation;

(19) Medication management;

(20) Seizure management;

(21) Diagnostic services;

(22) Clinical laboratory services;

(23) Physician services in accordance with the limits and requirements established in

907 KAR 3:005; or

(24) Laboratory services in accordance with the limits and requirements established in 907 KAR 1:028.

Section 6. Specialty Intermediate Care Clinic Services for Recipients Who are Enrolled with a Managed Care Organization. The following shall be the covered specialty intermediate care clinic services for an individual who is enrolled with a managed care organization and who is eligible in accordance with Section 3(1) and (2)(a) of this administrative regulation:

(1) Dental services provided in accordance with 907 KAR 1:026 except that a dentist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(2) Physicians services provided in accordance with 907 KAR 3:005 except that:

(a) A physician who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

(b) An advanced practice registered nurse who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(3) Psychiatric services provided in accordance with 907 KAR 3:005 except that:

(a) A psychiatrist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(b) A physician who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

(c) An advanced practice registered nurse who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(4) Behavioral health services in accordance with:

(a) 907 KAR 1:054 except that:

1. A clinical psychologist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

2. An advanced practice registered nurse who is employed by or under contract with a specialty IC clinic shall be authorized to

provide the services;

(b) 907 KAR 1:082 except that:

1. A clinical psychologist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

2. An advanced practice registered nurse who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

(c) 907 KAR 1:044 except:

1. That:

a. A clinical psychologist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

b. A psychiatrist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

c. An advanced practice registered nurse who is certified in the practice of mental health nursing and who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(i) Chemotherapy services if the APRN meets the requirements of 201 KAR 20:057, Section 2(1) and Sections 6(1) – (3); or

(ii) Psychiatric evaluations and testing if the APRN meets the requirements of 201 KAR 20:057, Section 2(1)[,meets the requirements of 201 KAR 20:057, and who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services]; and

2. For the following which shall not be covered if provided by a specialty IC clinic:

a. Inpatient services;

b. Therapeutic rehabilitation services for adults;

c. Therapeutic rehabilitation services for children; or

d. Services in a detoxification setting;

(5) Audiology services provided in accordance with 907 KAR 1:038 except that an audiologist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(6) Ophthalmic dispensing provided by an ophthalmic dispenser in accordance with 907 KAR 1:038 except that an ophthalmologist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(7) A prescribed drug covered in accordance with 907 KAR 1:019 except that a pharmacist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(8) Preventive health care in accordance with 907 KAR 3:005 except that:

(a) A physician who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

(b) An advanced practice registered nurse who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(9) Occupational therapy in accordance with 907 KAR 3:005 except that an:

(a) Occupational therapist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

(b) Occupational therapy assistant who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(10) Physical therapy in accordance with 907 KAR 3:005 except that a:

(a) Physical therapist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

(b) Physical therapist assistant who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(11) Speech therapy in accordance with 907 KAR 3:005 except that a speech language pathologist who is an employee of or under contract with a specialty IC clinic shall be authorized to provide the services;

(12) Diagnostic services in accordance with 907 KAR 1:014, 907 KAR 1:054, 907 KAR 1:082, or 907 KAR 3:005 except that:

(a) A physician who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

(b) An advanced practice registered nurse who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

(13) Laboratory services in accordance with 907 KAR 1:028 except that if a specialty IC clinic's laboratory does not meet the requirements of 907 KAR 1:028, the specialty IC clinic shall be authorized to provide the services via a contractual relationship with a laboratory which meets the requirements of 907 KAR 1:028.

Section 7. Therapy Limits. (1) To be reimbursable by the department, occupational therapy, physical therapy, or speech therapy shall be limited to thirty (30) visits per twelve (12) months for a recipient except as established in subsection ~~(2)(4)~~ of this section.

(2) The therapy limits established in subsection (1) of this section shall:

(a) Not apply to a recipient under twenty-one (21) years of age; and

(b) Be overridden by the department if the department determines that an additional visit or visits beyond the limit are medically necessary.

Section 8. No Duplication of Service. (1) The department shall reimburse no more than one (1) provider for the provision of a given service to a recipient on a given day.

(2) There shall be no duplicate billing to the department regarding a given service provided to a recipient on a given day.

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

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 10. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

Department for Medicaid Services

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 13, 2013 at 4 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, email 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 is a new administrative regulation which establishes Medicaid specialty intermediate care (IC) clinic service and coverage policies and requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid policies and requirements for specialty IC clinic services related to a settlement agreement between the Cabinet for Health and Family Services and the United States Department of Justice's Division of Civil Rights. The strategic action plan incorporated by reference into the settlement agreement mandated the establishment of specialty intermediate care clinics on the grounds of intermediate-care facilities for individuals with an intellectual disability (ICF-IID) as a means of serving individuals in the most integrated setting appropriate to their needs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

to the content of the authorizing statutes by establishing Medicaid policies and requirements for specialty IC clinic services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing Medicaid policies and requirements for specialty IC clinic services.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments deletes the definition of "primary care provider" as the term is never used in the administrative regulation and, for clarity, inserts references to the specific sections in another administrative regulation which establishes advanced practice registered nurse requirements for behavioral health services.

(b) The necessity of the amendment to this administrative regulation: The amendment after comments is necessary to eliminate a definition that is not used in the administrative regulation and, for clarity, to specify references to another administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments conforms to the content of the authorizing statutes by eliminating an un-used definition and by more clearly specifying a reference to another administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by eliminating an un-used definition and by more clearly specifying a reference to another administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Affected individuals include Medicaid recipients currently residing in an intermediate care facility for individuals with an intellectual disability but who may be able to transition to a community setting as a result of this administrative regulation; individuals who are participating in a 1915(c) home and community based waiver program; and individuals who are neither of the aforementioned two (2) populations but are enrolled with a managed care organization. Additionally, the clinics themselves will be affected. One (1) facility – located in Louisville, has already been constructed and the start of construction for another facility – in Somerset, Kentucky – is anticipated to begin in June 2013.

(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: If a given specialty IC clinic wishes to be reimbursed by Medicaid for services provided to Medicaid recipients, the clinic will have to comply with the service requirements, practitioner requirements (including practitioner qualifications), and be licensed as a specialty IC clinic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost other than administrative cost associated with compliance is imposed on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients currently residing in an intermediate care facility for individuals with an intellectual disability; are receiving services via a 1915(c) home and community based waiver program; or are neither of the two (2) aforementioned but are enrolled with a managed care organization would benefit by being able to receive these outpatient clinic services.

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

(a) Initially: The Department for Medicaid Services estimates that implementing this administrative regulation will cost DMS \$600,000 per month (state and federal combined) for each month of implementation in state fiscal year 2013.

(b) On a continuing basis: DMS projects that implementing the

administrative regulation will cost approximately \$7.2 million (state and federal combined) annually.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the regulated entities are regulated uniformly by this administrative regulation.

qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. The strategic action plan incorporated by reference into the settlement agreement mandated the establishment of specialty intermediate care clinics on the grounds of intermediate-care facilities for the intellectually and developmentally disabled as a means of serving individuals in the most integrated setting appropriate to their needs.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) and the Department for Behavioral Health, Developmental and Intellectual Disabilities 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 taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that implementing this administrative regulation will cost DMS \$600,000 per month (state and federal combined) for each month of implementation in state fiscal year 2013.

(d) How much will it cost to administer this program for subsequent years? DMS projects that implementing the administrative regulation will cost approximately \$7.2 million (state and federal combined) annually.

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. The mandate source is a settlement agreement between the Cabinet for Health and Family Services and the United States Department of Justice's Division of Civil Rights. The strategic action plan incorporated by reference into the settlement agreement mandated the establishment of specialty intermediate care clinics on the grounds of intermediate-care facilities for individuals with an intellectual disability as a means of serving individuals in the most integrated setting appropriate to their needs.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To

PROPOSED AMENDMENTS

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 3:080. Career and technical education school principals[administrators].

RELATES TO: KRS 161.020,[161.025,] 161.027, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.027, 161.028[166.070, 161.030]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires an educator to hold a certificate of legal qualifications issued by the Education Professional Standards Board prior to being employed in a certified school position. KRS 161.028 authorizes the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate and KRS 161.027 specifically requires the Education Professional Standards Board to establish the requirements for the preparation and certification of principals. This administrative regulation establishes the certification requirements for career and technical education school principals[, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed and approved by the Education Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates by the Education Professional Standards Board. KRS 161.027 establishes testing and internship requirements for principals. This administrative regulation establishes appropriate certificate conditions for their issuance and renewal, and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for Preparation Certification of Professional School Personnel for career and technical education administrators].

Section 1. Application and Renewal Procedures. (1) A certificate for career and technical education school principal shall be issued to an applicant who has:

(a) At least three (3) years of teaching experience in a career and technical education teaching assignment;

(b) Completed an approved educator preparation program for career and technical education school principal as established in 16 KAR 5:010; and

(c) Obtained the specified minimum score on any assessment required by 16 KAR 6:030.

(2) Application for an initial certificate for career and technical education school principal shall be made on the Application for Kentucky Certification or Change in Salary Rank, Form TC-1, incorporated by reference in 16 KAR 2:010.

(3)(a)1. The initial certificate for career and technical education school principal shall be issued for a duration period of one (1) year upon obtaining employment for an internship position as principal or assistant principal of a career and technical school.

2. During the period of validity of the one (1) year certificate, the internship program for career and technical education school principals as outlined in KRS 161.027 shall be completed.

3. Upon successful completion of the internship, the certificate shall be extended for four (4) years.

(b)1. A certificate for career and technical education school principal shall be renewed subsequently for five (5) year periods.

2. Each five (5) year renewal thereafter shall require the completion of:

a. Two (2) years of experience as a career and technical education school principal;

b. Three (3) semester hours of additional graduate credit related to the position of career and technical education school principal; or

c. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

3. Application for renewal of a certificate for career and technical education school principal shall be made on Form TC-2, incorporated by reference in 16 KAR 4:060.

Section 2. Certifications permissible for position of career and technical education school principal. The following certificates shall be valid for the position of school principal:

(1) The certificate for career and technical education school principal; or

(2) A certificate for instructional leadership - school principal. The certificate for administration, supervision, and coordination of vocational education issued only through January 4, 1988 under prior versions of this administrative regulation shall:

(1) Not qualify the holder for any vocational education position; and

(2) Be designated as one of the several requirements for certain positions of administration, supervision, and coordination as identified in the Kentucky State Plan for Vocational Technical Education, as incorporated by reference in 780 KAR 1:010.

Section 2. (1) The certificate for career and technical school principal shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board administrative regulations to an applicant who has:

(a) at least three (3) years of teaching experience in a career and technical education teaching assignment; and

(b) completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures for approval of preparation programs as established in 16 KAR 5:010.

(2) The certificate shall be issued and renewed in accordance with the provisions of KRS 161.027, 16 KAR 6:030, and 16 KAR 7:020.

(3)(a)1. The initial certificate for career and technical school principal shall be issued for a duration period of one (1) year upon: a. successful completion of the approved curriculum and the tests prescribed under KRS 161.027 and 16 KAR 6:030; and b. obtaining employment for an internship position as principal or assistant principal of a career and technical school.

2. During the period of validity of the one (1) year certificate, the internship program for career and technical school principals as outlined in KRS 161.027 shall be completed.

3. Upon successful completion of the internship, the certificate shall be extended for four (4) years.

(b) 1. The certificate shall be renewed subsequently for five (5) year periods.

2. Each five (5) year renewal thereafter shall require the completion of:

a. Two (2) years of experience as a career and technical school principal;

b. Three (3) semester hours of additional graduate credit related to the position of career and technical school principal; c. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program;

(4) In compliance with KRS 161.027, persons applying for the certificate for career and technical school principal who satisfy the curriculum requirements and all other prerequisites, and who have completed at least two (2) years of successful full-time experience, including at least 140 days per year, as a career and technical school principal, within a ten (10) year period prior to making application, shall be:

(a) Exempt from the internship requirements for career and technical school principal; and

(b) required to pass the written examinations required by KRS 161.027 and the governing administrative regulation.

(5)(a) The certificate for career and technical school principal shall be valid for the position of principal at a career and technical school.

(b) The hiring authority of a career and technical school may employ as a principal a candidate who possesses the following:

1. A valid Kentucky certificate or statement of eligibility for

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instructional leadership—school principal;

2. A valid Kentucky certificate for a career and technical education; and

3. A minimum of three (3) years of teaching experience in the field of career and technical education.

Section 3. (1) The certificate for career and technical education principal shall be issued in accordance with the pertinent Kentucky statutes to an applicant who has at least three (3) years of teaching experience in a career and technical education teaching assignment and who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures of the Education Professional Standards Board pursuant to 16 KAR 5:010.

(2)(a) The certificate for career and technical education principal shall be issued for a duration period of five (5) years and shall be renewed subsequently for five (5) year periods.

(b) Each five (5) year renewal shall require the completion of:

1. Two (2) years of experience as a supervisor or coordinator of career and technical education;

2. Three (3) semester hours of additional graduate credit related to the position of supervisor or coordinator of career and technical education;

3. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program].

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: August 5, 2013

FILED WITH LRC: August 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 30, 2013 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification requirements for career and technical school education administrator.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to individuals seeking certification as a career and technical administrator of the certification requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(f) authorizes the Education Professional Standards Board (board) to issue and renew certification for professional school personnel in the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the steps necessary to become a career and technical school administrator.

(2) If 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 the certification requirements for career and technical school education principal.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide notice to individuals seeking certification as a career and technical principal of the certification requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the board to issue and renew certification for professional school personnel in the board. KRS 161.027 specifically requires the board to establish the requirements for the preparation and certification of principals

(d) How the amendment will assist in the effective administration of the statutes: This amendment modernizes the regulation by updating the language used in the regulation and removing out-of-date clauses. Additionally, the amendment allows individuals who hold a statement of eligibility or a certificate for Instructional Leadership – Principal, All Grades to serve as a principal in a Kentucky career and technical school.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, 30 educator preparation programs, and educators seeking to serve as a principal in a Kentucky career and technical school.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to this regulation or the Education Professional Standards Board website for current certificate requirements. Educators will need to consult this regulation for information regarding certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by an increase in educators who can serve as principals in career and technical schools.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates are required to 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 Education Professional Standards Board, public colleges and universities, and the 173 public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.027, 161.028, 161.030

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program, but sets the requirements for certification as a career and technical education principal.

EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 9:080. University-based alternative certification program.

RELATES TO: KRS 161.027, 161.028(1)(k), (s), (t), 161.030(10), 161.048

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1)(d), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(d) and (7) require[requires] the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

Section 1. Definitions. (1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, guidance counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

Section 2. Admission Requirements. (1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

(3) An applicant for any alternative certification teacher or administrator program shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 or 3 except completion of the corresponding educator preparation program and the required assessments.

Section 3. University Requirements for Alternative Certification Teacher Program. (1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation institution seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and to successfully complete any applicable assessments, including internship programs, within a period of three (3) years for those enrolled in an alternative certification teacher program.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. Prior to the candidate's enrollment in the Kentucky Teacher Internship Program pursuant to KRS 161.030 and 16 KAR 7:010, a minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. The name, contact person, and role for the collaborating educator preparation institution mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

Section 4. Temporary Provisional Certificate for Teaching. (1) The temporary provisional certificate for teaching shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional certificate for teaching may be renewed a maximum of two (2) times.

(3) The temporary provisional certificate for teaching shall be:

(a) Issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form TC-TP; and

(b) Valid for employment consistent with the area of certification being sought through the preparation program.

(4) The temporary provisional certificate for teaching shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in 16 KAR 8:020.

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Section 5. Issuance of a Temporary Provisional Certificate for Teaching. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.

(4) The employing school district shall submit with Form TC-TP a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching. (1) A candidate shall be eligible for the first renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c) Completion of Form TC-TP.

(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) new semester hours or its equivalent from the approved preparation program;

(c) The required assessments as established in 16 KAR 6:010; and

(d) Completion of Form TC-TP.

Section 7. Alternative Certification Teacher Program Completion Requirements. (1) If the candidate has successfully passed the required assessments as outlined in 16 KAR 6:010, and completed the required coursework, the institution shall provide written notice to the employing school district that a candidate is eligible to participate in the Kentucky Teacher Internship Program in each subject area covered by the temporary provisional certificate and in accordance with 16 KAR 7:010.

(2) When the candidate is prepared to enroll in the Kentucky Teacher Internship Program, the recommending institution shall complete and sign page five (5) of the TC-TP form and deliver it to the employing school district for submission to the Education Professional Standards Board.

(3) Upon completion of all program requirements of the alternative certification teacher program, including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010, the candidate may make application to the Education Professional Standards Board for the professional certificate on the form TC-1, which is incorporated by reference in 16 KAR 2:010.

(4) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

(5) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate and who has been transitioned into an institution's traditional educator preparation program, shall be eligible for a Teacher Internship Statement of Eligibility-Confirmation of Employment as a Teacher upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(6) If a candidate fails to complete all alternative certification program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, the employing

school district may, pursuant to 16 KAR 2:010, 2:120, and 2:180, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment.

Section 8. University Requirements for an Alternative Certification Administrator Program. (1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation institution seeking alternative certification administrator program approval shall design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation institution mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

Section 9. Temporary Provisional Administrative Certificate. (1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

Section 10. Issuance of a Temporary Provisional Administrative Certificate. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university based al-

ternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.

(4) The employing school district shall submit with Form TC-TP a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

Section 11. Requirements for renewal of the temporary provisional certificate for an administrator. (1) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the temporary provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c) Completion of Form TC-TP.

Section 12. Alternative Certification Administrator Program Completion Requirements. (1)(a) If the alternative certification administrator candidate for principal certification has successfully passed the required assessments, as outlined in 16 KAR 6:030, and completed the required coursework, the institution shall provide written notice to the district that the candidate is eligible to participate in the Kentucky Principal Internship Program in accordance with 16 KAR 7:020.

(b) When a principal candidate is ready to enroll in the Kentucky Principal Internship Program, the recommending institution shall complete page five (5) of the TC-TP form and deliver the form to the employing school district for submission to the Education Professional Standards Board.

(2)(a) An alternative certification administrator candidate who failed to complete the assessments, the internship, or the required coursework during the initial issuance and one (1) renewal of the temporary provisional certificate and who has been transitioned into an institution's traditional preparation program, shall be eligible for an administrative certificate in the area of study upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(b) If the candidate was initially enrolled in the alternative certification program for principal, the candidate shall be eligible for a Principal Internship Statement of Eligibility-Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(3)(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(4) Upon completion of the alternative certification administrator program, the assessments, and the internship or Superintendents Training Program as applicable, the university shall provide a recommendation for the professional certificate on the candidate's TC-1 form.

(5) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate[University Requirements. (1) An accredited college or university seeking to offer a post baccalaureate alternative teacher or administrator program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2)(a) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation institution seeking alternative teacher or alternative administrator program approval shall develop and publish a plan of selection and admission of candidates to the alternative program.

(b) The plan shall be filed with the Education Professional Standards Board and shall include:

1. A method to verify that an applicant has a minimum of a bachelor's degree from an accredited college or university and the minimum grade point average required for admission to the program;

2. One (1) or more assessments to measure academic proficiency for program admission;

3. An evaluation of a candidate's disposition for the education profession;

4. A procedure to ensure that a candidate reviews the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

5. A copy of the declaration signed by a candidate affirming a commitment to upholding the Code of Ethics and acknowledging awareness of information required for state certification.

(3) The alternative program shall be designed to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including internship programs, within a period of:

(a) Three (3) years for those enrolled in an alternative teacher program; or

(b) Two (2) years for those enrolled in an alternative administrator program.

(4) Upon approval, the alternative teacher or administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins course work no later than ninety (90) days from the date the eligibility notice is issued;

(d) Establish, in consultation with the administration of a candidate's employing school, a written plan for mentoring the candidate in the employment setting;

(e) Provide, prior to a candidate's participation in the Kentucky Teacher or Principal Internship Program, a minimum of fifteen (15) hours of observation of a candidate in practice in the employment setting utilizing university faculty and a district-based mentor teacher;

(f) Provide effective candidate mentoring by maintaining an adequate number of personnel and sufficient resources to ensure that candidates meet professional, state, and institutional standards, including successful transition to the professional certificate;

(g) Maintain regular communications with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and

(h) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification program permanently ceases.

Section 3. Participation in the Alternative Teacher Program. (1) Participation in the institution's alternative teacher program shall be available only to individuals who meet the institution's alternative program admission requirements.

(2) A candidate's employment position shall be consistent with

the area of certification being sought through the preparation program.

(3) After notice of acceptance into the alternative teacher program and subsequent notification of selection for an eligible position, a candidate shall apply for a Temporary Provisional Certificate by submitting a completed TC-TP Application for Temporary Provisional Certificate to the Education Professional Standards Board.

(4)(a) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a temporary provisional certificate.

(b) The temporary provisional certificate shall be:

1. Issued for a period of one (1) year;

2. Limited to the employing school district; and

3. Contingent upon the candidate's continued enrollment in the alternative preparation program and continued employment in an eligible position that corresponds to a candidate's certification program.

(5)(a) A candidate shall be eligible for no more than two (2) renewals of the temporary provisional certificate.

(b) Application for renewal shall be made by submitting a completed TC-TP form.

(c) The Education Professional Standards Board shall renew the temporary provisional certificate upon verification of compliance with all eligibility requirements, including continued enrollment in the alternative preparation program and employment in an eligible position.

(6) If the candidate has successfully passed the required assessments as outlined in 16 KAR 6:010, and completed the required course work, the institution shall provide written notice to the employing school district that a candidate is eligible to participate in the Kentucky Teacher Internship Program in each subject area covered by the temporary provisional certificate and in accordance with 16 KAR 7:010.

(7) Upon receipt of the written notification regarding readiness for internship, the employing school district shall submit to the Education Professional Standards Board, a Confirmation of Employment in electronic form, or hard copy if the electronic system is unavailable.

(8) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate and who has been transitioned into an institution's traditional educator preparation program, shall be eligible for a Statement of Eligibility upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(9) If a candidate fails to complete all alternative program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, the employing school district may, pursuant to 16 KAR 2:010, 2:120, and 2:180, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment.

Section 4. Participation in the Alternative Administrator Program. (1) Participation in the university alternative administrator program shall be available only to individuals who meet the institution's alternative program admission requirements.

(2) The employment position shall be consistent with the area of certification being sought through the preparation program.

(3) After notice of acceptance into the alternative administrator program and subsequent notification of selection for an eligible position, a candidate shall apply for a temporary provisional certificate by submitting a completed TC-TP Application for Temporary Provisional Certificate to the Education Professional Standards Board.

(4)(a) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a temporary provisional certificate.

(b) The temporary provisional certificate shall be:

1. Issued for a period of one (1) year;

2. Limited to the employing school district; and

3. Contingent upon the candidate's continued enrollment in the alternative preparation program and continued employment in an eligible position that corresponds to a candidate's certification pro-

gram.

(5)(a) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(b) Application for renewal shall be made by submitting a completed TC-TP form.

(c) The Education Professional Standards Board shall renew the temporary provisional certificate upon verification of compliance with all eligibility requirements, including continued enrollment in the alternative preparation program and employment in an eligible position.

(6)(a) If the alternative administrator candidate for principal certification has successfully passed the required assessments, as outlined in 16 KAR 6:030, and completed the required course work, the institution shall provide written notice to the district that the candidate is eligible to participate in the Kentucky Principal Internship Program in accordance with 16 KAR 7:020.

(b) Upon receipt of the written notification regarding readiness for internship, the employing school district shall submit a Confirmation of Employment in electronic form, or hard copy if the electronic system is unavailable, to the Education Professional Standards Board and shall assign individuals to the internship committee in accordance with the requirements established in KRS 161.027 and 16 KAR 7:020.

(7)(a) An alternative administrator candidate who failed to complete the assessments, the internship, or the required course work during the initial issuance and one (1) renewal of the temporary provisional certificate and who has been transitioned into an institution's traditional preparation program, shall be eligible for an administrative certificate in the area of study upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(b) If the candidate was initially enrolled in the alternative program for principal, the candidate shall be eligible for a Statement of Eligibility upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(8)(a) During the period of enrollment in the alternative administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative administrator program as well as the Superintendent Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendent's Training Program.

Section 5.(1) Upon completion of the alternative program, the assessments, and the internship or Superintendent's Training Program as applicable, the university shall provide a recommendation for the professional certificate on the candidate's TC-1 form.

(2) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate].

Section 13[6]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Temporary Provisional Certification", Form TC-TP, May 2007;

(b) "Teacher Internship Statement of Eligibility-Confirmation of Employment as a Teacher", November 2004; and

(c) "Principal Internship Statement of Eligibility-Confirmation of Employment as a[ad] Principal/Assistant Principal in an Accredited Kentucky School", May 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VOLUME 40, NUMBER 3 – SEPTEMBER 1, 2013

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: August 5, 2013

FILED WITH LRC: August 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 30, 2013 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to individuals seeking certification through an university-based alternative certification program of the requirements for certification and program completion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the steps necessary to achieve certification through a university-based alternative certification program.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide notice to individuals seeking certification through an university-based alternative certification program of the requirements for certification and program completion.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment requires that applicants to post-baccalaureate alternative certification programs meet the same admission standards established for corresponding tradition-

al programs. This amendment also clarifies the responsibilities of the university based alternative certification program and the employing school district. Additionally, this amendment requires the employing district to include with the TC-TP application a copy of the mentoring collaboration agreement between the district and the university. Other proposed changes are intended to clarify and efficiently organize the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, thirty (30) educator preparation programs, and educators seeking alternative certification through a university based alternative certification program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will be aware of their responsibilities to ensure appropriate mentoring for alternative certification candidates. The educator preparation programs will have clarification on their duties and responsibilities to provide appropriate mentoring and services to alternative certification candidates serving in classrooms. Educators will need to consult this regulation for information regarding certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be additional costs to the institution and the district to provide appropriate mentoring to the candidate, but this cost should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs will be positively affected by the clarifications to the regulation. School districts will have better support systems for their alternatively certified educators during their first years in the classroom. Alternatively certified educators will have sufficient support systems to ensure their transition to teaching is more successful.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates are required to 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 Education Professional Standards Board, public colleges and universities, and the 173 public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.027, 161.028, 161.048

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Public colleges and universities may experience a minimum cost increase to ensure that sufficient mentoring is provided to the candidate.

(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? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program, but sets the requirements for university-based alternative certification programs.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term
Care Administrators
(Amendment)

201 KAR 6:020. Other requirements for licensure.

RELATES TO: KRS 216A.070(1)(a), 216A.080(1)(e), (f)

STATUTORY AUTHORITY: KRS 216A.070(3), 216A.080(1)(e), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(1)(a) requires the Kentucky Board of Licensure for Long-Term Care Administrators~~[Nursing Home Administrators]~~ to develop, impose, and enforce standards which shall be met by an individual in order to receive a license. KRS 216A.080(1)(f) authorizes the board to establish other requirements to be met if the requirements are uniform and applied to each applicant for a license. KRS 216A.080(1)~~(d)~~~~(e)~~ requires an applicant to pass an examination approved~~[administered]~~ by the board. This administrative regulation establishes the other requirements for licensure and sets limits on the taking of the examination.

Section 1. An applicant for a license as a long-term care~~[nursing home]~~ administrator shall in addition to meeting all of the requirements provided by KRS 216A.080(1):

(1) Have satisfactorily completed a course of study for, and have been awarded a baccalaureate degree from, an accredited college or university accredited by an agency recognized by the United States Department of Education;

(2) Pass the written examination administered and verified by the National Association of Long-Term Care Administrator Boards~~[Board of Examiners for Nursing Home Administrators]~~ and submit documentation of a passing score, as defined by the National Association of Long-Term Care Administrator Boards but not less than seventy (70) percent of the scaled score, to the Board of Licensure for Long-Term Care Administrators~~[Nursing Home Administrators]~~. This examination shall be passed no more than two (2) years prior or no more than six (6) months subsequent to the filing of an application for licensure or reinstatement; and

(3)~~(a)~~ Except as provided in paragraph (b) or (c) of this subsection, have six (6) months of continuous management experience, but not less than 1,000 hours within not less than a twenty-four (24) month period, in a long-term care~~[health care]~~ facility within two (2)~~[three (3)]~~ years of the date of application.

(a) The management experience shall include evidence of responsibility for:

1. Personnel management;
2. Budget preparation;
3. Fiscal management; ~~[and]~~
4. Public relations; and
5. Regulatory compliance and quality improvement.

(b) An~~[A preceptorship or]~~ internship, that is at least 1,000 hours~~[six (6) months]~~ in length, which is a part of a degree in long-term care administration or a related field, shall satisfy the experience requirement established in~~[paragraph (a) of]~~ this subsection.

(c) A bachelor's or master's degree from an academic program accredited by the National Association of Long-Term Care Administrator Boards at the time of the applicant's graduation and which was awarded within two (2) years of the date of the application shall satisfy the experience requirement established in this subsection.

Section 2. (1) The examination for licensure established by KRS 216A.080(1)(e) shall be the examination prepared by the National Association of Long-Term Care Administrator Boards~~[Boards of Examiners for Nursing Home Administrators]~~.

(2) An applicant shall be permitted to sit for the examination no more than four (4) times within twelve (12) months.

Section 3. Any application not completed within six (6) months of having been approved to take the exam shall be mandatorily withdrawn as incomplete.

Section 4. A licensee shall provide the board with written notification within thirty (30) days of the occurrence of the following:

(1) Change of home address;

(2) Change of employer;

(3) Conviction of a felony or misdemeanor.

(a) A licensee providing notice of a conviction shall provide a copy of the judgment in the case.

(b) A plea of nolo contendere or an alford plea shall not absolve the licensee of an obligation to report a conviction; or

(4) Immediate Jeopardy of Substandard Level of Care citation received from the Cabinet for Health and Family Services by the long-term care facility at which the licensee serves as the administrator of record. A licensee providing notice of a citation shall provide a copy of the inspection report and submitted plan of correction.

Section 5. An applicant for licensure shall complete and submit an Application for Licensure.

Section 6. Incorporation by Reference. (1) "Application for Licensure", August 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG WELLS, Board Chair

APPROVED BY AGENCY: July 24, 2013

FILED WITH LRC: August 14, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, 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 other requirements for licensure as a long-term care administrator

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 216A.070(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity KRS 216A.070(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help the public in understanding the requirements for obtaining a license as a long-term care administrator.

(2) If 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 existing requirements to obtain licensure.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that requirements for licensure are understood.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board by making the process of the Board more easily understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 800 individuals are licensed by the Board. This regulation primarily relates to future unidentified applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken as the regulation relates to new applicants only.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will more readily understand the process they are to complete.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-Term Care Administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216A.070(3).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term
Care Administrators
(Amendment)**

201 KAR 6:030. Temporary permits.

RELATES TO: KRS 216A.070(4)

STATUTORY AUTHORITY: KRS 216A.070(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(4) authorizes the board to issue a temporary permit to an individual to practice the art of long-term care[nursing-home] administration. This administrative regulation establishes the requirements for issuance of a temporary permit.

Section 1. (1) A temporary permit to practice as a nursing home administrator shall be granted by the Office of Occupations and Professions to an applicant if:

(a) The applicant has applied for licensure under the provisions of KRS Chapter 216A;

(b) The applicant has completed all of the requirements established in 201 KAR 6:020 except the examination required pursuant to 201 KAR 6:020, Section 1(2), and the management experience required by 201 KAR 6:020, Section 1(3)[for licensure except the examination];

(c) The facility where the applicant is to be employed as the administrator is without a licensed administrator; and

(d) The facility owner provides a written request and supporting information to the board indicating that an emergency situation exists. An emergency situation shall be deemed to exist if:

1. The facility is without a licensed long-term care[nursing home] administrator; and

2. A licensed long-term care[nursing-home] administrator is not available to fill the position.

(2) The request for temporary permit shall include payment of the temporary permit fee as established in 201 KAR 6:060, Section 3.

(3) A temporary permit shall be subject to review by the board at the meeting immediately following issuance of the temporary permit. The board shall either ratify or revoke the temporary permit.

Section 2. (1) A temporary permit shall not be transferred to

another individual.

(2) A temporary permit shall:

(a) Be effective for no longer than six (6) months from the date it was granted; and

(b) Not be renewed by the permit holder.

(3) A temporary permit holder may be relocated to another location if an emergency exists at that location during the period in which the permit is effective and a separate request for a declaration of emergency is filed and approved by the board pursuant to Section 1(1)(d) of this administrative regulation.

(4) An individual shall not be granted a temporary permit more than once during a five (5) year period.

(5) A temporary permit shall not authorize the individual to whom the permit was issued to manage more than one (1) facility at the same time.

GREG WELLS, Board Chair

APPROVED BY AGENCY: July 24, 2013

FILED WITH LRC: August 14, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, 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 other requirements for temporary permits as a long-term care administrator

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 216A.070(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity KRS 216A.070(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help the public in understanding the requirements for obtaining a temporary permit as a long-term care administrator.

(2) If 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 existing requirements to obtain temporary permits.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that requirements for temporary permits are understood.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board by making the process of the Board more easily understandable.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: Approximately 800 individuals are licensed by the Board. This regulation primarily relates to future unidentified applicants for temporary permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken as the regulation relates to new applicants for temporary permits only.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will more readily understand the process they are to complete.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-Term Care Administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216A.070(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:

VOLUME 40, NUMBER 3 – SEPTEMBER 1, 2013

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term
Care Administrators
(Amendment)

201 KAR 6:040. Renewal, reinstatement, and reactivation of license.

RELATES TO: KRS 216A.090

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.090 requires the holder of a license to renew that[his] license biennially. This administrative regulation establishes the requirements for renewal, late renewal, inactive licensure, and reinstatement of a license.

Section 1. (1) A license shall be renewed every two (2) years from date of issue or from date of last renewal. To apply for renewal, a licensee shall:

(a) Submit a completed Renewal Form[B430-7] to the board; and

(b) Pay to the board the appropriate renewal fee established in 201 KAR 6:060 for the renewal of a[his] license.

(2) A sixty (60) day grace period shall be allowed after the renewal date, during which time a licensee may continue to practice and may renew the[his] license upon payment of the late renewal fee established in 201 KAR 6:060.

(a) Except as provided by KRS 36.450, a license not renewed by the end of the sixty (60) day grace period shall terminate based on the failure of the licensee to renew in a timely manner.

(b) Upon termination, the licensee shall not practice in the Commonwealth.

(3) A license shall be deemed inactive if:

(a) The board receives~~[A licensee submits to the board]~~ a written request seeking inactive status from the licensee;

(b) A licensee pays to the board the inactive licensee fee established in 201 KAR 6:060 for an inactive license;

(c) The grace period established in subsection (2) of this section has not expired; and

(d) The license is in good standing when the inactive status request is received.

(4)(a) After the sixty (60) day grace period, in order to apply for reinstatement, an individual with a terminated license shall submit a completed Reinstatement Application and pay~~[have his license reinstated upon payment of]~~ the reinstatement fee established in 201 KAR 6:060.

(b) A person who applies for reinstatement after expiration~~[termination]~~ of a[his] license shall not be required to meet current licensure requirements, except those established in 201 KAR 6:070, Section 10, if reinstatement application is made within two (2) years from the date of expiration~~[termination]~~.

(5)(a) In order to apply for reactivation, an individual with an inactive license shall submit a completed Inactive Renewal and Reactivation Form accompanied by the reactivation fee established in 201 KAR 6:070.

(b) An individual who has continuously maintained inactive status and who makes application to return to active status shall not be required to meet current licensure requirements except those established by 201 KAR 6:070, Section 10.

(6) A licensee who fails to reinstate a[his] license within two (2) years after its termination shall not have it renewed, restored, reissued, or reinstated. A person may apply for and obtain a new license by meeting the current requirements for licensure established in KRS Chapter 216A and 201 KAR Chapter 6.

(7)~~[(6)]~~ A suspended license shall be subject to expiration and termination and shall be renewed as renewed in this administrative regulation. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board and the right to practice is restored by the board.

(8)~~[(7)]~~ A revoked license shall be subject to expiration or termination and shall not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (2) of this section and the renewal fee as set forth in subsection (1) of this section.

(9)~~[(8)]~~ A licensee applying for renewal, late renewal, or reinstatement of licensure shall show evidence of completion of continuing education as established by 201 KAR 6:070.

(10) An inactive licensee shall renew his or her inactive license biennially by submitting an application on the Inactive Renewal and Reactivation Form and submitting payment of the fee established in 201 KAR 6:060.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Form", August 2013;

(b) "Reinstatement Application", August 2013; and

(c) "Inactive Renewal and Reactivation Form", August 2013[B430-7", (7/1/97 edition), is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators~~[Nursing Home Administrators, Berry Hill Annex]~~, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG WELLS, Board Chair

APPROVED BY AGENCY: July 24, 2013

FILED WITH LRC: August 14, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, 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 other requirements for renewal of a license as a long-term care administrator.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 216A.070(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity KRS 216A.070(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help the public in understanding the requirements for renewing a license as a long-term care administrator.

(2) If 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 existing requirements to renew a license.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that requirements for renewing a license are understood.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board by making the process of the Board more easily understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 800 individuals are licensed by the Board. This regulation primarily relates to future unidentified applicants for temporary permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensees will need to become familiar with the processes for renewing a license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will more readily understand the process they are to complete.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-Term Care Administrators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216A.070(3).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Long-Term Care Administrators (Amendment)

201 KAR 6:050. Licensure by endorsement.

RELATES TO: KRS 216A.130

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.130 authorizes the board to issue a license to a long-term care[nursing home] administrator possessing a license issued by another state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. An applicant applying for licensure via endorsement shall submit to the board~~The board shall issue a license by endorsement, without examination, to a nursing home administrator currently licensed by examination by the proper authorities of another state upon:~~

(1) A completed Application for Endorsement Licensure;

(2) Verification that the applicant[he]:

(a) Meets all current requirements for licensure as established by KRS 216A.130~~216A.080~~ and 201 KAR 6:020, except for KRS 216A.080(e); or

(b) Is currently designated as a certified long-term care[nursing home] administrator by the American College of Health Care Administrators;

(3)~~(2)~~ Payment of the fee for licensure by endorsement as established by 201 KAR 6:060;

(4) Documentation from the other state's board verifying that~~(3) Verification of his~~ license issued by that other[another] state [which indicates that his license is]:

(a) Is active;

(b) Is valid;

(c) Is in good standing; [and]

(d) Does not have an unresolved complaint pending against it;
and

(e) Has not been subject to disciplinary action during the five
(5) years immediately preceding the application~~There are no unresolved complaints pending against his license].~~

Section 2. Incorporation by Reference. (1) "Application for Endorsement Licensure", August 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG WELLS, Board Chair

APPROVED BY AGENCY: July 24, 2013

FILED WITH LRC: August 14, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, 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 other requirements for licensure as a long-term care administrator via endorsement.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 216A.130 which allows the Board to license individuals via endorsement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity KRS 216A.070(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help the public in understanding the requirements for becoming licensed via endorsement.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies existing requirements to apply via endorsement.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that requirements for obtaining a license via endorsement.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board by making the process of the Board more easily understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 800 individuals are licensed by the Board. This regulation primarily relates to future unidentified applicants for temporary permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals referenced above will not be impacted because they already hold licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will more readily understand the process they are to complete.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-Term Care Administrators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216A.070(3).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term
Care Administrators
(Amendment)**

201 KAR 6:060. Fees.

RELATES TO: KRS 216A.110(1), 216A.130

STATUTORY AUTHORITY: KRS 216A.070(3), (4), 216A.110(1), 216A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(4) requires the board to establish a fee for a temporary permit. KRS 216A.110(1) requires the board to prescribe and collect reasonable fees and charges for processing applications, examination, and issuance of licenses, including renewals. KRS 216A.130 authorizes the board to establish a fee for licensure by reciprocity. This administrative regulation establishes those fees.

Section 1. Application Fee. (1) The application fee for board review of the application for licensure shall be \$100~~[fifty (50) dollars]~~.

(2) The application fee shall be nonrefundable.

Section 2. Initial Licensure Fee. (1) The initial licensure fee shall be \$150 for an applicant for licensure.

(2) The fee for licensure by endorsement shall be \$300~~[\$250]~~ for an applicant for licensure.

(3) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 3. Temporary Permit Fee. The fee for a temporary permit shall be seventy-five (75)~~[fifty (50)]~~ dollars.

Section 4. Biennial Renewal Fee, Late Renewal Fee, Inactive License Fee, and Reinstatement Fee. (1) The renewal fee shall be \$125~~[\$100]~~.

(2) The late renewal fee shall be \$200~~[\$150]~~.

(3) The inactive license fee shall be seventy-five (75)~~[fifty (50)]~~ dollars.

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(4) The fee for reactivating an inactive license shall be fifty (50) dollars.

(5) The reinstatement fee shall be \$300.

Section 5. Duplicate License Fee. The duplicate license fee shall be twenty-five (25) dollars.

Section 6. Licensure Verification Fee. The fee for verification of state licensure shall be twenty-five (25)~~fifteen (15)~~ dollars.

Section 7. Continuing Education Fees. (1) The fee to apply for preapproval to present a single continuing education program as described in 201 KAR 6:070, Section 5(1)(a), shall be fifty (50) dollars.

(2) The fee to apply for approval of credit for a single continuing education program not preapproved as described in 201 KAR 6:070, Section 4, shall be twenty-five (25) dollars.

GREG WELLS, Board Chair

APPROVED BY AGENCY: July 24, 2013

FILED WITH LRC: August 14, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes fees for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 216A.110(1) and to allow the Board to create funds from which it operates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity KRS 216A.070(3) and KRS 216A.110(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help the public in understanding the fees they are to pay for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendment increases fees which have gone unchanged for many years.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the Board has the needed funds to operate.

(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 to charge fees specifically.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board by putting the public on notice as to the

fees they will be charges.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 800 individuals are licensed by the Board. This regulation primarily relates to future unidentified applicants for temporary permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to pay an increased amount to renew their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The difference between the old fee and the new fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will continue to receive the services of the Board and will continue to be able 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: This regulation increases fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases existing fees. It also creates new fees related to continuing education provider review.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-Term Care Administrators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216A.070(3).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term
Care Administrators
(Amendment)

201 KAR 6:070. Continuing education requirements.

RELATES TO: KRS 216A.090

STATUTORY AUTHORITY: KRS 216A.070(3), 216A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.090 authorizes the board to promulgate an administrative regulation requiring a licensed nursing home administrator to complete continuing education requirements as a condition of renewal of [his] licensure. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Approved" means recognized by the Kentucky Board of Licensure for Long-Term Care[Nursing Home] Administrators.

(2) "Continuing education hour" means sixty (60) clock minutes of participation in a continuing educational experience.

(3) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives, including an experience presented in one (1) session or in a series.

(4) "Provider" means an organization approved by the Kentucky Board of Licensure for Long-Term Care[Nursing Home] Administrators for providing a continuing education program.

(5) "Relevant" means having content applicable to the practice of nursing home administration as determined by the board.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of thirty (30) continuing education hours shall be accrued by each person holding licensure during the two (2) year period for renewal.

(2) All continuing education hours shall be in or related to the field of long-term care[nursing home] administration.

(3) A maximum of fifteen (15) continuing education hours may be accrued during one (1) calendar day.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a long-term care[nursing home] administrator. A continuing education hour shall be earned by completing an educational activity described in this section[any of the following educational activities:]

(1) Programs not requiring board review and approval. An educational program[~~from any of the following providers~~] shall be considered[~~deemed to be~~] relevant to the practice of long-term care[nursing home] administration and shall be approved without further review by the board if it is:

(a) Sponsored or approved by the National Association of Long-Term Care Administrator Boards[~~of Licensure for Nursing Home Administrators~~] (NAB) or another board of licensure which is a member of NAB; or

(b) Sponsored by:

1. Leading Age[~~The American Association of Homes and Services for the Aging~~], or any of its affiliated state chapters;

2. The American College of Health Care Administrators, or any of its affiliated state chapters;

3. The American College of Healthcare Executives;

4. The American Health Care Association, or any of its affiliated state chapters;

5. The American Hospital Association, or any of its affiliated state chapters;

6. The Kentucky Board of Nursing; or

7. The American Medical Directors Association, or any of its affiliated chapters[(c) A college course directly related to business administration, economics, marketing, computer science, social services, psychology, gerontology, or health professions including nursing or premedicine;]

(2) Programs requiring board review and approval. A program from one (1) of the following sources shall be approved by the

board if the board determines the program is relevant:

(a) A college course directly related to business administration, economics, marketing, computer science, social services, psychology, gerontology, or health professions including nursing or premedicine, except that a college course described in this paragraph shall not fulfill more than one-half (1/2) of a licensee's continuing education requirement;

(b) A relevant program[programs], including a home study course[~~courses~~] or in-service training provided by another organization, education institution, or other service provider[~~other organizations, educational institutions, or other service providers~~] approved by the board;

(c) A[(b)] relevant program[programs] or academic course[~~courses~~] presented by the licensee. A presenter of a relevant program[programs] or academic course[~~courses~~] shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

(d)[(e)] Authoring an article in a relevant, professionally recognized or juried publication. Credit shall be granted for an article that was published within the two (2) year period immediately preceding the renewal date if the licensee has not received credit for another publication during that renewal period. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication.

Section 4. Procedures for Approval of Continuing Education Programs. A course which has not been preapproved by the board may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review this program, the licensee requesting approval shall submit[~~following information shall be submitted~~]:

(1) A published course or similar description;

(2) Names and qualifications of the instructors;

(3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;

(4) Number of continuing education hours requested;

(5) Official certificate of completion or college transcript from the sponsoring agency or college; and

(6) Application for Continuing Education; and

(7) The fee required by 201 KAR 6:060, Section 7[~~credits approval~~].

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval.

(a) Any entity seeking to obtain approval[:

(a)] of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(b) An applicant[~~As a prior authorized continuing education provider under Section 3(1) of this administrative regulation,~~] shall satisfy the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in Section 2 of this administrative regulation; and

2. Does not exclude any licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters which integrally relate to the practice of nursing home administration;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable[~~acceptance~~] to the board.

Section 6. Responsibilities and Reporting Requirements of Licensees. (1) Each licensee shall be responsible for obtaining required continuing education hours. The licensee[~~He~~] shall:

(a) Identify his or her own continuing education needs;

(b)[:] Take the initiative in seeking continuing professional education activities to meet these needs[;] and

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(c) Seek ways to integrate new knowledge, skills, and attitudes.

(2) Each person holding licensure shall:

(a)(4) Select approved activities by which to earn continuing education hours;

(b)(2) Submit to the board, if applicable, a request for continuing education activities requiring approval by the board as established in Section 4 of this administrative regulation;

(c)(3) Maintain his or her own records of continuing education hours;

(d)(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period; and

(e)(5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his renewal, as required by this paragraph.

1. follows:

(a) Each person holding licensure shall maintain, for a period of two (2) years from the date of renewal, all documentation verifying successful completion of continuing education hours.;

2.(b) During the two (2) year licensure renewal period, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period.;

3.(c) Verification of continuing education hours shall not otherwise be reported to the board.;

4.(d) Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail;

(e) Documentation shall take the form of official documents including:

a.(1) Transcripts;

b.(2) Certificates;

c.(3) Affidavits signed by instructors; or

d.(4) Receipts for fees paid to the sponsor.

5.; and (f) Each licensee shall retain copies of the his documentation.

Section 7. Responsibilities and Reporting Requirements of Providers. (1) A provider[Providers] of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 4 of this administrative regulation, directly to the licensee.

(2) A provider[Providers] of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. (1) If an application for approval of continuing education hours is denied, the licensee may[shall have the right to] request reconsideration by the board of its decision.

(2) The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in an individual case[cases] involving medical disability, illness, or undue hardship as determined by the board, grant a waiver[waivers] of the minimum continuing education requirements or an extension[extensions] of time within which to fulfill the requirements or make a[the] required report[reports].

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding a license and shall be accompanied by a verifying document signed by a licensed physician.

(3) A waiver[Waivers] of the minimum continuing education requirements or an extension[extensions] of time within which to fulfill the continuing education requirements shall be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Rein-

statement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) Upon request by a licensee, the board may permit the licensee[him] to resume practice, with the provision that the licensee[he] shall receive thirty (30) hours continuing education within six (6) months of the date on which the licensee[he] is approved to resume practice.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 11. Incorporation by Reference. (1) "Application for Continuing Education", August 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREG WELLS, Board Chair

APPROVED BY AGENCY: July 24, 2013\

FILED WITH LRC: August 14, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, 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 continuing education requirements for the renewal of a license.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 216A.090 which allows the Board require continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity KRS 216A.070(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help licensees understand continuing education requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies existing requirements for continuing education.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update approved providers and make other changes.

(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 continuing education requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board by making continuing education requirements understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 800 individuals are licensed by the Board. This regulation primarily relates to future unidentified applicants for temporary permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals referenced above will need to comply with the continuing education requirements in order to renew their licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will more readily understand what types of continuing education courses are acceptable.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-Term Care Administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216A.070(3).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

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

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Long-Term Care Administrators (Amendment)

201 KAR 6:080. Code of ethics.

RELATES TO: KRS 216A.070(1)(a), (c), (d)

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(1)(a) requires the board to develop, impose, and enforce standards which shall be met by an individual licensed as a long-term care[nursing home] administrator. KRS 216A.070(1)(c) requires the board to discipline an individual who fails to meet those standards after licensure. KRS 216A.070(1)(d) requires the board to establish and carry out procedures to insure compliance with the established standards. This administrative regulation establishes a code of ethics as a portion of the standards which shall be met in compliance with KRS 216A.070(1)(a), (c), and (d).

Section 1. Definitions. (1) "Long term care administrator" means an individual responsible for the operation of a nursing home, as defined under KRS 216A.010(2).

(2) "Long term care[Nursing] facility" means an institution licensed pursuant to 902 KAR 20:300 and 902 KAR 20:008. [(2) "Nursing home administrator" means an individual responsible for the operation of a nursing home, as defined under KRS 216A.010(2).]

(3) "Resident" means an individual who resides as a patient in a nursing facility, pursuant to 900 KAR 2:060, Section 1(4)[(1), (4)].

Section 2. Responsibility to Residents. (1) A long-term care[nursing home] administrator shall:

(a) Advance and protect the welfare of the resident;
(b) Respect the rights of a person seeking service;
(c) Operate the facility consistent with laws and administrative regulations applicable to nursing facilities under KRS Chapter 216; and

(d) Have the duty to report to the proper authorities knowledge of resident abuse, pursuant to KRS Chapter 209.

(2) A long-term care[nursing home] administrator shall not:

(a) Provide services other than those for which the administrator is prepared and qualified to perform;
(b) Discriminate against or refuse professional service to anyone on the basis of race;
(c) Misrepresent qualifications, education, experience, or affiliations;

(d) Exploit the trust and dependency of a resident;
(e) Participate in activities that reasonably may be considered to create a conflict of interest, or have the potential to have a substantial adverse impact on the facility, its residents, or its staff;

(f) Engage in a sexual relationship or sexual contact, as defined under KRS 510.010(7), with a resident; or
(g) Engage in sexual or other harassment or exploitation of a resident, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or disciplinary proceeding.

Section 3. Confidentiality. A long-term care[nursing home] administrator shall not divulge confidential information, except:

(1) As mandated, or permitted, by law;

(2) To prevent a clear and immediate danger to a person;

(3) In the course of a civil, criminal, or disciplinary action if:

(a) The long-term care[nursing home] administrator is a defendant in that action; and
(b) The action arose from a service provided by the long-term care[nursing home] administrator; or

(4) To comply with the terms of a consent agreement if written informed consent has been obtained.

Section 4. Professional Competence and Integrity. (1) A long-term care[nursing home] administrator shall maintain standards of professional competence and integrity and shall be subject to disciplinary action for:

[(4)](a) Conviction of a felony, or a misdemeanor related to the practice as a long-term care[nursing home] administrator.

[(b)] Conviction shall include conviction based on:

1. A plea of no contest or an "Alford Plea"; or
2. The suspension or deferral of a sentence;[-]

[(b)](2) Having been subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

[(c)](3) ~~Impairment due to mental incapacity or the abuse of alcohol or another substance which negatively impacts the practice of nursing home administration;~~

[(4)] Misrepresentation or concealment of a material fact in obtaining or seeking reinstatement of license;

[(d)](5) Refusing to comply with an order issued by the board;

[(e)](6) Failing to cooperate with the board by not:

1. [(a)] Furnishing in writing a complete explanation to a complaint filed with the board;

2. [(b)] Furnishing documentation requested by the board regarding a complaint;

3. [(c)] Appearing before the board at the time and place designated; or

4. [(d)] Properly responding to a subpoena issued by the board; or

[(f)](7) Violating a state statute or administrative regulation governing the practice of long-term care[nursing home] administration.

(2) Impaired Licensees.

(a) A licensee shall not practice as a long-term care administrator if the competency of the licensee is impaired due to a mental, emotional, psychological, pharmacologic, or substance abuse condition.

(b) If an impairment develops during the employment as a long-term care administrator, the licensee shall:

1. Terminate or suspend the employment in an appropriate manner;

2. Notify the long-term care facility where the licensee is employed of the impairment in writing; and

3. Assist the long-term care facility in obtaining services from another licensee.

(c) Full compliance with paragraph (b) of this subsection shall not constitute a defense to an administrative charge brought against a licensee alleging violation of paragraph (a) of this subsection but may be considered by the board as a mitigating factor.

GREG WELLS, Board Chair

APPROVED BY AGENCY: July 24, 2013

FILED WITH LRC: August 14, 2013 at 3 p.m.

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CONTACT PERSON: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, 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 the code of ethical conduct to which a licensee is held.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 216A.070(1)(a,c,d).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity KRS 216A.070(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help the public in understanding the requirements for ethical practice as a long-term care administrator.

(2) If 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 existing ethical requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that licensees understand their ethical duties.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board by making the ethical requirements for administrators more easily understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 800 individuals are licensed by the Board. This regulation primarily relates to future unidentified applicants for temporary permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to continue to conform their conduct to the ethical standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will clearly understand the standards they must meet and they will be benefiting their own business by achieving a higher standard of care..

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-Term Care Administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216A.070(3).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Long-Term
Care Administrators
(Amendment)**

201 KAR 6:090. Complaint [management] process.

RELATES TO: KRS 216A.070(1)(e)

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(1)(e) requires the board to investigate a person engaging in a practice which violates the provisions of KRS Chapter 216A. This administrative regulation establishes procedures for the investigation of a complaint received by the board.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 216A or 201 KAR Chapter 6[the administrative regulations promulgated thereunder].

(3) "Complaint" means:

(a) A written allegation alleging misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 216A, 201 KAR Chapter 6[the administrative regulations promulgated thereunder], or another state or federal statute or regulation;

(b) A notification which relates to the credential of the individual pursuant to KRS Chapter 216A; or

(c) A ["]Notification of Substandard Care["] issued by the Cabinet for Health and Family Services, as defined in 42 C.F.R. 488.301.

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal action.

(5) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a dispensation

of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(7) "Standards of practice committee" means the committee appointed pursuant to Section 7 of this administrative regulation.

Section 2. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity. A complaint shall be in writing and shall be signed by the person offering the complaint. The board may file a complaint or a formal complaint based on information in its possession.

(2)(a) Upon receipt of a complaint against a licensee,[:

(a)] a copy of the complaint shall be sent to the licensee[individual] named in the complaint along with a request for that licensee's[individual's] response to the complaint.

(b) The licensee[individual] shall file a response to the complaint within twenty (20) days from the date the letter was mailed as signified by the date on the letter[be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant. The complainant shall have five (5) days from the receipt to submit a written reply to the response].

(3) Upon receipt of a Notification of Substandard Care, a copy of the notification shall be sent to the licensee administering the facility at issue[individual] along with a letter from the board requesting the following information:

(a) The effective date of that administrator becoming the administrator of record for the facility. If that has occurred within the last 180 days, the facility shall furnish the name of the previous administrator,[:]

(b) Copy of completed and approved 2567L and Notice of Acceptance of Allegation of Compliance as issued by the Cabinet for Health and Family Services;

(c) Copy of Notice of Results of Revisit as issued by the Cabinet for Health and Family Services; and

(d) Formal notice of each remedy imposed by the Cabinet for Health and Family Services, if applicable.

(4) A licensee shall provide the documentation listed in subsection (3) of this section if a request is made by the board pursuant to that provision.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the licensee's[individual's] response, the standards of practice committee shall consider the complaint, the licensee's[individual's] response,[complainant's reply to the response,] and other relevant material available and make a recommendation to the board regarding whether an investigation of the complaint is required[The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint].

(2) If, in the opinion of the board, a complaint does not warrant a[the] formal investigation[of a complaint against an individual], the board shall dismiss the complaint[and shall notify both the complaining party and the individual of the outcome of the complaint].

(3)(a) If, in the opinion of the board, a complaint warrants a formal investigation against either a licensed individual or a person who may be practicing without appropriate credential, the board shall authorize an investigator to investigate the matter and make a report to the standards of practice committee[at the earliest opportunity].

(b) If, at any time, the board determines that it has enough information, it may file a formal complaint pursuant to Section 4[In the case of a notification of substandard care, the board shall:

1. Open a formal investigation; or

2. Proceed under Section 4(3)] of this administrative regulation.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1)(a) Upon completion of the formal investigation, the investigator shall submit a report to the standards of practice committee of the facts regarding the complaint.

(b) The committee shall review the investigative report and

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make a recommendation to the board.

(c) The board shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and whether a complaint shall be filed.

(2) If, in the opinion of the board, a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) If ~~[When]~~ in the opinion of the board, a complaint warrants the issuance of a formal complaint against a licensee, the standards of practice committee shall ~~authorize~~prepare a formal complaint which states ~~[clearly]~~ the charge or charges to be considered at the hearing. The formal complaint shall be approved by the board and~~[reviewed by the board and, if approved, signed by the chairman and]~~ served upon the individual as required by KRS 13B.050~~[13B.040]~~.

(4) If, in the opinion of the board, probable cause exists that an individual is guilty of~~a person shall be~~ practicing without appropriate credential, it may:

(a) Issue a letter ordering that person to cease and desist from the unlicensed practice of long-term care~~[nursing home]~~ administration;

(b) Forward information to the county attorney of the county of residence of the person allegedly practicing without appropriate credential with a request that appropriate action be taken under KRS 216A.150 and 216A.990; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of long-term care~~[nursing home]~~ administration.

Section 5. Settlement by Informal Proceedings~~[- Letter of Admonishment]~~. ~~[(1)]~~ The board~~[- through counsel and the standards of practice committee]~~ may at any time enter into a settlement agreement or agreed order~~[informal proceedings]~~ with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

~~[(1)(a)]~~ An agreed order or settlement agreement~~[reached through this process]~~ shall only be effective after being~~[be]~~ approved by the board and signed by the individual who is the subject of the complaint and the chairman.

~~[(2)(b)]~~ The board may employ mediation as a method of resolving the matter informally. ~~[(2)(a)]~~ The board may issue a written admonishment to the licensee if in the judgment of the board:

1. An alleged violation is not of a serious nature; and

2. The evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur.

(b) A copy of the admonishment shall be placed in the permanent file of the licensee.

(c) Within thirty (30) days of receipt of an admonishment, the licensee shall file:

1. A response to the admonishment which shall be placed in the licensee's permanent licensure file; or

2. A request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.]

Section 6. Notice and Service Process. A notice required by KRS Chapter 216A or this administrative regulation shall be issued pursuant to KRS 13B.050~~[13B.040]~~.

Section 7. Standards of Practice Committee. The standards of practice committee shall:

(1) Be appointed by the chairman of the board; and~~[(a)]~~

~~(a) Review a complaint or investigative report; and~~

~~(b) Participate in an informal proceeding to resolve a formal complaint;]~~

(2) Consist of two (2) or three (3) board members~~[persons, including:~~

~~(a) A board member who is a nursing home administrator;~~

~~(b) A board member who is not a nursing home administrator; and~~

~~(c) One (1) other person, which may be the executive director of the board or another staff member.]~~

GREG WELLS, Board Chair

APPROVED BY AGENCY: July 24, 2013

FILED WITH LRC: August 14, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 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: Karen Lockett, Board Administrator, Board of Licensure for Long-Term Care Administrators, 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 the process by which the Board receives and processes complaints against licensees.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 216A.070(1)(e).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity KRS 216A.070(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help the public in understanding how they can bring a complaint against a licensee.

(2) If 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 existing requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the public understands the process to file a complaint and licensees understand the due process protections afforded to them.

(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 making the complaint process more easily understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 800 individuals are licensed by the Board. This regulation primarily relates to future unidentified applicants for temporary permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to observe this process if a complaint is filed against them.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will clearly understand the due process rights afforded to them under the provisions of this section.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-Term Care Administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216A.070(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 Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:040. Fees.

RELATES TO: KRS 309.312(1)(a), (4), 309.314(1), (2), (4), (6)

STATUTORY AUTHORITY: KRS 309.304(3), 309.306, 309.314(1), (2), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.314 require the Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to effectively carry out the provisions of KRS 304.300 to 309.319

and to establish requirements concerning license fees. This administrative regulation establishes all fees charged by the board.

Section 1. Fees for Licensure. (1) The application fee for initial licensure shall be fifty (50) dollars. This fee shall be nonrefundable.

(2) The initial licensure fee shall be ~~\$125~~~~[\$400]~~. If the application for initial licensure is denied, the initial licensure fee shall be refunded upon written request of the applicant.

(3) The annual renewal fee shall be ~~\$125~~~~[seventy-five (75) dollars]~~. Renewal fees shall not be refundable.

Section 2. Fees for Temporary Licensure. The application fee for initial temporary licensure shall be fifty (50) dollars. This fee shall be nonrefundable.

(2) The initial licensure fee for a temporary license shall be ~~\$125~~~~[fifty (50) dollars]~~. If the application for initial temporary licensure is denied, the initial licensure fee shall be refunded upon written request of the applicant. The annual fee to maintain or extend a temporary license shall be ~~\$125~~~~[fifty (50) dollars]~~. This fee shall be nonrefundable.

Section 3. Late Renewal and Extension Fees. (1) All licenses renewed during the sixty (60) day grace period shall require payment of a late renewal fee of sixty (60) dollars in addition to the current renewal fee set forth in Section 1(3) of this administrative regulation.

(2) All temporary licenses extended during the sixty (60) day grace period shall pay a late fee of thirty-five (35) dollars in addition to the current extension fee set forth in Section 2(3) of this administrative regulation.

(3) Late renewal and extension fees shall not be refundable.

Section 4. Reinstatement Fee. (1) The reinstatement fee for a license terminated pursuant to KRS 309.314(3) shall be \$125, in addition to the current renewal or extension fee as set forth in Section 1(3) or 2(3) of this administrative regulation.

(2) The reinstatement fee shall not be refundable.

Section 5. Fee for a Reciprocal License. (1) The fee for a reciprocal license shall be \$250.

(2) The reciprocal license fee shall not be refundable.

Section 6. Duplicate License Fee. The fee for a duplicate license shall be ten (10) dollars.

TIM OWENS, Board Chair

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 15, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, P.O. Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes fees for interpreters.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees which generate the revenue that the Board needs to operate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 309.309(3), KRS 309.312(1)(a), and KRS 309.314(1), (2), and (4) which authorize the Board to charge fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in establishing fees which generate the revenue which the Board needs to operate.

(2) If 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 increases fees.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to increase fees on licensees because recent increases in administrative costs by the Board's contracting state agency which provides administrative services, the Office of Occupations and Professions, have led the Board to operate with an annual budget deficit.

(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 related to fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the Board with additional revenue necessary to continue to operate and fulfill its statutory duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 250 licensed in the state and approximately fifty (50) temporary licensees.

(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 required to pay greater fees to obtain or renew a license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost those entities fifty (50) - seventy-five (75) dollars in additional costs depending on whether they hold temporary or permanent licensure and whether they are applying for initial licensure or renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licenses will continue providing the services that the Board currently provides including investigating unethical and illegal practitioners and ensuring that qualifications are met by initial licensees.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment specifically relates to a fee increase but the change will not cause any additional services to be used which would require additional revenue.

(8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation increases fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not treat similarly situated persons differently based on a differentiating factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Interpreters for the Deaf and Hard of Hearing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.309(3), KRS 309.312(1)(a), and KRS 309.314(1), (2), and (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. This amendment should generate approximately an additional \$8,000 in revenue for the Board.

(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. This amendment should generate approximately an additional \$8,000 in revenue for the Board.

(b) How 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 should generate approximately an additional \$8,000 in revenue for the Board annually in future years.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The fee increase should generate about \$8,000 in additional funds as it constitutes a fifty (50) dollar increase annually on approximately 250 full licensees and a seventy-five (75) dollar increase on approximately 50 temporary licensees. Additionally, new applicants will be paying a greater fee which should provide some additional revenue if the Board continues to gain new licensees.

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

301 KAR 1:130. Live bait for personal use.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 105.025(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 ~~to regulate creel and possession limits of fish, including the size or types of devices used for taking fish and the places where the taking of fish is permitted~~. This administrative regulation establishes the procedures for the taking of live bait for personal use.

Section 1. Definitions. (1) "Live bait" means live bait fish-es ~~minnows, shad, herring~~, crayfish, salamanders, frogs except bullfrogs, tadpoles, native lampreys, Asiatic clams (Genus Corbicula), and other aquatic invertebrate organisms except mus-

sels.

(2) "Live bait fishes" means:

(a) Rough fishes, except blackside dace, palezone shiner, relict darter, Cumberland darter, and tuxedo darter; or

(b) Redear sunfish less than six (6) inches in length["Minnows" means fishes under six (6) inches in length, except blackside dace, palezone shiner, relict darter, duskytail darter, largemouth bass, smallmouth bass, Kentucky bass, redeer sunfish, rock bass, trout, crappie, walleye, sauger, pikes, white bass, yellow bass, striped bass, and muskellunge, or any hybrids of the above].

(3) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes a person who is license exempt pursuant to KRS 150.170[is defined in 301 KAR 1:410(6)].

Section 2. Equipment. (1) Any other organisms not defined as live bait pursuant to Section 1 of this administrative regulation shall be returned immediately to the water.

(2) Live bait for personal use shall only be taken with the following gear:

(a) The maximum size seine for:

1. Take in the Ohio and Mississippi Rivers and Barkley and Kentucky Lakes shall be:

a. Thirty (30) feet long;

b. Six (6) feet deep; and

c. With bar mesh no larger than one-fourth (1/4) of an inch;

2. All other waters of the Commonwealth shall be:

a. Ten (10) feet long;

b. Four (4) feet deep; and

c. With bar mesh no larger than one-fourth (1/4) of an inch.

(b) The maximum size for a minnow trap shall be:

1. Three (3) feet long;

2. Eighteen (18) inches in diameter; and

3. With openings no larger than one (1) inch.

(c) The maximum size for a dip net shall be three (3) feet in diameter, and shall only be allowed in the following waters:

1. Ohio River;

2. Tennessee River;

3. Mississippi River;

4. Cumberland River below Barkley Dam;

5. Kentucky River below Lock Number Fourteen (14); and

6. All lakes over 1,000 acres.

(d) The maximum size for a sport cast net on a statewide basis shall be twenty (20) feet in diameter with one (1) inch bar mesh, except take is prohibited in the following bodies of water:

1. Lakes with a surface area of less than 500 acres; and

2. Hatchery Creek in Russell County, a tributary to the Cumberland River located below Wolf Creek Dam[Live bait shall be taken with the following gear for personal use. Other species except live bait taken with this gear shall be returned immediately to the water:

(1) Seine:

(a) Maximum size shall be ten (10) feet long, four (4) feet deep, one-fourth (1/4) inch bar mesh, with taking permitted statewide; and

(b) Maximum size shall be thirty (30) feet long, six (6) feet deep, one-fourth (1/4) inch bar mesh, with taking permitted in Ohio and Mississippi Rivers and Kentucky and Barkley lakes.

(2) Minnow trap: Maximum size shall be three (3) feet long, eighteen (18) inches in diameter, one (1) inch openings for catching, with taking permitted statewide.

(3) Dip net: Maximum size shall be three (3) feet in diameter, with taking permitted in Ohio, Tennessee, and Mississippi Rivers; Cumberland River below Barkley Dam; Kentucky River below Lock #14; and all lakes over 1,000 acres.

(4) Sport cast net: The maximum size shall be twenty (20) feet in diameter, one (1) inch bar mesh, with taking permitted statewide except for:

(a) Streams stocked with trout, which include statewide streams, national forest streams, seasonal catch and release streams, and the Fort Campbell and Fort Knox military reservations that are cited in the List of Streams Stocked with Trout, 2008;

(b) Lakes with a surface area of less than 500 acres; and

(c) Crocus and Marrowbone Creeks, Cumberland County.

1. Crocus Creek shall be closed to cast nets for an area ex-

tending from its mouth to fifty (50) yards upstream.

2. All other tributaries of the Cumberland River below Wolf Creek Dam to the Tennessee state line shall be closed to cast nets].

Section 3. Bait. (1) A mussel, except for an Asiatic clam, shall not be taken or used as bait[Mussels shall not be taken for use as bait except Asiatic clams].

(2) A sport fisherman shall not possess bait in an amount greater than the following[fishermen shall fisherman shall not possess bait in amounts greater than those listed in each category below]:

(a) 500 live bait fishes[minnows];

(b) 500 crayfish;

(c) Twenty-five (25) dusky salamanders of the genus Desmognathus;

(d) Five (5) frogs, except[other than] bullfrogs[]];

(e) Five (5) tadpoles;

(f) 100 native lampreys; or

(g) 500 aquatic invertebrates other than mussels, excluding Asiatic clams[(h) 500 shad; and

(i) 500 herring].

Section 4. Possession and Movement of Live Bait for Personal Use. (1) Live wild-caught shad or herring shall:

(a) Only be used in the water body where they were collected; and

(b) Not be transported to or used in a different body of water.

(2) Prohibited aquatic species, as established in 301 KAR 1:122, shall not be possessed or used as live bait[Material incorporated by Reference. (1) "List of Streams Stocked with Trout, 2008", 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, between the hours of 8 a.m. and 4:30 p.m. Eastern time].

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 7, 2013

FILED WITH LRC: August 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by September 30, 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 types of live bait and legal methods that may be used to take live bait for personal use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of 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 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by regulating the amount of live bait, size or types of devices used for taking live bait, and the places where the taking of live bait is permitted.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow sport fishermen to harvest live bait with a cast net in all water bodies in Kentucky except in lakes less than 500 acres and in Hatchery Creek which is located below Wolf Creek Dam. It will also restrict the use of live wild-caught shad and herring to only the water body from which they were collected.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow sport fishermen to collect live bait for personal use in all tributaries of the Cumberland River located below Wolf Creek Dam and trout streams with the exception of Hatchery Creek. It is also needed to prevent the accidental introduction of young Asian carp into new water bodies as young Asian carp are difficult to separate from native shad and herring.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who collect live bait for personal use will be affected by this amendment. At present, there is no estimate of the number of people who collect live bait for personal use 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: 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 to individuals who collect live bait for personal use to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will now be able to collect live bait for personal use from more water bodies, but shall only use live wild-caught shad and herring in the water body from which they were collected.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to administer.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied be-

cause all individuals who collect live bait for personal use are being treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:132. Sale of live bait.

RELATES TO: KRS 150.175, 150.180, 150.280, 150.450, 150.485

STATUTORY AUTHORITY: KRS 150.025

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 requirements apply to a limited area. This administrative regulation establishes the requirements under which live bait may be taken, transported, and sold[relating to the taking of fish and wildlife including where the fish and wildlife may be taken. This administrative regulation establishes the conditions and provisions under which live bait may be taken, transported, and sold. It is necessary to protect the state's aquatic resources; to more clearly designate licenses needed to take and sell live bait, and to add a more effective method to take Asiatic Clam (*Corbicula fluminea*), a recently recognized live bait].

Section 1. Definitions. (1) "Asian carp" means:

(a) Bighead carp;

(b) Black carp;

(c) Grass carp; or

(d) Silver carp.

(2) "Live bait" means the condition the following organisms are

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in when taken, even though the organism may later be sold as a part no longer living:

- (a) Live bait fishes;
- (b) Crayfish;
- (c) Salamanders;
- (d) Frogs, except bullfrogs;
- (e) Tadpoles;
- (f) Native lampreys;
- (g) Asiatic clams (Genus Corbicula); or
- (h) Any aquatic invertebrate organism.

(3) "Live bait fishes" means rough fishes, except blackside dace, palezone shiner, relict darter, Cumberland darter, and tuxedo darter.

Section 2. Legal sources of live bait. (1) Live bait may be sold by a person possessing a valid:

(a) Live fish and bait dealer's license if the person purchases the live bait from a legal source as established in this section; or

(b) Live commercial fishing license if the live bait is taken pursuant to the requirements of this section.

(2) Asiatic clams may be taken and sold as live bait by a person possessing a valid commercial musseling license.

(3) Live commercially harvested shad, herring, or Asian carp shall not be transported and sold as live bait.

(4) Dead shad, dead herring, dead Asian carp, or other live bait may be sold whole or in part, if taken pursuant to Section 3 of this administrative regulation.

(5) Legal sources of live bait include:

(a) Live bait hatched and reared in Kentucky by a person possessing a valid commercial fish propagation permit;

(b) Legal commercial live bait sources in states outside of Kentucky;

(c) A person selling Asiatic clams obtained from a legal brailing method, if the person possesses a valid commercial musseling license;

(d) A person selling Asiatic clams obtained by means of a tagged commercial bait rake pursuant to Section 3 of this administrative regulation, if the person possesses a valid commercial fishing license; or

(e) A person with a valid commercial fishing license who is selling dead shad, dead herring, dead Asian carp, or live bait, if taken pursuant to Section 3 of this administrative regulation.

(6) A licensed live fish and bait dealer who purchases live bait from legal sources outside of Kentucky shall possess a bill of sale that lists the:

(a) Date of purchase; and

(b) Number of each type of live bait purchased.

Section 3. Legal methods of take. (1) A person shall not take live bait from any public waterway or water body for commercial purposes, except as established in this section.

(2) A person who holds a valid commercial fishing license may sell:

(a) Live bait that was taken with legally set commercial fishing gear;

(b) Dead shad and dead herring, if taken with a dip net of three (3) feet or less or a cast net with a maximum diameter of twenty (20) feet and possessing a maximum bar mesh of one (1) inch in the following bodies of water:

1. Cumberland River below Barkley Dam;

2. Kentucky River downstream of Lock Number Fourteen (14);

3. Mississippi River;

4. Ohio River; or

5. Tennessee River; or

(c) Asiatic clams taken in legal commercial fishing waters pursuant to 301 KAR 1:150 with a tagged commercial live bait rake having the following specifications:

1. A maximum width of twenty (20) inches;

2. A maximum tine length of five (5) inches;

3. A maximum distance in between tines of one (1) inch;

4. A basket with a maximum:

a. Width of twenty (20) inches;

b. Length of ten (10) inches; and

c. Height of eight (8) inches;

5. A rigid handle with a maximum length of twenty (20) feet; and

6. The rake does not contain a bridle that would allow dragging.

(3) Any mussel other than an Asiatic clam shall be returned to the water unharmed.

(4) A person shall not possess a commercial live bait rake in a boat that has a musseling brail aboard or attached to the boat.

Section 4. Other requirements. (1) A person, corporation, or other business entity transporting, selling, or possessing live bait for sale in Kentucky is required to hold a valid live fish and bait dealer's license and have in possession the license or exact copy thereof when transporting, selling, or holding live bait organisms in Kentucky.

(2) A live fish and bait dealer's license shall not be used in lieu of a fish propagation or transportation permit if these permits are also legally required.

(3) A person, corporation, or other business entity who transports live bait from one (1) state, through Kentucky, to another state without conducting any business in Kentucky shall not be required to have a live fish and bait dealer's license, but shall be required to have a valid Kentucky transportation permit.

(4) A person, corporation, or other business entity is not required to possess a live fish and bait dealer's license if selling live bait as food in establishments licensed by another state agency to sell resale or wholesale food products["Live bait" means minnows; shad; herring; crayfish; salamanders; all frogs, except bull frogs; all tadpoles; native lampreys; Corbicula and aquatic invertebrate organisms. Live bait refers to the condition of the animal when taken even though it may eventually be sold as a part no longer living.

Section 2. Live bait may be sold by a licensed live fish and bait dealer if purchased from a recognized source as specified in this administrative regulation. Live bait can be sold by a licensed commercial fisherman only if taken in accordance with this administrative regulation. Corbicula may be taken and sold as bait by a licensed mussel fisherman. The source of live bait is permitted if:

(1) The live bait is hatched and reared by a licensed propagator in standing private water (ponds or lakes) or commercial hatchery raceways within the boundaries of Kentucky;

(2) The live bait is purchased from legal commercial sources located in states other than Kentucky; however, licensed live fish and bait dealers doing business in Kentucky having possession of live bait obtained from sources outside of Kentucky must have a bill of sale showing the date and number of each kind of organism purchased or obtained;

(3) The live bait is purchased from a licensed mussel fisherman, Corbicula may, if taken by means of a legal brail, be resold as bait. No other species of mussel may be sold for bait;

(4) The live bait is purchased from a licensed commercial fisherman, Corbicula taken by means of a tagged commercial bait rake may be resold as bait as specified in Section 3 of this administrative regulation; and

(5) The live bait is purchased from a licensed commercial fisherman. Shad, herring, and other live bait may be sold in whole or part if taken as specified in Section 3 of this administrative regulation.

Section 3. Live bait may not be harvested by any method from any public stream for commercial purposes except as specified in this section:

(1) Licensed commercial fishermen may sell live bait taken in legally set commercial fishing gear.

(2) Licensed commercial fishermen may take and sell shad and herring only if taken by use of a dip net of a diameter of three (3) feet or less made of any type material or cast net twenty (20) feet maximum diameter with one (1) inch maximum bar mesh in the Tennessee River, Kentucky River downstream from Lock #14, Ohio River, Cumberland River below Barkley Dam, Mississippi River and in all lakes 1,000 acres or larger.

(3) Licensed commercial fishermen may sell live bait if taken from the Mississippi and Ohio rivers only by the use of a one-fourth (1/4) inch mesh seine no more than thirty (30) feet long and six (6)

feet deep.

~~(4) Licensed commercial fishermen may take and sell Corbicula by use of a tagged commercial live bait rake in commercial waters only.~~

~~(a) The rake may be no more than twenty (20) inches wide, have tines no longer than five (5) inches, the tines may be set no more than one (1) inch apart, and the basket of any material may be no larger than eight (8) inches by twenty (20) inches by ten (10) inches with a rigid handle no longer than twenty (20) feet. A commercial gear tag must be permanently attached to the handle.~~

~~(b) The rake must be operated with the handle in hand. No bridle to permit dragging is allowed.~~

~~(c) All mussels taken other than Corbicula must be immediately returned to the water unharmed.~~

~~(d) It shall be illegal to have a commercial live bait rake in a boat that also has a mussel trail aboard or attached to the boat regardless of what type licenses the occupants possess.~~

~~Section 4. Possession of live bait by a licensed live fish or bait dealer obtained in any other manner than those specified in Section 2 of this administrative regulation is prohibited.~~

~~Section 5. All individuals, corporations, or other business entities transporting, selling, or possessing live bait for sale in Kentucky are required to have an appropriate live fish and bait dealers license issued in the name of the individual, corporation, or other business entity that is transacting business in this commonwealth. This license or exact copy thereof must be in the possession of the persons who are transporting, selling, or possessing these organisms in Kentucky. This license is not in lieu of a propagation or transportation permit if they also are applicable to the operation.~~

~~Section 6. Those individuals, corporations, or other business entities transporting live bait from one state to another state through Kentucky without conducting any type of business in this commonwealth are not required to have a live fish and bait dealers license, but must have a valid transportation permit.~~

~~Section 7. Those individuals, corporations, or other business entities who sell any of the organisms above mentioned for food in establishments licensed by another state agency to sell retail or wholesale food stuffs are not required to have a live fish and bait dealers license.~~

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 7, 2013

FILED WITH LRC: August 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 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 September 30, 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 conditions and provisions under which live bait may be taken, transported, and sold.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the state's aquatic resources.

(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 wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in protecting the state's aquatic resources by establishing the conditions and provisions under which live bait may be taken, transported, and sold.

(2) If 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 prohibit the transportation and sale of commercial harvested live shad, herring, and Asian carp for use as live bait. Dead shad, herring, and Asian carp will still be permitted to be transported and sold as live bait.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to protect the state's valuable commercial and sport fisheries by attempting to prevent the spread of invasive species.

(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 exact number of commercial fishermen affected is not known but all of those commercial fishermen who harvest shad, herring, and Asian carp for live bait will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishermen who harvest shad, herring, and Asian carp for sale as live bait 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 commercial fishermen identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The potential spread of Asian carp will be reduced resulting in additional protection to Kentucky's valuable commercial and sport fish populations.

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

(a) Initially: There will no initial costs to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

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

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fees will be established

(9) TIERING: Is tiering applied? Tiering was not applied because all commercial fishermen must comply 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 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(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take~~[set seasons, establish bag or creel limits]~~, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the department's Asian carp harvest program.

Section 1. Definitions. (1) "Asian carp" means:

(a) Bighead carp;

(b) Black carp;

(c) Grass carp; or

(d) Silver carp~~[, bighead carp, black carp, or grass carp]~~.

(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp Harvest Program; and

(b) Fishing in restricted water.

(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; or

(b) Commercial fishing with gill or trammel nets is prohibited.

(5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish pursuant to 301 KAR 1:060.

(6) "Whip net set" means a gill or trammel net that is:

(a) Set to encircle and harvest Asian carp; and

(b) Always tended by a program participant while in the water.

Section 2. Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program;

(2) Possess a valid Kentucky commercial fishing license;

(3) Have possessed a valid Kentucky commercial fishing license for at least three (3) consecutive years; and

(4) Have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period.

Section 3. Program Participant Requirements. A program participant shall:

~~(1) Obtain an agreement with a fish buyer to deliver a requested poundage of Asian carp;~~

~~(2) Call the department at 800-858-1549 at least forty-eight (48) hours in advance of the requested fishing date and provide the following information:~~

~~(a) The participant's name;~~

~~(b) The fish buyer's name and phone number;~~

~~(c) Date requested;~~

~~(d) The location in the restricted water to be fished; and~~

~~(e) The name or location of the boat ramp that will be used;~~

~~(2) Harvest a weight ratio of at least seventy-five (75) percent Asian carp to twenty-five (25) percent scaled rough fish over a one (1) month period;~~

~~(3) Total poundage of the Asian carp requested by the fish buyer.~~

~~(3) Only harvest Asian carp;~~

~~(4) Only fish:~~

~~(a) On dates approved by the department; and~~

~~(b) At a location approved by the department; and~~

~~(c) When a department observer is present;~~

~~(4) Immediately notify the department if the participant changes the:~~

~~(a) Fishing location in the restricted water body; or~~

~~(b) Boat ramp being used;~~

~~(5) Only use a whip net set with a minimum bar mesh size of three and one-quarter (3.25) inches;~~

~~(6) Complete and submit to the department [Sign] a Daily Harvest and Release Summary Card immediately after each day's fishing;~~

~~(7) Be allowed to sell all harvested Asian carp and scaled rough fish pursuant to Section 2 of this administrative regulation;~~

~~(8) Immediately release all by-catch;~~

~~(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the requirements of 301 KAR 1:155; and~~

~~(10) Harvest a weight ratio of at least seventy-five (75) percent Asian carp to twenty-five (25) percent scaled rough fish over a one (1) month period; and~~

~~(11) Be suspended from the program:~~

~~(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection ~~(2)~~ [(10)] of this section are not met; and~~

~~(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.~~

Section 4. Department Requirements. (1) The department shall:

(a) Maintain a list of program participants and their contact information which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly; and [;]

(b) Review all restricted water fishing requests pursuant to the requirements of Section 3 of this administrative regulation. [;]

(2) The department shall approve a qualified fishing request by assigning:

(a) ~~A department observer to each program participant;~~

(b) ~~A fishing location and boat ramp to a program participant for a program participant and department observer], except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and~~

(b) ~~[(e)] The time period when fishing may occur, not to exceed a three (3) consecutive day period, and~~

(3) ~~A department observer shall:~~

(a) ~~Contact the program participant for an arranged meeting time and location;~~

(b) ~~Be present during each approved fishing period by either:~~

1. ~~Traveling in the participant's boat, if allowed; or~~

2. ~~Following the participant in a department boat;~~

(c) ~~Monitor Asian carp harvest and release of by-catch during each approved fishing period; and~~

(d) ~~Complete a Daily Harvest and Release Summary Card.~~

(4) The department shall not approve a fishing request for the following reasons:

(a) Higher than normal by-catch is likely to occur at that location and time;

(b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time;
 or

(c) A requested date falls on:

1. Memorial Day;

2. Labor Day;

3. July 4; or

4. A Saturday or Sunday from April 1 through September 30;

or

(d) ~~A department observer is unavailable on the requested date].~~

Section 5. Program disqualification. A program participant whose commercial fishing license becomes revoked or suspended pursuant to 301 KAR 1:155 shall be disqualified from participating in the Asian carp harvest program while that license is revoked or suspended.

Section 6. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 7, 2013

FILED WITH LRC: August 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 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 September 30, 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 requirements for the Asian carp harvest program, which allows commercial harvest of Asian carp in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth without the use of a department assigned observer.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the need for an approved commercial fisherman to have a department assigned observer being present when fishing in restricted waters.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make it easier for commercial fishermen to harvest Asian carp from restricted waters and to remove the need for the department to always have assigned observers present.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will potentially affect at least twenty (20) commercial fishermen that are initially anticipated to participate in Asian carp removal from restricted waters. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishermen will no longer be required to have a department assigned observer present when fishing restricted waters for Asian carp.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will benefit from this amendment because they will now be able to fish for Asian carp in restricted waters without a department assigned observer.

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

(a) Initially: There will be no cost to the department to implement this administrative regulation. In fact, it will reduce the cost to the department as the department will no longer need to pay observers to be present with the commercial fishermen when they fish for Asian carp in restricted waters.

(b) On a continuing basis: There now will be no continual cost to the Department because the department will not need to pay observers to be present with the commercial fishermen when they

fish for Asian carp in restricted waters.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation because all commercial fishermen who fish for Asian carp 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' Fisheries Division and Law Enforcement Division 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(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local fisheries and therefore local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? In fact, the cost to administer this program will be reduced as the department will no longer need to pay an observer to be present with the commercial fishermen when fishing in restrictive waters.

(d) How much will it cost to administer this program for subsequent years? It will not cost the department 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:

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.170, 150.370, 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

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 statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer regulations on public areas.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Upland bird" means a grouse or northern bobwhite.

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

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

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

(4) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

Section 3. On a Wildlife Management Area owned or managed by the department:

(1) A person shall wear hunter orange clothing if a firearm is allowed for deer hunting, as established in 301 KAR 2:172.

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person hunting:

(a) Waterfowl; or

(b) Raccoon or opossum at night.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

Section 4. Exceptions on Specific Public Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt with a breech-loading firearm.

(2) Beaver Creek WMA, including private inholdings.

(a) Grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(4) Cane Creek WMA, including private inholdings.

(a) Grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(5) Cedar Creek Lake WMA.

(a) Rabbit season shall be closed after December 31.

(b) Squirrel season shall coincide with the statewide season.

(c) The area shall be closed to all other small game and furbearer hunting.

(6) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

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- (b) Rabbit season shall be closed after December 31.
- (c) Grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation.
- (d) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.
 - 1. Any person with a valid hunting license may take a pheasant.
 - 2. The daily limit per hunter shall be three (3) birds of either sex.
- (e) Quota fox hunting field trials.
 - 1. There shall be a maximum of two (2) four (4) day events per calendar year.
 - 2. Each event shall be limited to 250 participants.
 - 3. The area shall be closed to nonparticipants.
 - 4. A participant shall:
 - a. Wear a laminated identification badge issued by the department during the event.
 - b. Return the laminated badge at the close of the event.
- (7) Curtis Gates Lloyd WMA.
 - (a) Northern bobwhite and rabbit seasons shall be closed after December 31.
 - (b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if squirrel hunting.
- (8) Dix River WMA.
 - (a) Northern bobwhite and rabbit seasons shall be closed after December 31.
 - (b) Grouse season shall be open from October 1 through December 31.
- (9) Fleming WMA.
 - (a) Northern bobwhite and rabbit seasons shall be closed after December 31.
 - (b) Grouse season shall be open from October 1 through December 31.
- (10) Green River Lake WMA.
 - (a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.
 - (b) Northern bobwhite and rabbit seasons shall be closed after December 31.
- (c) Pheasant.
 - 1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.
 - 2. The daily limit per hunter shall be three (3) birds of either sex.
- (d) The area shall be closed to grouse hunting and trapping.
- (11) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
- (12) Kieber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
- (13) Lake Cumberland WMA.
 - (a) Grouse season shall be open from October 1 through December 31.
 - (b) Northern bobwhite and rabbit seasons shall be closed after December 31.
- (14) Mill Creek WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
- (15) Miller-Welch Central Kentucky WMA.
 - (a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open.
 - (b) A person shall not allow a dog to be unleashed:
 - 1. From April 1 until the third Saturday in August.
 - 2. On a Monday, Wednesday, or Friday during the remainder of the year, except:
 - a. If a person is hunting squirrels during an open season; or
 - b. If a person is participating in an authorized field trial.
- (16) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
- (17) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
- (18) Otter Creek Outdoor Recreation Area.
 - (a) Except as authorized by the department, a person shall not

- enter the area during a deer quota hunt without a valid quota hunt confirmation number.
- (b) Northern bobwhite season shall be closed.
- (c) Rabbit hunting season shall be from December 1 through December 31.
- (d) Trapping season shall be from January 1 through the last day in February.
- (e) A person who traps on the area shall:
 - 1. First obtain prior authorization from the area manager; and
 - 2. Only trap in department designated areas.
- (f) Except during deer quota hunts, a person shall not use the following to take furbearers:
 - 1. A rifle;
 - 2. Ball ammunition; or
 - 3. Slug ammunition.
- (g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.
- (19) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.
- (20) Peabody WMA.
 - (a) Northern bobwhite hunting on the Sinclair Unit shall:
 - 1. Have shooting hours between 7:30 a.m. and 3:00 p.m.; and
 - 2. Be closed on Sunday.
 - (b) A northern bobwhite hunter on the Sinclair Unit shall:
 - 1. Check in and check out at the Peabody WMA office; and
 - 2. Visibly display a hunting log on the dashboard of the hunter's vehicle.
- (21) Pennyryle Forest WMA.
 - (a) Grouse season shall be open from December 1 through December 31.
 - (b) The daily limit shall be two (2).
- (22) Pioneer Weapons WMA. A person shall not hunt with a breech-loading firearm.
- (23) Robinson Forest WMA.
 - (a) Hunting shall not be permitted on the Main Block.
 - (b) The remainder of the WMA shall be open under statewide requirements.
- (24) Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.
- (25) Tradewater WMA.
 - (a) Grouse season shall be open from December 1 through December 31.
 - (b) The daily limit shall be two (2).
- (26) West Kentucky WMA.
 - (a) A person shall check in daily at a designated check station prior to using an "A" tract.
 - (b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.
 - (c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10;
 - 1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.
 - 2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.
- (d) A person shall not:
 - 1. Use a rifle, ball, or slug ammunition;
 - 2. Operate a vehicle on Tract 6 from February 1 through April 16; or
 - 3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.
- (27) Yellowbank WMA.
 - (a) Northern bobwhite and rabbit seasons shall be closed after December 31.
 - (b) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.
 - (c) A person shall:
 - 1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and
 - 2. Not take more than three (3) pheasants of either sex.

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Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:

(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November.

(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December.

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the second Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.

(4) During a quota hunt or clean-up hunt, a person shall wear orange clothing as specified in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) birds of either sex, except there shall be a daily bag limit of three (3) birds of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall:

1. Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. Not apply as a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022, prior to the hunt.

Section 6. Northern Bobwhite and Upland Bird Quota Hunts.

(1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract of Peabody WMA on the following days:

(a) The fourth Saturday in November, which shall only be a youth-mentor hunt;

(b) The Tuesday following the fourth Saturday in November;

(c) The Tuesday following the third Saturday in December;

(d) The first Saturday in January;

(e) The second Saturday in January; and

(f) The Tuesday following the third Saturday in January.

(2) There shall be one (1) day upland bird quota hunts on Clay WMA on the following days:

(a) On the Wednesday following the first Saturday in November;

(b) The third Sunday in November;

(c) The second Sunday in December; and

(d) The third Tuesday in December.

(3) A person participating in a quota hunt shall:

(a) Only hunt from one-half (1/2) hour before sunrise to 2:00 p.m.;

(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and

(c) Not take more than four (4) northern bobwhite on a daily basis.

(4) A person who participates in an upland bird quota hunt:

(a) Shall not take more than four (4) grouse daily; and

(b) May take woodcock pursuant to the requirements established in 301 KAR 2:225.

(5) A person applying for a northern bobwhite or upland bird quota hunt shall:

(a) Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

(b) Not apply as a group of more than three (3) people.

(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:

(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide from a touch tone phone between September 1 and September 30;

(b) Enter each applicant's Social Security number;

(c) Indicate a choice of days to hunt; and

(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person, prior to participating in a quota hunt, shall be required to show:

(a) A department-issued quota hunt permit;

(b) A valid Kentucky hunting license or proof of exemption; and

(c) A hunter education card, if required.

(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.

(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(5) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(6) A youth shall only apply as part of a party that has at least one (1) adult.

(7) The department may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(9) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10) A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned.

Section 8. Dog Training Areas on Wildlife Management Areas.

(1) A group or club may request that a dedicated dog training area be authorized by the department on a specific WMA.

(2) The department shall authorize a dog training area if:

(a) The department approves a suitable location for the dog training area; and

(b) A signed memorandum of understanding is entered into with the club or group.

(3) The following conditions shall apply for each dog training area on a WMA:

(a) All northern bobwhite quail to be used in training shall be banded with aluminum leg bands and individually placed in the dog training area;

(b) Dog training areas shall remain open to all other legal WMA uses;

(c) A person shall comply with all dog training area requirements pursuant to 301 KAR 2:041, unless otherwise stated in the memorandum of understanding;

(d) Unleashed dogs shall be allowed within the boundaries of the dog training area year-round, except for the following days:

1. May 15 through August 15;

2. Youth statewide turkey season; and

3. Statewide turkey season; and

(e) Released northern bobwhite quail with aluminum leg bands, chukars, pheasants, or pigeons may be harvested on legal dog training days.

(f) Immediately prior to dog training, a person shall:

1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite quail are present; and

2. Then place released birds in the training area.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 7, 2013

FILED WITH LRC: August 12, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 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 September 30, 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 administrative regulation establishes exceptions to statewide small game and furbearer regulations on public areas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage small game and furbearer populations, and to provide reasonable hunting and trapping opportunity on public lands.

(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 open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the administration of the statutes by establishing small game and furbearer hunting and trapping seasons and regulating hunting opportunity on public lands.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow dog training areas to be established on Wildlife Management Areas.

(b) The necessity of the amendment to this administrative regulation: The amendment will provide opportunity for small game hunters to train their hunting dogs on WMAs.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is currently unknown how many hunters will be affected by this amendment, but overall opportunity will be increased on the area.

(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 establishes the process that individuals will need to take to establish a dog training area on a WMA.

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

tion (3): This regulation amendment does not directly increase any cost for hunters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Dog training opportunity will increase for those individuals interested in that pursuit on public lands and potentially enhance the quality of small game hunting for these individuals when hunting during the statewide seasons.

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

(a) Initially: The cost for implementing this administrative regulation amendment initially is minimal.

(b) On a continuing basis: There will be a minimal cost to administer on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation amendment did not establish any fees.

(9) TIERING: Is tiering applied? Tiering was not used because all hunters must comply with this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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 KRS 150.620

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 change will not result in a change 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? This administrative regulation change will not generate revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to implement this administrative regulation amendment during the first year as hunters request dog training areas on WMAs, almost entirely in current employees' time.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to implement this administrative regulation amendment during subsequent years as hunters request dog training areas on WMAs, almost entirely in current employees' time.

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 3 – SEPTEMBER 1, 2013

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

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

RELATES TO: KRS 150.330, 150.340, 150.603

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

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

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

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

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

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

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

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

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

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

(a) Dove, beginning on:

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

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

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

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

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

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

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

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

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

1. Public land in the Ballard Zone;

2. Public land in the West-Central Goose Zone; and

3. The Northeast Goose Zone.

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

(a) Dove:

1. Daily limit of fifteen (15); and

2. Possession limit of forty-five (45)~~[thirty (30)]~~.

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

1. The head; or

2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit of three (3); and

2. Possession limit of nine (9)~~[six (6)]~~.

(d) Common snipe:

1. Daily limit of eight (8); and

2. Possession limit of twenty-four (24)~~[sixteen (16)]~~.

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

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

2. Possession limit of seventy-five (75)~~[twenty-five (25)]~~.

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

1. Daily limit of fifteen (15); and

2. Possession limit of forty-five (45)~~[thirty (30)]~~.

(g) Wood duck and teal:

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

2. Possession limit of twelve (12)~~[eight (8)]~~, which shall not include more than six (6)~~[four (4)]~~ wood ducks.

(h) Canada goose:

1. Daily limit of three (3)~~[two (2)]~~; and

2. Possession limit of nine (9)~~[four (4)]~~.

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

(a) The head; or

(b) A fully-feathered wing.

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

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

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

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

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

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

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

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

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

(2) Containing:

(a) Lead shot;

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

(c) Shot larger than size "T".

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

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

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

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

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

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

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

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Kaler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

- (i) South Shore WMA;
- (j) Yatesville Lake WMA; and
- (k) A WMA wetland management unit that is posted by sign.
- (3) At Ballard WMA, a person shall not hunt:
 - (a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or
 - (b) Woodcock.
- (4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:
 - (a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or
 - (b) Woodcock.
- (5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:
 - (a) Dove or snipe after October 13; or
 - (b) Woodcock.
- (6) At Grayson Lake WMA, a person shall not hunt:
 - (a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
 - (b) On Deer Creek Fork; or
 - (c) On Camp Webb property or the state park, except for youths drawn for any department quota dove hunt on Camp Webb property~~[the quota dove hunt on Camp Webb property on the first Saturday]~~ in September.
- (7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.
- (8) At West Kentucky WMA, a person shall not hunt Canada geese during the September season.
- (9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:
 - (a) The Greenbrier Creek embayment; and
 - (b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.
- (10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 6, 2013

FILED WITH LRC: August 14, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013, at 8 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 September 30, 2103. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the United States Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2013–2014 migratory bird seasons in accordance with the USFWS.

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment will increase the Canada goose bag limit from two to three during the September season, which is consistent with the long-term management efforts for this species. In addition, the U.S. Fish and Wildlife Service has allowed states to increase possession limits after the first day of the hunting season from two (2) times the daily bag limit to three (3) times the daily bag limit. This Administrative Regulation was changed to be consistent with federal frameworks.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase migratory bird hunting opportunity for early migratory bird hunting seasons, defined as those seasons in which the hunting season may open as early as September 1.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Migratory bird hunters in the early season will have the opportunity to harvest an additional Canada goose on a daily basis, and possession limits for all migratory game birds will be increased to three times the daily limit.

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

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

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

ment this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal

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

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

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025,~~[150.175,]~~ 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603,~~[150.620,]~~ 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty (20) dollars;

(b) Statewide annual fishing license (nonresident): fifty (50) dollars;

(c) Joint statewide fishing license (resident): thirty-six (36) dollars; and

(d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars;

(e) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$150; and

(b) Commercial fishing license (nonresident) plus ten (10) non-resident commercial gear tags: \$600.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty (20) dollars;

(b) Statewide hunting license (nonresident): \$140~~[\$130]~~;

(c) Statewide junior hunting license (resident): six (6)~~[or non-resident: five (5)]~~ dollars;

(d) Statewide junior hunting license (nonresident): ten (10) dollars;

(e) Shooting preserve hunting license (resident or nonresident): five (5) dollars; and

(f) Migratory game bird and waterfowl permit (resident or non-resident): fifteen (15) dollars~~[(e) Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and~~

~~(f) Migratory game bird permit (resident or nonresident): ten (10) dollars].~~

(5) Combination hunting and fishing license (resident): thirty (30) dollars.

(6) Senior sportsman's license (resident): eleven (11)~~[Senior/disabled combination hunting and fishing license (resident): five (5)]~~ dollars.

(7) Disabled sportsman's license (resident): eleven (11) dollars;

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- (8) Trapping licenses:
(a) Trapping license (resident): twenty (20) dollars;
(b) Trapping license (resident landowner/tenant): ten (10) dollars;
(c) Trapping license (nonresident): \$130; and
(d) Junior trapping license (resident): five (5) dollars.
(9) Game permits:
(a) Resident bear: thirty (30) dollars;
(b) Resident bear chase: thirty (30) dollars.
(c) Resident junior bear chase: ten (10) dollars;
(d) Resident quota cow elk permit: sixty (60)~~[elk hunt permit: thirty (30)]~~ dollars;
(e) Nonresident quota cow elk permit: \$400~~[elk hunt permit: \$365]~~;
(f) Resident quota bull elk permit: \$100;
(g) Nonresident quota bull elk permit: \$550;
(h) Resident out-of-zone elk~~[hunt]~~ permit: thirty (30) dollars;
(i) ~~[(g)]~~ Nonresident out-of-zone elk~~[hunt]~~ permit: \$400~~[\$365]~~;
(j) ~~[(h)]~~ Game permit; Resident deer permit: thirty-five (35)~~[thirty (30)]~~ dollars;
(k) ~~[(i)]~~ Game permit; Nonresident deer permit: \$160~~[sixty (60)]~~ dollars;
(l) ~~[(j)]~~ Junior game permit, resident deer~~[(resident or nonresident)]~~: ten (10) dollars;
(m) Junior game permit, nonresident deer: fifteen (15) dollars;
(n) ~~[(k)]~~ Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;
(o) ~~[(l)]~~ Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;
(p) ~~[(m)]~~ Game permit, resident spring turkey: thirty (30) dollars;
(q) ~~[(n)]~~ Game permit, nonresident spring turkey: seventy-five (75)~~[sixty (60)]~~ dollars;
(r) ~~[(o)]~~ Game permit, resident fall turkey: thirty (30) dollars;
(s) ~~[(p)]~~ Game permit, nonresident fall turkey: seventy-five (75)~~[sixty (60)]~~ dollars;
(t) ~~[(q)]~~ Junior game permit, ~~[(t)]~~ resident~~[(or nonresident)]~~ turkey: ten (10) dollars;
(u) Junior game permit, nonresident turkey: fifteen (15) dollars;
(v) Junior game permit, resident elk: thirty (30) dollars; and
(w) Junior game permit, nonresident elk: forty (40) dollars.
(10) ~~[(9)]~~ Peabody individual permit: fifteen (15) dollars.
(11) ~~[(10)]~~ Commercial mussel licenses:
(a) Musseling license (resident): \$400;
(b) Musseling license (nonresident): \$1,600;
(c) Mussel buyer's license (resident): \$600; and
(d) Mussel buyer's license (nonresident): \$1,600.
(12) ~~[(11)]~~ Sportsman's license~~[licenses]~~ (resident), which includes a resident hunting and fishing license~~[combination]~~, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and deer permit~~[game permit for]~~: ninety-five (95) dollars.
(13) ~~[(12)]~~ Junior sportsman's license (resident)~~[(or nonresident)]~~, which includes a junior hunting license, two (2) junior deer permits~~[permit]~~, and two (2) junior turkey permits~~[permit, trout permit and waterfowl permit]~~: thirty (30)~~[twenty-five (25)]~~ dollars.
(14) ~~[(13)]~~ Land Between the Lakes hunting permit: twenty (20) dollars.
(15) ~~[(14)]~~ Conservation permit: five (5) dollars.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued. (1) Live fish and bait dealer's licenses:

- (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
(b) Live fish and bait dealer's license (nonresident): \$150.
(2) Commercial taxidermist license: \$150.
(3) Commercial guide licenses:
(a) Commercial guide license (resident): \$150; and
(b) Commercial guide license (nonresident): \$400.
(4) Shooting area permit: \$150.
(5) Dog training area permit: fifty (50) dollars.
(6) Collecting permits:
(a) Educational wildlife collecting permit: twenty-five (25) dollars; and

- (b) Scientific wildlife collecting permit: \$100.
(7) Nuisance wildlife control operators~~[(NWCO)]~~ permit: \$100;
(8) Pay lake license:
(a) First two (2) acres or less: \$150; and
(b) Per additional acre or part of acre: twenty (20) dollars.
(9) Commercial captive wildlife permit: \$150.
(10) Commercial fish propagation permit: fifty (50) dollars.
(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.
(12) Annual wildlife transportation permit: \$250; and
(13) Peabody Wildlife Management Area annual event permit: \$250; and
(14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry permit: seventy-five (75) dollars.

- (2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:

- (a) One (1) day resident fishing license: seven (7) dollars;
(b) One (1) day nonresident fishing license: ten (10) dollars;
(c) Seven (7) day nonresident fishing license: thirty (30) dollars;
(d) Fifteen (15) day nonresident fishing license: forty (40) dollars.
(e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.
(f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): fifteen (15)~~[ten (10)]~~ dollars.
(g) Seven (7)~~[Five (5)]~~ day nonresident hunting license (not valid for deer, elk, or turkey hunting) fifty-five (55)~~[forty (40)]~~ dollars;
(h) Three (3) day fur bearer's license: fifty (50) dollars; and
(2) Individual wildlife transportation permit: twenty-five (25) dollars.
(3) Special resident commercial fishing permit: \$600.
(4) Special non-resident commercial fishing permit: \$900.
(5) Commercial waterfowl shooting area permit: \$150.
(6) Shoot to retrieve field trial permits:
(a) Per trial (maximum four (4) days): seventy-five (75) dollars; and
(b) Single day: twenty-five (25) dollars.
(7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.
(8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:
(a) Tier I: \$100;
(b) Tier II: \$200;
(c) Tier III: \$300; and
(d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.
(9) Peabody individual event permit: twenty-five (25) dollars.
(10) Commercial roe-bearing fish buyer's permit;
(a) Commercial roe-bearing fish buyer's permit (resident): \$500; and
(b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.
(11) Commercial roe-bearing fish harvester's permit:
(a) Commercial roe-bearing fish harvester's permit (resident): \$500; and
(b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.
(12) Otter Creek Outdoor Recreation Area:
(a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
(b) Daily Special Activities Permit: seven (7) dollars.
(13) Commercial foxhound training enclosure permit: \$150.
(14) Resident Senior Lifetime Sportsman's License: fifty-five (55) dollars.

Section 5. Licenses, tags, and permits listed in this section

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shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5) Pond stocking fee (per stocking):

(a) Ponds less than 1.5 surface acres: seventy-five (75) dollars;

(b) Ponds from 1.5 to 2.9 surface acres: \$200; and

(c) Ponds equal to or greater than 3.0 surface acres: \$200 plus \$150 for each additional surface acre of water over 3.0 acres proposed on a 0.25 acre basis.

(6) Commercial captive cervid permit (per facility, per year): \$150.

(7) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): \$150.

(2) Fur buyer's license (resident): fifty (50) dollars.

(3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

(1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and

(2) Annual Special Activities Permit: seventy (70) dollars.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 14, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013, at 2 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by September 30, 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 fees, terms, and expiration dates for licenses, tags, and permits sold by the Department of Fish and Wildlife Resources.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Department of Fish and Wildlife Resources to establish reasonable license, tag, and permit fees, permit terms, and the expiration dates of licenses and permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the depart-

ment to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the requirements and purposes of the statutes identified in (1)(c) by establishing reasonable fees and terms for licenses, permits, and tags issued by the Department.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the fee for thirteen (13) nonresident licenses or permits and divides the nonresident elk permit into a nonresident cow elk permit and a nonresident bull elk permit. The amendment increases the fee for six (6) resident licenses or permits and divides the resident elk permit into a resident cow elk permit and a resident bull elk permit. The amendment also creates two new licenses, a resident senior lifetime sportsman's license and a resident three (3)-year fishing license. Finally, this amendment combines the statewide waterfowl permit and the migratory game bird permit into the migratory game bird and waterfowl permit.

(b) The necessity of the amendment to this administrative regulation: Hunting and fishing licenses and associated permits comprise fifty (50) percent of the department's revenue. They are also equally important to provide the necessary state match for approximately thirty-five (35) percent of the federal grant revenue the department receives. The department examines and adjusts fee structures on a five (5) to seven (7) year interval and the last fee increase was made in 2007. An increase in revenue is necessary to continue the department's mission and to provide financial stability for the next five (5) to seven (7) years. The proposed fee increases are based on: (a) an external economic consultant's study of our past sales data; (b) an extensive survey of license customers regarding license structure and pricing preferences; (c) analysis and comparison of similar fees in surrounding states; (d) analysis and comparison of similar fees in states that provide similar hunting and fishing opportunities; and (e) the necessity of adjusting the senior/disabled license fee in order to meet federal standards in the near future with respect to required minimum net license proceeds in order to count toward federal aid.

(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: For the license year ending February 28, 2011, the department sold 486,527 resident hunting licenses, 79,545 nonresident hunting licenses, 503,145 resident fishing licenses, and 91,908 nonresident fishing licenses. Approximately 116,000 residents purchased a senior or disabled hunting license in the 2012 license 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: Under the proposed amendment, for the license year beginning on March 1, 2014, nonresident hunters will be required to pay increased fees in order to hunt in Kentucky. Residents who are not license exempt wishing to hunt deer and elk will be required pay an increased fee. Senior or disabled resident hunters and anglers will be required to pay an increased fee to fish or hunt. The youth hunting license and youth sportsman's license fee will also increase. Those people who hunt migratory birds, but not waterfowl, will be required to pay an increased fee. Anglers and resident seniors will have the option to purchase a multi-year li-

cense at a reduced cost.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will depend on the activity to be pursued and whether the hunter or angler qualifies as a senior or disabled participant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Resident seniors and resident anglers will have a new multi-year license purchase option at a reduced cost. The department will also be able to provide for hunters, anglers, and wildlife recreation enthusiasts the same level of fish and wildlife management attention, the same level of customer service, and be able to provide the same high quality or enhanced quality of fish and wildlife populations and their habitats for the next five (5) to seven (7) years in the face of rising operational costs.

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

(a) Initially: There will be some additional administrative costs to the department to implement this administrative regulation for the initial year.

(b) On a continuing basis: There will be no additional cost to the department in subsequent years.

(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: Yes. Per the above explanations some fees will be increased, particularly for nonresidents, senior/disabled hunters and anglers, resident deer and elk hunters, and youth hunters, while two new multi-year license options were established.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes. Please see above.

(9) TIERING: Is tiering applied? Yes. Nonresident hunters and anglers must pay a higher fee for permits and licenses than residents. Resident senior and disabled hunters and youths pay a reduced fee compared to other resident hunters and anglers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 department estimates that the proposed license and permit fee increase will generate approximately an additional \$2.5 million 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? The department estimates that the increase will generate approximately \$2.5 million in subsequent years, though this figure is dependent on the future pattern of license sales.

(c) How much will it cost to administer this program for the first year? There will be some minimal administrative costs to the department to implement this administrative regulation for the initial year.

(d) How much will it cost to administer this program for subsequent years? Administrative costs in subsequent years should remain similar.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. Incorporation by Reference. (1) "Luther Luckett Correctional Complex policies and procedures", July 26, 2013[40-2042], are incorporated by reference. Luther Luckett Correctional Complex Policies and Procedures include:

LLCC 02-05-03 Inmate Canteen Committee (Amended 5/15/12)

[LLCC 02-05-03 Inmate Canteen Committee (Amended 5/15/12)]

LLCC 02-05-05 Inmate Canteen (Amended 5/15/12)

LLCC 02-06-01 Inmate Control of Personal Funds (Amended 5/15/12)

LLCC 02-06-02 Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 a.m. Weekdays (Amended 5/15/12)

LLCC 05-02-02 Outside Consultation and Research (Amended 5/15/12)

LLCC 06-01-01 Offender Information (Added 7/26/13)

LLCC 06-02-01 Open Records (Amended 5/15/12)

LLCC 08-04-01 Fire Safety (Amended 7/10/12)

LLCC 09-14-02 Guidelines for Contractors (Amended 7/10/12)

LLCC 09-18-01 Search Plan (Amended 5/15/12)

LLCC 09-18-03 Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence (Amended 5/15/12)

LLCC 09-25-01 Procedure for Maintaining Current Inmate Photographs (Amended 5/15/12)

LLCC 09-29-01 Inmate Death (Amended 7/10/12)

LLCC 10-01-01 Special Management Inmates (Amended 7/10/12)

LLCC 11-01-01 Dining Room Guidelines (Amended 7/26/13[7/40/42])

LLCC 11-02-01 Food Services: Security (Amended 5/15/12)

LLCC 11-03-01 Food Services: General Guidelines (Amended 5/15/12)

LLCC 11-04-01 Food Service Meals (Amended 5/15/12)

LLCC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 5/15/12)

LLCC 11-05-02 Health Requirements of Food Handlers (Amended 5/15/12)

LLCC 11-06-01 Food Services: Inspections and Sanitation (Amended 7/10/12)

LLCC 11-07-01 Food Services: Purchasing, Storage and Farm

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Products (Amended 5/15/12)
LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing Issues (Amended 5/15/12)
LLCC 12-02-01 Laundry Services (Amended 7/10/12)
LLCC 12-03-01 Vermin and Insect Control (Amended 5/15/12)
LLCC 12-04-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 5/15/12)
LLCC 13-02-01 Access to Healthcare (Amended 5/15/12)
LLCC 13-02-02 Specialized Health Services (Amended 5/15/12)
LLCC 13-02-03 Vision Care, Prostheses and Orthodontic Devices (Amended 7/10/12)
LLCC 13-02-05 Medical Services Co-pay (Amended 7/26/13[5/45/42])
LLCC 13-03-01 Mental Health Services (Amended 5/15/12)
LLCC 13-03-02 Use of Psychotropic Medications (Amended 5/15/12)
LLCC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 7/26/13[5/45/42])
LLCC 13-04-02 Health Education and Special Health Programs (Added 7/26/13)
LLCC 13-04-06 Psychological and Psychiatric Records (Added 5/15/12)
LLCC 13-05-02 Self-Administration of Medication (Inmate) (Amended 7/26/13[5/45/42])
LLCC 13-06-01 Health Records (Amended 7/26/13[5/45/42])
LLCC 13-06-03 Notification[Notice] of Inmate Family of Serious Illness, Surgery or Inmate Death (Amended 7/26/13[5/45/42])
LLCC 13-07-01 Serious and Infectious Diseases (Amended 7/26/13[5/45/42])
LLCC 13-07-02 Medical Waste Management (Amended 5/15/12)
LLCC 13-08-01 Restraint Approval (Amended 5/15/12)
LLCC 13-09-01 Substance Abuse and Chemical Dependency Program (Amended 5/15/12)
LLCC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/12)
LLCC 14-03-01 Inmate Legal Services (Amended 5/15/12)
LLCC 15-01-02 Inmate Housing Assignment (Amended 5/15/12)
LLCC 15-01-03 Operational Procedures of the Units (Amended 5/15/12)
LLCC 15-01-04 Rules of the Unit (Amended 7/26/13[5/45/42])
LLCC 15-01-08 Searches and Control of Excess Property (Amended 7/26/13[5/45/42])
LLCC 15-01-09 Laundry Unit Services (Amended 5/15/12)
LLCC 16-01-01 Inmate Correspondence (Amended 5/15/12)
LLCC 16-01-02 Inmate Privileged or Legal Mail (Amended 5/15/12)
LLCC 16-01-03 Inmate Packages (Amended 5/15/12)
LLCC 16-02-01 Inmate Visiting (Amended 7/26/13[5/45/42])
LLCC 16-02-02 Extended and Special Visits (Amended 5/15/12)
LLCC 16-02-03 Restricted Visitation Privileges (Amended 5/15/12)
LLCC 16-03-04 Parole Hearings: Media and Visitors (Amended 5/15/12)
LLCC 17-01-01 Inmate Transportation, Reception and Discharge Process (Amended 5/15/12)
LLCC 17-03-01 Assessment and Orientation (Amended 7/26/13[5/45/42])
LLCC 17-04-01 Personal Property Control (Amended 5/15/12)
LLCC 17-04-02 Missing or Stolen Inmate Personal Property (Amended 5/15/12)
LLCC 17-05-01 Appliances to Outside Dealers for Repair (Amended 7/10/12)
LLCC 18-01-01 Meritorious Housing (Amended 7/26/13[5/45/42])
LLCC 18-02-01 Minimum Security Unit Operations (Amended 7/26/13[5/45/42])
LLCC 19-01-02 Job Assignments and Dismissals (Amended 7/26/13[5/45/42])
LLCC 20-01-01 Educational Programs (Amended 7/26/13[5/45/42])
LLCC 21-01-01 Library Services (Amended 5/15/12)
LLCC 22-01-01 Recreation and Inmate Activities (Amended 5/15/12)
LLCC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/12)
LLCC 22-02-02 Inmate Photographs Project (Amended 5/15/12)
LLCC 22-05-02 Arts and Crafts Program (Amended 5/15/12)
LLCC 23-01-01 Religious Program (Amended 7/26/13[5/45/42])

LLCC 23-01-03 Inmate Family Emergency Notification (Amended 5/15/12)
LLCC 24-01-01 Counseling and Social Services (Amended 7/26/13[5/45/42])
LLCC 25-01-01 Final Release (Amended 5/15/12)
LLCC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 5/15/12)
LLCC 26-02-01 Use of Students (Amended 5/15/12)
LLCC 26-02-02 Student and Volunteer Identification Badges (Amended 5/15/12)
LLCC 26-03-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Students, and Volunteers (Amended 5/15/12)

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

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: July 12, 2013

FILED WITH LRC: July 26, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of Luther Luckett Correctional Complex regarding the rights and responsibilities of Luther Luckett Correctional Complex employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA accreditation requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of Luther Luckett Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Luther Luckett Correctional Complex employees and the inmate population as to employee duties, inmate responsibilities, and the procedures to govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the policies and procedures to address changes in operations at the institution, clarify language, make changes to conform to KRS Chapter 13A, and update ACA standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and

197.020.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes permit the commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of Luther Luckett Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 232 employees of the Luther Luckett Correctional Complex and 1,082 inmates and all visitors to Luther Luckett Correctional Complex.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for Luther Luckett Correctional Complex.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation establishes fees for medical and dental copays, records copy fees and personal property repair. The amendment does not change any of the fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this regulation impacts the operation of Luther Luckett Correctional Complex.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulation generally impacts prison operations but does involve several fees or cost repayment mechanisms which for the 2012-2013 fiscal year generated approximately the following in revenue: medical and dental copays \$8,447, records copy costs \$860, and personal property repair \$60. The funds are returned to the general fund and reallocated to DOC.

(b) How 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 revenues generated are expected to remain similar in amounts to that listed in (a).

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Luther Luckett Correctional Complex operates, but does not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how Luther Luckett Correctional Complex operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. Incorporation by Reference. (1) Roederer Correctional Complex policies and procedures, July 26, 2013~~May 15, 2012~~, are incorporated by reference. Roederer Correctional Complex policies and procedures include:

RCC 01-08-01 Public Information and News Media Access (Amended 05/15/12)

RCC 02-02-02 Inmate Personal Funds (Amended 05/15/12)

RCC 02-02-05 Inmate Canteen Services (Amended 05/15/12)

RCC 05-02-01 Consultants, Research, and Student Interns (Added 5/15/12)

RCC 06-03-01 Records Release of Information (Amended 05/15/12)

RCC 08-01-01 Fire Prevention (Amended 7/26/13~~05/15/12~~)

RCC 09-08-01 Operation of a Licensed Vehicle by an Inmate (Added 05/15/12)

RCC 09-10-01 Fishing At Roederer Correctional Complex Lakes (Amended 7/26/13~~Added 05/15/12~~)

RCC 09-29-01 Tobacco Free Environment (Added 05/15/12)

RCC 10-01-02 Temporary Holding Cell Guidelines (Amended 7/26/13~~05/15/12~~)

RCC 11-01-01 Food Service Guidelines (Amended 05/15/12)

RCC 11-04-01 Food Service: Meals, Storage, Menu Nutrition and Alternative Items (Amended 05/15/12)

RCC 11-05-02 Sanitation and Health Requirements of Food Handlers (Amended 05/15/12)

RCC 12-01-01 Sanitation, Living Conditions and Clothing Issuance (Amended 05/15/12)

RCC 12-01-02 Bed Areas (Amended 05/15/12)

RCC 12-01-03 General Guidelines for Living Units (Amended 05/15/12)

RCC 12-02-01 Laundry Services (Amended 05/15/12)

RCC 12-03-01 Personal Hygiene Items: Issuance and Replace-

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ment Schedule (Amended 05/15/12)
RCC 12-03-02 Barber Shop Services and Equipment Control (Amended 05/15/12)
RCC 12-07-01 Treatment of Inmates with Body Lice (Added 05/15/12)
RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 05/15/12)
RCC 13-03-01 Dental Procedures and Sick Call (Amended 05/15/12)
RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 05/15/12)
RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 7/26/13[05/15/12])
RCC 13-07-03 Use of Pharmaceutical Products (Amended 05/15/12)
RCC 13-07-04 Self-Administered Medication Program (Amended 7/26/13[05/15/12])
RCC 13-09-01 Notification of an Inmate's Family Due to Serious Illness, Surgery, or Death (Amended 05/15/12)
RCC 13-10-01 Health Education and Special Health Programs (Amended 05/15/12)
RCC 13-11-01 Informed Consent (Amended 05/15/12)
RCC 13-13-01 Identification and Transfer Guidelines for Inmates with Psychological, Psychiatric or Severe Medical Disabilities (Amended 05/15/12)
RCC 13-16-01 Specialized Health Services (Amended 05/15/12)
RCC 13-18-01 Infection Control (Amended 05/15/12)
RCC 13-19-01 Medical Waste Management (Amended 05/15/12)
RCC 13-20-01 Medical Services Co-pay (Amended 05/15/12)
RCC 13-21-01 Mental Health Services (Amended 05/15/12)
RCC 13-24-01 Substance Abuse and Chemical Dependency Program (Amended 05/15/12)
RCC 14-01-01 Inmate Rights and Responsibilities (Amended 05/15/12)
RCC 14-02-01 Legal Services Program (Amended 05/15/12)
RCC 14-03-01 Marriage of Inmates (Amended 05/15/12)
RCC 16-01-01 Inmate Visiting (Amended 7/26/13[05/15/12])
RCC 16-01-02 Restricted Visitation (Added 7/26/13)
RCC 16-02-01 Telephone Communications (Amended 05/15/12)
RCC 16-03-01 Mail Regulations (Amended 7/26/13[05/15/12])
RCC 16-04-01 Parole Hearings: Media and Visitors (Added 7/26/13)
RCC 17-01-01 Assessment and Orientation Procedure for Intra-system Transfers (Amended 05/15/12)
RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 7/26/13[05/15/12])
RCC 17-05-05 Assessment Center Operations and Reception Program (Amended 05/15/12)
RCC 18-01-01 Classification (Amended 05/15/12)
RCC 19-01-01 Job and Program Assignments (Amended 7/26/13[05/15/12])
RCC 20-01-01 Education Program (Amended 05/15/12)
RCC 20-01-03 Vocational Horticulture Program (Amended 05/15/12)
RCC 21-01-01 Library Services (Amended 7/26/13[05/15/12])
RCC 22-01-01 Recreation and Inmate Activities (Amended 05/15/12)
RCC 22-03-01 Inmate Clubs and Organizations (Amended 7/26/13[05/15/12])
RCC 22-03-02 Alcohol Anonymous and Narcotics Anonymous Club Sponsored Picture Project (Amended 7/26/13[05/15/12])
RCC 22-04-01 Arts and Crafts Program (Amended 7/26/13[05/15/12])
RCC 23-01-01 Religious Services (Amended 05/15/12)
RCC 24-01-01 Social Services and Counseling (Amended 05/15/12)
RCC 25-01-01 Furloughs (Amended 05/15/12)
RCC 25-05-01 Inmate Discharge Procedure (Amended 05/15/12)
RCC 26-01-01 Citizens Involvement and Volunteer Services Program (Amended 7/26/13[05/15/12])

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

p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: July 13, 2013

FILED WITH LRC: July 26, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Roederer Correctional Complex including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020 and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Roederer Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to employees and the inmate population concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Roederer Correctional Complex into compliance with ACA Standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Roederer Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 254 employees and 1,152 inmates at the Roederer Correctional Complex and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Roederer Correctional Complex budgeted funds

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Roederer Correctional Complex

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

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

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

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the institution operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the institution operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:180. Firearms qualification for certified peace officers.

RELATES TO: KRS 15.383(1)

STATUTORY AUTHORITY: KRS 15.330(1)(h), 15.383
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.383(1) requires all certified peace officers to meet the marksmanship qualification standards for retired peace officers in KRS 237.140. This administrative regulation establishes when and where a certified peace officer shall qualify and the requirements for reporting annual qualification requirements to the Kentucky Law Enforcement Council.

Section 1. Qualification. (1) In accordance with KRS 15.383(1), each certified peace officer shall annually meet the firearms qualification standard established for retired peace officers in KRS 237.140(4)(a).

(2) The rounds fired pursuant to subsection (1) of this section shall be done under the supervision of:

(a) A firearms instructor of the officer's employing agency;

(b) A currently certified peace officer who has successfully completed a Kentucky Law Enforcement Council approved firearms instructor course;

(c) A firearms instructor employed by the Department of Criminal Justice Training; or

(d)[(e)] A Department of Criminal Justice Training certified concealed deadly weapon[carry] instructor or instructor-trainer.

Section 2. Agency Record-keeping and Reporting. (1) Each law enforcement agency whose officers are required to meet the requirements of Section 1(1) of this administrative regulation shall retain a record of each of its officers having met the annual marksmanship qualification on KLEC Form #68-3.

(2) For purposes of maintaining peace officer certification records, on or before December 31 of each year, each[the] law enforcement agency shall forward to the Kentucky Law Enforcement Council's Office of Peace Officer Professional Standards, a copy of the completed KLEC Form #68-3.

Section 3. Incorporation by Reference. (1) "KLEC Form #68-3", August 2013 edition, [(05/06/05 edition)] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH R. CAIN, Chair

APPROVED BY AGENCY: July 30, 2013

FILED WITH LRC: July 30, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 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 September 30, 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: establishes the requirements for law enforcement agencies to report annual firearms qualification to the Kentucky Law Enforcement Council. The necessity of this administrative regulation: KRS 15.383(1) requires each certified peace officer to annually meet the firearms qualification standard established for retired peace officers in KRS 237.140. The regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility of ensuring that each certified officer complies with the statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992. This administrative regulation is required to establish requirements for reporting firearms qualification to the KLEC.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable, and consistent rules and procedures for submission of proof of firearms qualification.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow certified peace officers who have completed a KLEC approved firearms instructor course to supervise mandated annual peace officer marksmanship qualifications.

(b) The necessity of the amendment to this administrative regulation: This amendment will allow for additional firearms instructors to assist and supervise peace officers to meet the annual statutory marksmanship qualification.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will allow for more firearms instructors to assist the 8,300 Kentucky peace officers in complying with the annual firearms qualification.

(d) How the amendment will assist in the effective administration of the statutes: There are approximately 8,300 peace officers in the state that must annually meet marksmanship standards set forth by statute. This amendment provides an additional resource to these officers by providing for trained, certified peace officers to assist as firearms instructors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth are affected, which is approximately 415 agencies, including most state, county and local agencies employing approximately 8,300 officers across 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: No action is necessary due to this amendment, rather it is anticipated that agencies will experience a positive impact due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Law enforcement agencies will not incur any costs from this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified peace officers will have greater access to firearms instructors for their required assistance in meeting their statutory obligation for maintaining successful marksmanship standards for retired peace officers in KRS 237.140.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost on a continuing basis is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local law enforcement agencies including city, urban-county, county police officers, and sheriff's departments whose officers are required by KRS 15.383 to annually qualify in the use of a firearm will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.383(1) requires city, county, and urban-county law enforcement officers to annually qualify in the use of a firearm as a condition of peace officer certification.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 and its amendment produce 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 regulation and its amendment produce no revenue for state or local government.

(c) How much will it cost to administer this program for the first year? Costs cannot be determined, but would include the time it takes for an officer to qualify and completion of the qualification results form incorporated by reference in this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Costs cannot be determined, but would include the time it takes for an officer to qualify and completion of the qualification results form incorporated by reference in 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 (+/-): No impact.

Expenditures (+/-): Expenditures are impossible to estimate, but should not exceed the amount of time that it takes to qualify per KRS 15.383, complete the reporting form, and then forwarding that form to the Kentucky Law Enforcement Council.

Other Explanation: None.

**TRANSPORTATION CABINET
Motor Vehicle Commission
(Amendment)**

605 KAR 1:050. Dealer and salesman.

RELATES TO: KRS 190.010, 190.030, 190.035

STATUTORY AUTHORITY: KRS 190.010, 190.030, 190.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.010, 190.030, and 190.035 define what a motor vehicle salesman is and his relationship to his employing dealership. KRS 190.030 also provides for salesmen's licenses to indicate for whom they work and to be displayed upon request. This administrative regulation interprets the relationship between the dealership and salesman and implements statutory requirements to facilitate accurate recordkeeping by the Motor Vehicle Commission.

Section 1. A properly licensed motor vehicle salesman employed by a licensee may, in that capacity, sell or exchange a motor vehicle in Kentucky, subject to the following limitations:

(1) The activity must be pursuant to the salesman's employment by the licensee whose name appears on the salesman's license.

(2) No salesman shall establish a place of business separate from the location for which his employer holds a license.

(3) No salesman shall hold himself out to be a licensed dealer or conduct himself in any manner which would lead a prospective purchaser to believe he is a licensed dealer. (4) No salesman shall advertise his sales activity at any location other than the location for which his employer holds a license.

Section 2. In the event a salesman changes his place of employment to another dealership, he shall return his license to the commission along with a properly completed salesman's license application showing the name and address of the new[other] dealership.

Section 3. Every dealer licensee shall display in a conspicuous place in the dealership office a copy of the license of each salesman employed by the dealership. Upon the termination of employment of a salesman, the licensee shall, within ten (10) days, notify the commission of the termination and return to the commission the dealer's copy of the salesman's license.

Section 4. (1) Every applicant for a motor vehicle salesman license shall submit an application on a form provided by the commission containing the name, home address, social security number, date of birth of the applicant, and the employment history of the applicant in the motor vehicle industry identifying the name and address of any previous motor vehicle dealerships at which the applicant was employed. If the applicant has no prior experience in the motor vehicle industry, the applicant shall so state.

(2) Every applicant shall furnish a current photograph for identification purposes.

(3) Every applicant shall authorize the commission to make inquiries or investigations concerning the applicant's employment, credit, or criminal records. The applicant or the employing dealership shall remit the required fee for a criminal background check if requested by the commission.

(4) Every application shall be signed by the applicant and the authorized representative of the employing dealership.

Section 5. The following individuals are required to obtain a salesman's license:

(1) Each general partner actively involved in the day-to-day operation of a general or limited partnership holding a motor vehicle dealer license.

(2) The president, chief executive officer, chief operating officer, or equivalent of a corporation holding a motor vehicle dealer license.

(3) Each manager, or, if member-managed, each member actively involved in the day-to-day operation of a limited liability company holding a motor vehicle dealer license.

Section 6. If any of the individuals in Section 5 are physically located and conduct business at more than one location, the individual shall procure a salesman's license for each location. Otherwise, the individual shall procure a license for the location in Kentucky where he is located or a primary location in Kentucky if he is located outside the state.

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 10:00 a.m. local time at the Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If you have a disability for which the Motor Vehicle Commission 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 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 30, 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: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlos R. Cassady

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the relation between the dealership and salesman and implements statutory requirements to facilitate licensing and accurate record keeping by the motor vehicle commission.

(b) The necessity of this administrative regulation: KRS 190.040(1)(a) provides that a license may be denied to an applicant upon proof of financial or moral unfitness of the applicant. The amendment to Section 4 is necessary to provide the commission with information relevant to that statutory requirement. KRS 190.030(1) provides that a sales person of motor vehicle shall not engage in business in Kentucky at any location without a license issued for that location. The amendment to Sections 5 and 6 of this regulation is necessary to insure that each licensee has at least one licensed salesman at all times.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by insuring that the commission has sufficient information concerning applicants and that a dealership has a licensed sales person.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The amended regulation requires disclosure of pertinent information and ensures at least one licensed salesman for the dealership.

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

(a) How the amendment will change the existing administrative regulation: The amendment to Section 2 corrects grammatical errors concerning a salesman's change of employment from one licensed dealership to another. The amendment adds Section 4 to require the submission of certain pertinent information by applicants for salesman's license to enable the commission to determine whether a license should be denied based on proof of financial or moral unfitness as set forth in KRS 190.040(1). The

amendment adds Section 5 to the Regulation to clarify that every licensee shall have at least one principal owner or significant officer licensed as a salesman. The amendment adds Section 6 to clarify where individuals in Section 5 should procure a salesman's license when the dealership has multiple locations.

(b) The necessity of the amendment to this administrative regulation: The amendment to Section 2 is necessary to clarify the existing regulation. The additional of Section 4 is necessary to allow the commission to more easily determine whether applicants are morally and financially fit to hold a salesman's license. The amendments adding Section 5 and Section 6 are necessary to insure that licensed motor vehicle dealers have at least one individual authorized to conduct dealership business in the event that employee salesmen are missing, quit or are fired without sufficient time to allow the licensed motor vehicle dealer to obtain new salesmen's licenses.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by insuring that licensed motor vehicle dealers do not utilize individuals who are not licensed salesmen to sell vehicles and complies with KRS 190.040(1)(a) by allowing the commission to determine whether applicants are financially and morally fit.

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist the affect of administration of the statute by allowing the commission to more fully evaluate the fitness of salesman's applicants and by eliminating situations in which licensed motor vehicle dealers are without licensed salesmen due to employment actions and will reduce the instances in which the dealer is out of compliance with the statute or is forced to ask for expedited licensing of salesmen by the commission.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all licensed motor vehicle dealers and applicants and licensed motor vehicle salesmen.

(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 of the licensed new and used motor vehicle dealers will be required to obtain at least one salesman's license. Applicants for a motor vehicle salesman's license will be required to submit certain personal information to the commission and authorize certain inquiries by the commission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with the administrative regulation, it is anticipated that there will be no additional cost for applicants for salesman's licenses. It is possible that licensed motor vehicle dealers may incur an additional \$25.00 to obtain the required salesman's license in Section 5 of the amended regulation. It is not possible for the commission to determine whether this represents an additional costs to licensed motor vehicle dealers as many licensed motor vehicles dealers already obtained salesman's license for such control group individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amended regulation entities will be allowed to operate as licensed motor vehicle dealers in Kentucky and individuals will be able to operate as licensed motor vehicle salesmen's.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer or salesman.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an 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 Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all motor vehicle dealers and salesmen affected by this regulation 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? Motor Vehicle Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.030, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew the applicable license.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Motor Vehicle Commission (Amendment)

605 KAR 1:060. Temporary off-site sale or display event.

RELATES TO: KRS 186A.220(5), 190.030(7), (11), 190.035, 190.047

STATUTORY AUTHORITY: KRS 190.020, 190.030(1), 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030(7) requires a motor vehicle dealer to restrict the sale or display of motor vehicles to the location of the dealer's licensed place of business except that a motor vehicle dealer may have a temporary off-site sale or display of motor vehicles at a location other than the licensed place of business under certain conditions. KRS 190.030(1) authorizes the Motor Vehicle Commission to provide by administrative regulation for "other licensee activities and an appropriate fee". This administrative regulation establishes the application requirements for holding a temporary sale or display event.

VOLUME 40, NUMBER 3 – SEPTEMBER 1, 2013

Section 1. Definition. "Display" means:

(1)[4-] A showing of a motor vehicle or vehicles with an intent to attract or further a sale of the motor vehicle or vehicles or similar motor vehicles offered by a motor vehicle dealer at a location in this state where no sale, transfer, or test drive takes place; or

(2)[2-] Any showing of a motor vehicle at a location for more than forty-eight (48) hours.

Section 2. (1) A motor vehicle dealer shall not conduct or participate in a motor vehicle display event at any location other than the dealer's licensed place of business unless an Application for a Temporary Display Event is filed with the Motor Vehicle Commission and approved.

(2) The application for a Temporary Display Event shall be received a minimum of five (5) days prior to the next regularly-scheduled meeting of the commission held before the requested permit period.

(3) The temporary display permit application shall state:

(a) The duration of the display which shall not exceed sixty (60) successive days;

(b) The specific location of the temporary display event for which the permit is requested;

(c) A complete list of all motor vehicle dealers participating in the temporary display event; ~~and~~

(d) Proof that the city, county, urban county or consolidated local government where the temporary display event is to occur has enacted an ordinance specifically allowing a motor vehicle dealer to conduct a motor vehicle temporary display event in its jurisdiction at a location other than the dealer's licensed place of business; ~~and~~[-]

(e) That the applicant certifies that he has complied with or will comply with all requirements contained in the city, county, urban county, or consolidated local government ordinance referred to in paragraph (d) of this subsection.

(4) A salesman shall not be present at a temporary display event at any time. If a salesman of the participating motor vehicle dealer is present at the temporary display event, the event shall be deemed a temporary sale event.

(5) The dealership name as stated on its license, the address of its established place of business, and contact information shall be placed on or near the vehicle or vehicles on display.

Section 3. (1) A motor vehicle dealer shall not conduct or participate in a motor vehicle sale event at any location other than the dealer's licensed place of business unless an Application for a Temporary Sale Event is filed with the Motor Vehicle Commission and approved.

(2) The application for a Temporary Sale Event shall be received a minimum of forty-five (45) days prior to the temporary sale event.

(3) The temporary sale event application shall state:

(a) The duration of the sale, which shall not exceed five (5) successive days;

(b) The specific location of the temporary sale event for which the permit is requested;

(c) A complete list of all motor vehicle dealers participating in the temporary sale event;

(d) Proof that the city, county, urban county or consolidated local government where the temporary sale event is to occur has enacted an ordinance specifically allowing a motor vehicle dealer to conduct a motor vehicle temporary sale event in its jurisdiction at a location other than the dealer's licensed place of business;

(e) That the applicant certifies that he has complied with or will comply with all requirements contained in the city, county, urban county, or consolidated local government ordinance referred to in paragraph (d) of this subsection;

~~(f) [(e)]~~ That the temporary sale event has been, is being, or will be advertised as being temporary in nature;

~~(g) [(f)]~~ That the temporary sale event shall include a representative sampling of the inventory of the participating dealer or dealers; and

~~(h) [(g)]~~ In the case of a sale of new motor vehicles:

1. That the sale location is not within a five (5) mile radius of the licensed location of a nonparticipating new motor vehicle dealer

licensed to sell the same line make of motor vehicles as will be displayed at the temporary sale event; and

2. That the applicable franchisor or franchisors have approved or consented to the temporary sale event if consent is required.

Section 4. (1) At every temporary sale event each participating dealer shall display a sign easily visible from the street identifying his business using his business name as stated on his dealer's license and indicating the address of his established place of business as set forth in his dealer's license.

(2) If applicable local ordinance prohibits the signage, each dealer shall display allowable signage containing the same information and provide customers with business cards containing the information upon request.

Section 5. (1) All sales made at a temporary sale event shall be evidenced by a written sales document or purchase order containing the dealership's licensed name and address of the dealership's established place of business, the address of the temporary sale and the customer name, address and telephone number.

(2) The Documentation shall be retained for six (6) months after the sale and shall be made available to the Motor Vehicle Commission upon request.

Section 6. A certificate of title, and other documents if appropriate, shall be present at the temporary sale event location with respect to each motor vehicle offered for sale at the temporary sale event and shall be made available to purchasers as set forth in KRS 186A.220(5).

Section 7. (1) All individuals involved in attempting to make a sale as defined in KRS 190.010(25) at a temporary sale event shall possess a valid salesman's license issued by the Motor Vehicle Commission in the name of the participating dealer or dealers prior to the date of the temporary sale event.

(2) All salesmen participating in or present at a temporary sale event shall have their valid Kentucky license in their possession and available for display at all times during the event.

Section 8. A temporary sale event involving new motor vehicles shall not be allowed within a five (5) mile radius of the licensed location of a nonparticipating new motor vehicle dealer licensed to sell the same line make as will be displayed at the temporary sale event.

Section 9. (1) Unless good cause is shown by the applicant, temporary display events shall not be approved for the same location or the same jurisdiction unless there is at least a twenty-four (24) hour period between the end of the last temporary display event held by the applicant and the beginning of the next temporary display event to be held by the applicant.

(2) Unless good cause is shown by the applicant, temporary sale events shall not be approved for the same location or the same jurisdiction unless there is at least a thirty (30) day period between the end of the last temporary sale event held by the applicant and the beginning of the next temporary sale event to be held by the applicant.

Section 10. (1) The fee for a temporary sale event permit shall be \$500 per participating dealer and shall be paid when the application is submitted.

(2) If the application is only for a temporary display event, the fee shall be twenty-five (25) dollars.

Section 11. Incorporation by Reference. (1) "Application for Temporary Sale or Display Event," revised September 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m., to 4:30 p.m.

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 10:00 a.m. local time at the Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If you have a disability for which the Motor Vehicle Commission 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 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 30, 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: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlos R. Cassady

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for obtaining a permit for an off-site sale or display of motor vehicles.

(b) The necessity of this administrative regulation: KRS 190.030(7) allows licensees to conduct off-site sales or displays under certain conditions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation implements the application process for off-site sale or display permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the permit process.

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

(a) How the amendment will change the existing administrative regulation: The amendment will add a requirement that the applicant certify that he is in compliance with the city, county, urban county or consolidated local government ordinance allowing an off-site sale or display.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because the commission does not always have access to the latest ordinance enacted by the applicable city, county, urban county or consolidated local government. It is therefore necessary to require the applicant to certify his compliance with the applicable ordinance.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute KRS 190.030(7) which propose that a licensee may conduct a temporary sale or display if such activity is permitted under an enabling ordinance enacted by the city, county, urban-county, or consolidated local government within whose boundaries the temporary sale or display is to be conducted. The amendment insures compliance with that statutory condition.

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist in the effective administration of the statute by allowing the commission to determine that the applicant has complied with the applicable ordinance.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all licensees who wish to conduct off-site sales or displays.

(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: In order to comply with this administrative regulation, the licensee will have to contact the applicable city, county, urban-county or consolidated local government to determine whether the enabling ordinance requires any actions, permits or other approval. The licensee will then have to undertake those requirements and certify compliance in the application to the commission.

(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 of the identified entities cannot be reasonably ascertained as each enabling ordinance may have different fees or costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to conduct an off-site sale or display.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of off-site sale and display permits. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees for the relevant permit.

(7) Provide an assessment of whether an 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 Commission does not anticipate a need for any additional or increased fees or funding related to administration of this amended regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because licensees 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? Motor Vehicle Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.030(7), 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many licensees will apply for the applicable permits.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many licensees will apply for the applicable permits.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to each applicant.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to each applicant.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TRANSPORTATION CABINET
Motor Vehicle Commission
(Amendment)**

605 KAR 1:070. Change of ownership.

RELATES TO: KRS 190.030

STATUTORY AUTHORITY: KRS 190.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the Motor Vehicle Commission. This administrative regulation implements those requirements, particularly when a sale or transfer occurs, so that the Commission can be on notice of who actually holds a license[licenses].

Section 1. Any complete change of ownership of a licensee shall require a new application from the new owner[owner(s)-or corporation].

Section 2. Upon the sale or transfer of a licensee's business to a new individual or entity, the new owner shall secure a new license for each location acquired[If the licensee is a corporation, the sale of the controlling stock in the corporation must be reported to the commission, and the commission may require a new license application].

Section 3. If the licensee is a corporation or limited liability company, the transfer of the controlling stock or controlling membership interest must be reported to the commission within fifteen (15) days of the transfer. The commission may require a new license application based on the reported transfer.

Section 4. The commission shall be notified on a timely basis of the following:

(1) the death of a licensee who is a sole proprietor;

(2) the death of a general partner of a partnership or limited partnership licensee; or

(3) The death of an owner of the controlling interest of a corporate or limited liability company licensee.

Section 5. In the case of the death of a sole proprietor, the commission may allow a duly qualified executor or administrator to operate the business for the remainder of the calendar year. In the case of the death of an owner of a partnership, corporation, or limited liability company, the commission may require a new application for a license.

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 10:00 a.m. local time at the Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If you have a disability for which the Motor Vehicle Commission 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 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 30, 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: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlos R. Cassady

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires each separate entity acting as a motor vehicle dealer to have a license and to make needed reports to the Motor Vehicle Commission and ensures that existing licensees undergoing a change of ownership remain in compliance with KRS 190.040(1)(a).

(b) The necessity of this administrative regulation: KRS 190.010(2) contemplates that a motor vehicle dealer subject to a license requirement under KRS 190.030(1) may be either a natural person or a business entity. KRS 190.040(1)(a) provides that a dealer license may be denied, revoked or suspended if the licensee lacks financial or moral fitness. This regulation is necessary to address changes in ownership of business entities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by clarifying when additional information must be provided to the commission or when new applications must be submitted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation assists the commission by requiring existing licensees to provide new information to the commission when a death or change of ownership occurs.

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

(a) How the amendment will change the existing administrative regulation: Section 1 is amended to clarify that a complete change of ownership (as opposed to partial ownership changes) requires a new application from the new owners. The amendment modifies Section 2 to clarify that asset sales require a new license application from the new owner of the acquired business. This regulation is premised on the fact that the motor vehicle dealer license is an individual right not a transferable business asset. The amendment adds Section 3 to clarify that certain partial transfers of ownership must be reported to the commission and may require a new application. The amendment adds Section 4 to address the death of certain individuals who hold a motor vehicle dealer license or a controlling interest in a licensee. Section 5 is added to address the situation in which the duly authorized estate of a sole proprietor may be allowed to continue business under certain circumstances.

(b) The necessity of the amendment to this administrative regulation: The amendments to the administrative regulation are necessary to address certain factual situations which have arisen since the original regulation was promulgated in 1984 and to address the more frequent use of the limited liability company as a business entity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of KRS 190.030(1) by recognizing that a licensee may be an artificial entity and that the fitness of that entity may change given change in control.

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist the commission by requiring licensees to provide pertinent information to the commission in a timely manner.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees subject to a change of ownership or control will be affected by the amended administrative regulation. The number of such entities 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: Entities identified in question 3 will be required to provide certain information to the commission and, under appropriate circumstances, will be required to submit new applications to the commission.

(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 of the identified entities cannot be reasonably ascertained, but is believed to be minimal with regard to the provision of information to the commission. In the event that new licenses are required, the regulated entity will be required to pay the statutory fees set forth in KRS 190.030(6).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as motor vehicle dealers in Kentucky.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of motor vehicle dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an 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 Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all motor vehicle dealers affected by this regulation 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? Motor Vehicle Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.030, 190.040, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of

applicants and the issues which arise with regard to applicants and licensees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Motor Vehicle Commission (Amendment)

605 KAR 1:090. Business names.

RELATES TO: KRS 190.040

STATUTORY AUTHORITY: KRS 190.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) provides that a license can be denied, suspended, or revoked for false or misleading advertising. This administrative regulation interprets that proscription against false or misleading advertising to include the use of the name of a make of motor vehicle in the business name of a used motor vehicle dealer, a practice which infringes on trademark law and would cause a consumer to think that a new motor vehicle may be obtained from that dealer. The proscription against false or misleading advertising also includes the use of a name so similar to the name of an existing dealership that it would confuse or mislead the public.

Section 1. The trade name of a licensee shall incorporate the words used cars, auto sales, auto mart, or other similar wording clearly identifiable as a motor vehicle licensee. No licensee other than a franchised new motor vehicle dealer may use the name of any make of motor vehicle as a part of the dealership business name. The adoption of the name of a make of motor vehicle in a trade name or advertising in this manner shall be deemed to constitute false or misleading advertising within the meaning of KRS 190.040 and shall be considered grounds for the denial, suspension, or revocation of a license.

Section 2. The commission may deny an application for a license if the name or proposed trade name of the licensee is the same or so similar to the trade name of an existing licensee that the proposed name would confuse or otherwise mislead the public into believing that the two (2) entities are the same or related. If no other grounds are cited for the denial of the application, the applicant may reapply with a new trade name within ten (10) days of denial without remitting an additional application fee.

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 10:00 a.m. local time at the Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If you have a disability for which the Motor Vehicle Commission 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 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 30, 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: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlos R. Cassady

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements regarding the business name used by a motor vehicle dealer.

(b) The necessity of this administrative regulation: KRS 190.040(1)(i) allows the commission to deny, suspend or revoke a dealership for false or misleading advertising. This regulation addresses such advertising issues as they relate to the name of the dealership.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation contains standards for business names designed to avoid false or misleading advertising.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation provides guidelines for evaluating names proposed by applicants.

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

(a) How the amendment will change the existing administrative regulation: The amendment changes the administrative regulation by adding Section 2, which allows the commission to deny a license to an applicant if its proposed business name is misleading with respect to existing dealership names in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address the fact that absent federal trademark protections, the law does not preclude the use of the same or deceptively similar business names to that of an existing business.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is designed to ensure that licensee business names are not used in furtherance of false or misleading advertising by misrepresenting the relationship between existing dealerships.

(d) How the amendment will assist in the effect of administration of the statutes: The amended regulation will provide the commission with guidelines concerning business names proposed by applicants.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who wish to become a motor vehicle dealer in Kentucky. The number of such entities 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: This regulation establishes eligibility requirements for names used by a motor vehicle dealer and the entities identified in question (3) will have to submit the required application.

(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 of the identified entities cannot be reasonably ascertained but it is believed to be minimal as the applicant can use any name or trade name that is not misleading.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as a motor vehicle dealer in Kentucky.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on

the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an 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 Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all nonprofit motor vehicle dealers affected by this regulation 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? Motor Vehicle Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.040, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Motor Vehicle Commission (Amendment)

605 KAR 1:130. Procedures.

RELATES TO: KRS 190.058, 190.062

STATUTORY AUTHORITY: KRS 190.020, 190.058, 190.062

NECESSITY, FUNCTION, AND CONFORMITY: An absolute necessity for any administrative board is a written code of practice and procedure. The enabling legislation for the adoption of such procedures by the Motor Vehicle Commission is found in KRS 190.058. This administrative regulation establishes the proper form of procedure and practice before the Motor Vehicle Commission. [and adopts the general practice procedures found in the Kentucky Rules of Civil Procedure.]

Section 1. Hearings. Hearings shall be conducted as provided

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in this administrative regulation and KRS Chapter 13B. During any hearing, the reason for any objection shall be stated and made a part of the stenographic record. All testimony shall be transcribed.]
~~Section 1. Hearings shall be conducted by a commission member or person designated by the commission as a hearing officer. Hearings shall be conducted pursuant to the Kentucky Rules of Civil Procedure except as otherwise provided in this administrative regulation. The hearing officer shall conduct the hearing and shall rule on matters of procedure and introduction of evidence. The hearing shall be conducted in the manner as the hearing officer determines will best serve the purpose of attainment of justice and dispatch. Objections may be taken to any ruling of the hearing officer and shall be ruled on by the commission. The reason for any objection shall be stated and made a part of the stenographic record. All testimony shall be transcribed.]~~

Section 2. Appearances. A[Any] licensee who is a natural person may appear and be heard in person, or with or by a duly appointed attorney, and may produce under oath evidence relative and material to matters before the commission. A licensee that is an artificial entity may be represented only by a general partner, managing member, president, or equivalent officer, or by an attorney licensed or authorized to practice in Kentucky. Any attorney, in a representative capacity, appearing before the commission may be required to show his authority to act in such capacity.

Section 3. Argument. All oral arguments shall be succinct and concise. The hearing officer may curtail or set time limits for oral arguments.

Section 4. Additional Hearings. The commission may, on its own motion, prior to its determination, require an additional hearing. Notice to all interested parties setting forth the date of such hearing must be given in writing by the executive director.

Section 5. Briefs. Briefs may be filed as a matter of right. All briefs shall be concise, summarizing first the evidence presented at the hearing. Copies of briefs must be typewritten or typed and printed and filed in quadruplicate. The time allowed for filing briefs shall be designated by the hearing officer, but in no event shall be less than five (5) days after the hearing. Response[Respondent] briefs may be filed by the commission, or filed by any person whose interests are affected. Reply briefs may be filed only when limited strictly to answering the brief of respondent. Briefs containing more than ten (10) pages shall contain on the top fly leaves a subject index with page references.

Section 6. Continuances. Continuances may be granted in the discretion of the hearing officer if good cause for the continuance is shown and if requested at least forty-eight (48) hours in advance of the hearing date.

Section 7. Depositions. The hearing officer may order testimony to be taken by deposition at any stage of the hearing. Depositions shall be taken before any person having power to administer oaths, or written by the person taking the deposition or under his direction and shall then be subscribed by the deponent and certified in the usual manner by the person taking the deposition. The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 8. Except as otherwise provided in this administrative regulation, the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission; provided, however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing.

(1) Judicial notice. When called to the attention of the hearing officer, "judicial notice" may be taken of any matter situated in the files of the commission, the Revenue Cabinet or the Transportation Cabinet, any action pending which involves the commission or and all other matters of which a court of Kentucky may take judicial notice. A brief statement recognizing the matter shall be made in the transcript by the hearing officer.

(2) Additional evidence. Upon application to the commission, prior to the decision of the commission in the case, the hearing may, in the discretion of the commission, be reopened for the presentation of additional evidence. Application for and additional hearing shall set forth concisely the nature of this additional evidence. The commission may, on its own motion, require an additional hearing.

Section 9. Ex Parte Contacts. No person shall have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. In the event an ex parte contact occurs, the name of the person making the contact shall be revealed on the record. In no event shall the information conveyed in an ex parte contact be relied upon or considered in reaching a decision.

Section 10.~~The Report and Recommended Order. Upon the conclusion of a hearing, the hearing officer shall make a report and recommended order which shall contain his finding of facts and conclusions of law. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.~~

~~Section 11. Exceptions and Replies. Any party to a hearing may, within twenty (20) days after the date the finding of facts and conclusions of law and recommended order is filed with the commission, file and serve exceptions. Exceptions shall consist of as many objections to the whole or any part of the finding of facts and conclusions of law as the party filing the exceptions desires to make, with each objection numbered. Each objection shall fully state the nature and grounds for the objection. Parties filing exceptions shall serve a copy upon every other party participating in the hearing and shall certify to the commission that such service has been accomplished. Replies to exceptions shall be filed and served within twenty (20) days after the filing of exceptions, if any party desires to make a reply. The reply shall consist of a separate reply to each objection set out in the exceptions. Any party filing a reply shall serve a copy on every other party participating in the hearing and shall certify to the commission that such service has been accomplished.~~

~~Section 12. Final Order. Upon the filing of the exceptions and replies or upon expiration of the time for filing exceptions and replies, the hearing officer shall render the complete record to the commission which shall consider and rule upon the case. The commission may, after a study of the case, refer it back to the hearing officer and request the taking of more proof on any point in issue. The commission may require oral argument of the case. When the commission has rendered its decision in the case, its decision shall be served by mail upon all parties and shall be the final order of the commission. The final order shall contain the date of its rendition, and shall be final for purposes of judicial appeal.]~~

~~Section 13.] Service of Motions, Pleadings. Copies of all motions and pleadings shall be served upon all interested parties, in addition to filing the required copies before the commission.[There shall be no demurrers. Motions to dismiss, setting forth the reasons in support of the motion, may be heard by the commission.]~~

Section 11[14]. Reconsideration Hearings. Any party to the proceeding may request in writing a hearing for purposes of reconsideration of a commission decision of any matter formally heard by the commission. The request shall be filed with the Executive Director within fifteen (15) days from the date the notice of the commission's decision is mailed. A reconsideration hearing shall be granted only if the request presents significant, relevant information not previously available for consideration, or demonstrates that there have been significant changes in the factors or circumstances relied upon by the commission in reaching its decision, or demonstrates that the commission has materially failed to follow its adopted procedures in reaching its decision. The commission shall consider requests for reconsideration in a summary manner. If a hearing for reconsideration is granted by the commission, it shall be conducted in accordance with the requirements of this administrative regulation. The reconsideration hearing shall be held within

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thirty (30) days of the decision to grant the request for reconsideration.

Section 12[15]. Notices. Upon the filing of an appeal from an order or decision, the appellant shall serve a copy on all interested parties. All other hearings except license suspension or revocation hearings shall be held only after notice given at least ten (10) days before the date of the hearing. A notice of a license suspension or revocation hearing by registered mail to the licensee, sent to the business address of the licensee shown on the latest application for a license shall be deemed sufficient notice.

Section 13[46]. Specifications as to Pleadings, Complaints, Briefs, Motions, Etc. Except when permission is granted by the hearing officer, all papers filed under these rules shall be typewritten or printed. All copies shall be clearly legible and double spaced, except for quotations. All motions, complaints, briefs, etc., shall be made on unglazed paper eight and one-half (8 1/2) inches wide and eleven (11) inches long.

Section 14[47]. Subpoenas and Subpoena Duces Tecum. The party desiring a subpoena shall make application at least five (5) days before the hearing date with the Executive Director of the commission. The application shall be in writing, and shall state the name and address of each witness required. If evidence other than oral testimony is required, such as documents or written data, the application shall set forth the specific matter to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant.

Section 15[48]. Costs of Hearing. If the commission, by issuance of a final order, finds that a violation has been committed by a licensee, or upholds the recommendation of the hearing officer in a matter involving an applicant for a motor vehicle dealer license, the commission may assess to the licensee or the applicant the fee charged to the commission for the transcription of the record and the fee charged by the hearing officer. If the hearing officer or the commission finds that the hearing has been held as a result of an allegation or charge lacking substantial merit, or if the hearing officer or commission finds that a party to the hearing has materially delayed or increased the cost of the hearing through its actions, the commission may assess to the party bringing the allegation or causing the delay, the fee charged to the commission for transcription of the record and the fee charged by the hearing officer. The fee assessed for the transcription of the record and for the hearing officer shall be the actual costs charged to the commission for that particular hearing, and may be assessed in addition to any fine levied by the commission.

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 10:00 a.m. local time at the Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If you have a disability for which the Motor Vehicle Commission 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 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 30, 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: Carlos R. Cassady, Executive Director,

Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlos R. Cassady

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the practice and procedures used by the commission in administrative hearings.

(b) The necessity of this administrative regulation: KRS 190.058 requires the Motor Vehicle Commission to conduct hearings on certain matters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the practice and procedures to be used in administrative hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the practice and procedures to be used in administrative hearings.

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

(a) How the amendment will change the existing administrative regulation: The majority of the amendments to the regulation delete provisions of the practice and procedures for administrative hearings which were redundant or contradictory to the provisions of KRS Chapter 13B after its enactment in 1994 and subsequent amendment. Section 1 is amended to delete the existing Section 1 and replace it with a provision clarifying that the procedures set forth in KRS Chapter 13B apply along with practice and procedures contained in the regulation. Section 2 is amended to clarify that licensees or artificial entities must generally be represented by attorneys authorized to practice law in Kentucky. However, recognizing that certain small business entities may not be able to engage legal counsel on every matter, the commission allows artificial entities to be represented by a principal officer or owner consistent with KRS 13B.080(5). The amendment makes certain grammatical changes to Sections 5 and 6. Sections 10, 11 and 12 are deleted in their entirety as they are unnecessary given the current provisions of KRS Chapter 13B. Section 13 is renumbered as Section 10 and is modified to remove unnecessary language. Sections 14, 15, 16 and 17 are renumbered. Section 18 is renumbered and is amended to clarify the hearing officer's authority to impose costs in appropriate circumstances.

(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation is necessary to reflect changes in KRS Chapter 13B which were passed after the regulation was initially promulgated and last amended in 1993. The purpose of the amendment is to streamline the regulation and eliminate unnecessary redundant or contradictory provisions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of authorizing statute by modifying the commission's procedures to accurately reflect the existing provisions of KRS Chapter 13B.

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist the effective administration of the statute by addressing recurrent issues that occur during the commission's administrative hearing process which are not fully addressed in KRS Chapter 13B.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who participate in administrative hearings before the 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: Licensees or other entities involved in administrative hearings before the commission will be required to follow the procedures contained 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): The cost to each of the identified entities cannot be reasonably ascertained because each administrative hearing varies depending on the issues presented.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to participate in administrative hearings before the commission.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 establishes the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? Yes, Tiering is applied to the extent that small business entities are allowed to participate in administrative hearings without the formal requirement of engaging legal counsel.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.058, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many administrative hearings it will conduct.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many administrative hearings it will conduct.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of hearings and the issues which arise with regard to each hearing.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the first year is unknown as it will depend upon the number of hearings and the issues which arise with regard to each hearing.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Motor Vehicle Commission (Amendment)

605 KAR 1:190. Motor vehicle advertising.

RELATES TO: KRS 190.010-190.990

STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030, 190.040, 190.058, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) prohibits a motor vehicle dealer from engaging in "false or misleading advertising"; this is the only statutory or regulatory language which attempts to provide any guideline or standard for dealer advertising. The Motor Vehicle Commission has received numerous inquiries and complaints concerning advertising by licensees. It is the objective of this administrative regulation to define certain conduct which constitutes "false or misleading advertising". KRS 190.073 authorizes the Motor Vehicle Commission to "promulgate appropriate and reasonable regulations for the purpose of carrying out the provisions of this chapter." The purpose of this administrative regulation is to provide for truthful and accurate advertising practices in the sale and lease of motor vehicles by licensed motor vehicle dealers.

Section 1. Definitions. (1) "Advertising" means any oral, written or graphic statement, whether physical or electronic, which offers vehicles for sale or lease or which indicates the availability of vehicles, including any statements or representation made in a newspaper, pamphlet or circular, other publication, or in[on] radio or television, or contained in any notice, handbill, sign, billboard poster, bill catalog, letter or business card.

(2) "Clear and conspicuous" means a statement, representation or term differing from other statements, representations or terms being made so as to be readily noticeable to the person to whom it is being disclosed either by its size, sound, length of time, color, placement in the ad, or other features.

(3) "Demonstrator, official or executive vehicles": the word "demonstrator" means a vehicle of the current or preceding model year which has never been the subject of a retail sale, and which has been used by dealership personnel for demonstrating performance ability. "Executive" and "official" vehicles when so advertised shall have been used exclusively by executives of the dealer's franchiser.

(4) "Bait advertising" means an alluring but insincere offer to sell or lease a product, to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from the advertised product to another product for a higher price or on a basis more advantageous to the dealer. Advertising a new motor vehicle at a price which does not include all equipment listed as standard equipment by the manufacturer without disclosing such fact, or failing to disclose any such equipment for the purpose of advertising a low price and "baiting" the customer into charges above the advertised price is prohibited. No practice shall be pursued by the advertiser which will discourage the sale of the advertised product with the intent and purpose of selling other merchandise instead.

Section 2. Licensees shall not use misleading or bait advertising.

Section 3. Advertisements for the sale or lease of new and used vehicles placed by a licensee shall clearly and conspicuously identify the dealership by including in the text of the advertisement ~~either the word "dealer" or~~ the business name as it appears on the dealer's[dealer] license. In classified newspaper advertisements, the licensee may, as an alternative, use the word "dealer" in the text of the advertisement. A new or used motor vehicle dealer advertising the sale or lease of new or used motor vehicles at more than one licensed location shall use in the text of the advertisement the business name for each advertised location as the name appears on the dealer's license for the locations subject to the advertisement. Additionally, a new motor vehicle dealer advertising the sale or lease of new motor vehicles at more than one licensed

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location shall specifically identify the makes of vehicles available at each advertised location.

Section 4. (1) Except as provided in subsection (2) of this section, if a specific new motor vehicle is advertised by a dealer as being for sale, that vehicle shall be:

- (a) In the possession of the dealer;
- (b) Shown; and
- (c) Sold as advertised, illustrated or described at the advertised price and terms, at the advertised address.

(2) The advertisement for the sale or lease of a specific new motor vehicle that is not in stock on the date of the advertisement shall state:

- (a) "Not in stock"; or
- (b) "Order yours now"; or
- (c) Other phrases of similar import that clearly indicate the vehicle is not available for immediate delivery; and
- (d) Shall disclose a reasonable estimate of the period of time in which delivery will be made.

(3) If an advertisement pertains to one (1) specific vehicle only, this fact shall be disclosed in the advertisement. Listing a stock number is adequate disclosure.

Section 5. The following statements shall not be used in advertising by a dealer, unless such statements are absolutely true with no qualifications:

(1) Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own [if car]" or statements with similar meaning.

(2) Statements such as "everybody financed", "no credit rejected", "we finance anyone", and other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated.

(4) Statements implying that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles.

(5)(a) Retail advertising shall not state or imply that the dealer:

1. Is selling vehicles in a manner other than through normal retail channels;

2. Has a special relationship or connection to the manufacturer that other dealers do not have.

(b) Terms such as "wholesale", "factory sale", "factory discount", "factory outlet", "factory branch" and similar terms used in connection with the manufacturer's name are examples of terms that imply that a dealer has a special relationship or connection to manufacturer that other dealers do not have.

(6)(a) Claims such as "first", "largest", "biggest", shall not be used unless they are valid at the time such claims are made.

(b) If such claims are qualified with regard to area, location, time, or other limitations, upon the direction of the commission, the dealer shall incorporate within the advertisement the terms of such qualification.

Section 6. Since the amount of trade-in allowance will vary depending on the condition, model and age of a buyer's vehicle, no specific trade-in amount or range of amounts shall be used in advertising.

Section 7. An asterisk (*) may be used to give additional information about a word or term; however, use of one (1) or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify, or unreasonably limit a principal message of the advertisement shall not be used.

Section 8. Any disclosure appearing in advertisements shall clearly and conspicuously feature all necessary information in a manner that can be read and understood or which can be heard and understood. The minimum duration of printed language in a television advertisement shall be five (5) seconds for every three (3) lines.

Section 9. When a motor vehicle advertisement contains an offer of a discount on a new vehicle, the amount of such discount shall be stated by reference to the actual dollar figure of the manufacturer's suggested retail price of the vehicle plus the retail price of dealer-added options.

Section 10. The words "free", "gift", or words of similar import may be used in advertising only when the advertiser is offering an unconditional gift.

Section 11. The manufacturer's suggested retail price (MSRP) dollar figure of a new motor vehicle when advertised in local media by a manufacturer, distributor or regional advertisement council or association shall include all costs and charges for the vehicle advertised including destination charges when those charges are uniform regardless of destination throughout the state; destination charges subject to variance within the state and dealer preparation charges may be excluded from such price, provided that the advertisement conspicuously states that such costs and charges are excluded. When the price of a vehicle is advertised in local media by a licensee, the vehicle shall be fully identified as to year, make, model and if new or used. In addition, the stated price shall include all charges which the customer must pay for the vehicle, including, but not limited to, "freight" or "destination charges", "dealer preparation", "dealer handling", "additional dealer profit", "additional dealer margin", and "undercoating or rustproofing" if the vehicle is already so equipped. The advertised price at which the dealer is advertising a particular motor vehicle shall be the price before consideration for a down-payment, a trade-in allowance, or other similar allowances.

Section 12. Where the words "list" or "sticker" or words of similar import are used in a new motor vehicle advertisement, they shall only refer to the actual dollar figure of the manufacturer's suggested retail price (MSRP) plus the retail price of dealer-added options.

Section 13. Whenever any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle.

Section 14. A dealer offering to sell a demonstrator, program, official or executive vehicle shall clearly and conspicuously identify such former use. Demonstrators shall be offered for sale as such only by a dealer who holds a valid sales agreement or franchise [for] the sale of the same line make of motor vehicle. Vehicles advertised as official or executive vehicles shall not have been sold or leased to a retail customer prior to the appearance of the advertisement.

Section 15. No reduced interest rate on motor vehicle financing shall be advertised if the cost thereof would be directly or indirectly borne by the buyer unless the advertisement discloses that rate will affect the negotiated price of the vehicle to the buyer.

Section 16. In any action under this administrative regulation, truth shall be an absolute defense.

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 10:00 a.m. local time at the Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If you have a disability for which the Motor Vehicle Commission 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 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 30, 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: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlos R. Cassady

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements designed to ensure truthful and accurate advertising practices in the sale or lease of motor vehicles by licensed motor vehicle dealers.

(b) The necessity of this administrative regulation: KRS 190.040(1)(i) prohibits a motor vehicle dealer from engaging in false or misleading advertising. This amendment to the administrative regulation addresses certain advertising issues which have come to the commission's attention since the last date the regulation was published.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute prohibits a motor vehicle dealer from engaging in false or misleading advertising, this regulation sets forth requirements and prohibitions designed to ensure truthful and accurate advertising practices in the sale or lease of motor vehicles by licensed motor vehicle dealers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists or will assist in the effective administration of the statute by addressing certain issues often faced by licensees in the operation of their business and in advertising practices.

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

(a) How the amendment will change the existing administrative regulation: The regulation amends Section 1 (1) to clarify that advertising includes both physical and electronic media. Section 3 is amended to encompass advertisements by licensed dealers who choose to use an advertisement covering more than one location operated by the licensed dealer or a commonly owned entity.

(b) The necessity of the amendment to this administrative regulation: The amendment to Section 1 is necessary to recognize and address the significant use of web-based and other electronic advertisement which has grown significantly since the regulation was last promulgated in 1991. The amendment to Section 3 is necessary to address the growing prevalence of advertising by multi-line, multi-location licensees in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the authorizing statutory language in KRS 190.040(1)(i) to address new issues which have arisen due to changing business practices and changing advertising methodologies.

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist in the effective administration of the statute by addressing two frequently raised issues concerning the content of advertising in new and ever-changing electronic media and by clarifying advertising requirements as they relate to dealerships operating more than one licensed location.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all licensed motor vehicle dealers 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: With respect to the amendment in Section 1, the regulated entities will be required to apply existing advertising practices in compliance with this statute to all electronic advertising. With regard to the amendment in Section 3, the regulated entities choosing to advertise their business at multiple locations in a single advertisement will be required to clearly identify the separate operations and, in the case of new motor vehicle dealers, to clearly indicate the makes available at each advertised location.

(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 of the identified entities cannot be reasonably ascertained as but it is believed to be minimal as it is assumed that applicants will be able to conform future advertisements as part of the design process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be in compliance with the applicable statute.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an 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 Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all nonprofit motor vehicle dealers affected by this regulation 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? Motor Vehicle Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.040(1)(i), 190.073.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 regulation does not generate any revenue.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the issues which arise with regard to licensee advertising.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to licensee advertising.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 1:115. Annual in-service training of district board members.

RELATES TO: KRS[456.034,] 160.180

STATUTORY AUTHORITY: KRS 156.070, 160.180

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.034 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 160.180(5) provides that all local school board members shall complete an established number of hours of in-service training annually, based on the number of years of experience, and that the Kentucky Board of Education[State Board for Elementary and Secondary Education] shall identify the criteria for fulfilling such requirements. This administrative regulation establishes standards for the annual in-service training of district board members.

Section 1. Content of training. (1) The[annual] in-service requirements for all district school board members set forth in KRS 160.180(5) shall include[be as follows]:

(a) Three (3)[(4) Twelve (12)] hours of school finance training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training annually for school board members with zero to three (3) years of experience. School board members with zero to three (3) years of experience shall acquire the remainder of their hours in these topics or topics listed in Section 2(1)(b) of this administrative regulation:

(b) Two (2)[(2) Eight (8)] hours of school finance training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training annually for school board members with four (4) to seven (7) years of experience; or[.]

(c) One (1) hour of school finance[(3) Four (4) hours] training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training biennially for school board members with eight (8) or more years of experience[(4)(a) Newly appointed or elected school board members who take office after June 30th of a particular year shall be entitled, upon appropriate request, to an extension of time under Section 5 of this administrative regulation within which to acquire a maximum number of unacquired hours equal to the difference between the required number of hours and one (1) hour per month for each full month actually served during the year, and such extensions shall extend no longer than through the remainder of the term being served or the next two (2) calendar years, whichever is longer.

(b) Newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year may be granted an extension of time under Section 5 of this administrative regulation, in appropriate cases and for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required, but unacquired in-service hours for the initial year of new service. Any such extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year[.]

(2) For board members with four (4) or more years of experience, the remaining hours of required training[Section 2. The topics relating to the responsibilities of board members] may include but not be limited to the following subjects:

(a)[(4)] The basic role and responsibility of the district board and its members;

(b) Curriculum and instruction[(2) Instructional programs];

(c)[(3) District finance;

(4)] Relations with superintendent and staff;

(d)[(5)] School law; and

(e)[(6)] Community relations.

(3) To qualify toward meeting the in-service board member training requirements of KRS 160.180(5) and this administrative regulation, the required training activity shall not be:

(a) The regular work of the board, such as the attendance of meetings or the conduct of hearings;

(b) Irrelevant to the pertinent knowledge and skills of board membership; or

(c) A public relations or social activity, such as graduation or other student events.

Section 2. Providers of Training.[3-] (1)(a) The Kentucky School Boards Association (KSBA) shall be[is recognized as] the provider of eight (8) hours of district board member in-service training for board members who are required to obtain twelve (12) hours annually. Board members with zero to three (3) years of experience may acquire the remaining four (4) hours of their training from either the KSBA or the providers described in subsection (2) of this section. Board members with more than four (4) years of experience may acquire their hours from the KSBA or the providers described in subsection (2) of this section[This arrangement equates to the KSBA being the provider of thirty-two (32) of the forty-eight (48) hours required during the four (4) year period for new board members].

(b) The[New, inexperienced board members shall be exposed to basic information and skills that make them informed and effective board members. Topics that new, inexperienced board members shall acquire hours in shall be offered annually by] KSBA shall offer training on eight (8) of the eleven (11) following[from the following list of] topics annually and shall offer training on all eleven (11) topics at least once during every twenty-four (24) month period:

1. School law;
2. School finance;
3. Community relations;
4. Policy development;
5. Personnel relations;
6. Curriculum and instruction[Instructional programs];
7. Superintendent/board relations;
8. Goal setting/decision making;
9. Employment and evaluation of the superintendent;
10. Educational services provided for the exceptional, gifted and other special population children; and
11. Ethics.

(c) The KSBA shall coordinate with the chief state school officer annually to develop an in-service training plan for approval by the Kentucky Board of Education on or before November 1 of each year for use in the following calendar year. In-service training for district board members shall be provided at a minimum of five (5) geographic locations, on a variety of dates[KSBA shall offer hours in at least seven (7) of the ten (10) topics listed in paragraph (b) of this subsection annually. No topic shall be made available less frequently than once in every twenty-four (24) month period.

(d) Board members in the zero to three (3) year experience period shall be allowed a maximum of four (4) hours per year, or sixteen (16) hours for the four (4) year period, as flexible hours of in-service. If board members in this category opt to get all of their hours through the KSBA, then they shall have KSBA credit them for these hours. If they determine to acquire a portion or all of the sixteen (16) flexible hours through sources other than KSBA, then they shall get credit through their own school board's action at a board meeting, and a copy of that record shall be sent to KSBA so that proper credit can be given[.]

(2) Training providers, other than the KSBA, including the Prichard Committee, the Kentucky Education Association, the Kentucky Association of School Councils, the Kentucky PTA, the Kentucky Association of School Superintendents, the Kentucky Association of School Administrators, and any other provider, shall only provide training through courses that are:

(a) Customized for board members;

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(b) Approved by the department; and

(c) In compliance with the requirements of this administrative regulation~~[Those district board members in the four (4) to seven (7) years experience category may acquire their hours anywhere, through any source they desire. If they obtain their hours through any source other than the KSBA, they shall have local board approval and send a copy of the record (board minutes) to KSBA].~~

(3)(a) If board members opt to get all of their training hours through the KSBA, then they shall have KSBA credit them for these hours. If they obtain hours through any source other than the KSBA, they shall have local board approval and send a copy of the record (board minutes) to KSBA. If they acquire training hours through the other approved providers described in subsection (2) of this section, then a copy of proof of attendance including a recitation of the time, date, location, and description of the in-service training shall be sent by the course provider to KSBA within two (2) weeks of completion of the training so that proper credit can be given.

(b) The KSBA shall combine such hours with hours of in-service training received through KSBA training activities. These records shall be submitted annually by the KSBA to the Kentucky Board of Education.

(c) Each provider of training hours shall conduct an evaluation of each training course, which is offered by the provider during a calendar year and submitted by a local board member for training hours credit under this administrative regulation, and compile responses to be submitted to the KSBA within sixty (60) days of completion of the training~~[Those board members in the eight (8)-or more years experience category are subject to subsection (2) of this section.~~

(4) As the approved provider, the KSBA shall, in cooperation with the chief state school officer, annually develop an in-service training plan for the review and approval of the State Board for Elementary and Secondary Education. In-service training for district board members shall be provided at a minimum of five (5) geographic locations, on a variety of dates.

(5) The local district board of education shall by board action certify completion of all qualifying flexible hours of in-service training in writing to KSBA, which shall combine such hours with hours of in-service training received through its approved activities. The certification to KSBA shall include a description of the time, date, location, and description of the in-service training. These records shall be submitted annually to the State Board for Elementary and Secondary Education]

Section 3. Failure to Acquire Training~~[4.]~~ Subject to extensions granted under Section 4[5] of this administrative regulation, the names of all district school board members who fail to complete the required ~~[hours of]~~ in-service training set forth in KRS 160.180(5) and this administrative regulation shall be transmitted by the department~~[of Education]~~ to the Attorney General.

Section 4. Extension of Time. (1) The Kentucky Board of Education may grant newly appointed or elected school board members who take office after June 30th of a particular year an extension of time within which to acquire a maximum number of unacquired hours equal to the difference between the required number of hours and one (1) hour per month for each full month actually served during the year, and such extensions shall extend no longer than through the remainder of the term being served or the next two (2) calendar years, whichever is longer.

(2) The Kentucky Board of Education may grant newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year an extension of time, for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required, but unacquired in-service hours for the initial year of new service. Any such extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.

(3) The Kentucky Board of Education~~[5. The State Board for Elementary and Secondary Education]~~, in cases of emergency, may grant an extension of time within which a local board member shall complete the required hours of in-service training. Such ex-

tensions may include true emergencies for board members serving less than a full year, based upon reasons other than merely less than a full year's service.

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

TERRY HOLLIDAY, PH.D., Commissioner of Education

DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 15, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 30, at 10:00 a.m. in the State Board Room, First 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 September 30, 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: This administrative regulation establishes the criteria for fulfilling the training requirements of KRS 160.180(5) for district board members.

(b) The necessity of this administrative regulation: KRS 160.180(5) requires district board members to fulfill its requirements for the number of hours of annual in-service training and directs the agency to provide criteria for that training. This administrative regulation details the criteria for training content, course standards, the consequences for failure to meet the training requirements, and the avenue for extension of time to meet the training requirements.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 160.180(5) establishes the number of hours of in-service district board member training required annually and directs the agency to provide the criteria for that training in an administrative regulation. This administrative regulation conforms to the content of the authorizing statute by providing the criteria for that training.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation outlines the criteria for the training required of district board members and the reporting mechanism for ensuring district board members meet the training requirement of KRS 160.180(5).

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the in-service training criteria to include required topics and course standards for the training of all district board members.

(b) The necessity of the amendment to this administrative regulation: The overall purpose of this amendment to the administrative regulation is to help all district board members engage in positive growth and become better informed about certain critical areas, specifically ethics, finance, and superintendent evaluation.

This amendment adds mandatory requirements for training in these topics and sets course standards to ensure the alignment of the training course to the roles and needs of district board members. This amendment also provides an avenue for district board members to evaluate and provide feedback on the training they have received.

(c) How the amendment conforms to the content of the authorizing statute: KRS 160.180(5) establishes the number of hours of in-service district board member training required annually and directs the agency to provide the criteria for that training in an administrative regulation. This administrative regulation conforms to the content of the authorizing statute by updating the criteria for that training in light of current district board members' needs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will increase the district boards' efficacy in the areas of ethics, school finance, and superintendent evaluation, which should result in better management of school districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 school districts and their governing boards.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by school districts to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts already bear the cost of the training required of district board members in KRS 160.180(5). There would be no additional cost to continue to meet the training requirements of that statute and this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will increase the district boards' efficacy in the areas of ethics, school finance, and superintendent evaluation, which should result in better management of school districts.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General school district funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There will be no increase in fees with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation 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? School districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.180(5).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The intent is to update the criteria for district board member training to effect an increase the district boards' efficacy in the areas of ethics, school finance, and superintendent evaluation, which should result in better management of school districts.

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

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

(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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

704 KAR 3:390. Extended school services.

RELATES TO: KRS 158.070, 158.6451, 158.6459

STATUTORY AUTHORITY: KRS 156.070, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.070(9)(8) requires schools to provide continuing education for students who need additional instructional time to achieve the outcomes defined in KRS 158.6451. KRS 158.070(9)(8) requires the Kentucky Board of Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver those services during the regular school day. This administrative regulation establishes~~established~~ requirements for extended school services.

Section 1. Definitions. (1) ~~"A5 program" means an alternative program, which is a district-operated and district-controlled facility with no definable attendance boundaries, that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court-ordered placements). Students enrolled in A5 program typically include:~~

~~(a) Actual dropouts returning to an alternate educational environment;~~

~~(b) Potential or probable dropouts;~~

~~(c) Drug abusers;~~

~~(d) Physically abused students;~~

~~(e) Discipline problem students;~~

~~(f) Nontraditional students (e.g., students who have to work during the school day); or~~

~~(g) Students needing treatment (e.g., emotional or psychological).~~

(2) "A6 program" means a district-operated instructional program in a nondistrict-operated institution or school.

(3) "Diagnostic assessment[, "formative assessment" or "benchmark assessment,]" means an assessment that is used to identify~~identify~~ gaps in student learning in specific content areas.

(2)(4) "Extended school services" or "ESS" means instructional and support services provided:

(a) By school districts for students who are unlikely to achieve proficiency, transition to the next level of learning successfully, or be able to meet the academic expectations in 703 KAR 4:060 without additional time or differentiated opportunity to learn;

(b) At times separate from the regular school day, regular school week, or the minimum school term, unless a district's request for a waiver meets the criteria established in Section 7 of this

administrative regulation and has been approved by the commissioner [of Education]; and

(c) As interventions included in the student's intervention plan, ~~in primary through grade 5, or in the student's Individual Learning Plan, in grades 6 through 12,~~ to ensure that the student remains in school and is on track to meet goals for postsecondary education and career after high school.

(3)[(5)] "Formative assessment" is defined by KRS 158.6453(1)(e) ~~means the process used by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended learning outcomes~~.

(4)[(6)] "Individual learning plan" means a plan to help students in grades 6 through 12 better focus their coursework on individual goals as they prepare for postsecondary studies and careers.

(5)[(7)] "Interim[or benchmark] assessments" is defined by KRS 158.6453(1)(f).

(6) "Student intervention plan" means a plan written to identify the specific intervention goals for a student and used to track student progress on those goals.

(7) ~~means assessments that are administered at the school or district level at prescribed intervals and aimed at collecting student instructional data.~~

(8) "Summative assessment" is defined by KRS 158.6453(1)(i).

(8) ~~means tests given at the end of instruction to determine what was learned.~~

(9) "Support services" means services that provide technical, administrative, and logistical support to facilitate and enhance instruction and noninstructional components of a program that:

(a) Are provided to enable the student to realize the benefits of the instructional program; and

(b) May include transportation, instructional materials or supplies, student snacks, school-based counseling, community-based mentoring, academic advising, parent training for follow through, or referrals for social, health or financial assistance through appropriate service agencies.

Section 2. Instructional Program. (1) The major emphases of extended school services shall be to provide additional time and differentiated opportunity to learn in a program in which rigorous academic and enrichment content are aligned with individual student needs to improve the present level of performance in one (1) or more content areas. Priority for ESS services shall be placed on designing and delivering services to students at academic risk with the specific objective that students are able to:

(a) Progress from grade to grade with their cohort;

(b) Exit elementary school ready to meet academic expectations at the middle school level;

(c) Exit middle school ready to meet academic expectations at the high school level; and

(d) Exit high school ready to meet academic expectations at the [of] postsecondary education level and in the workplace, with particular emphasis on literacy and mathematics.

(2) The extended school services provided to a student shall be planned, documented, and evaluated through the intervention plan, ~~at primary through grade 5, or in the student's Individual Learning Plan, in grades 6 through 12.~~ The instructional program for extended school services shall include:

(a) Diagnostic assessments to determine areas of highest academic need of the individual student;

(b) Development of goals, in consultation with classroom teachers, parents, and students, for eliminating the identified academic need, including timelines and specific measurable outcomes;

(c) Formative and summative assessments to facilitate student progress and to determine if the student has achieved the learning goals of the student's intervention plan;

(d) Instructional strategies that are differentiated[varied] and that do not replicate practices that have proven to be ineffective for the student in the traditional classroom;

(e) A plan for collaboration and consistent use of interventions among the teachers supporting the student in core academic classes and those providing supports through extended school ser-

vices;

(f) Counseling and academic advising to remove barriers to achievement; and

(g) Regular communication with the parent or guardian.

(3) The instructional program may utilize a variety of scheduling models including:

(a) Programs operated during the regular school day as provided in Section 7 of this administrative regulation;

(b) Extended day programs which are scheduled at any time outside of the regular school day;

(c) Night programs;

(d) Saturday programs;

(e) Summer programs; or

(f) Flexible school calendars which allow eligible students to attend school for a longer period of time than other students.

(4) The district's comprehensive school improvement plan shall include opportunities to collaborate with businesses, colleges, and community organizations to provide services and advising in off-campus locations as part of or aligned with the extended school services programs.

(5) Extended school services programs shall not supplant instructional time of the regular school program, but shall extend time and provide differentiated opportunity to learn in a specific area of academic need.

(6) Certified staff, including administrators, teachers, and advisors, shall collaborate to plan, deliver, and evaluate extended school services instruction and supports ~~in collaboration~~ as part of a student's intervention plan ~~Individual Learning Plan (ILP)~~.

(7) Teachers providing instruction in extended school programs shall meet the same professional qualifications as teachers who are employed in the regular school program.

(8) Teachers providing instruction in extended school programs shall be provided with professional development on effective instructional strategies for meeting the needs of at-risk students and the use of formative assessment strategies to monitor progress.

(9) Certified staff shall supervise noncertified tutors.

(10) Extended school services shall be provided to eligible students who are in the first year of the primary school program through the twelfth grade. Students shall be eligible to receive these services until they graduate from the twelfth grade or reach[become] twenty-one (21) years of age, whichever comes first.

Section 3. Student Selection. (1) Each school district shall select pupils who need additional instructional time or differentiated opportunity to learn as described in Section 2(1) of this administrative regulation ~~who need additional instructional time~~. A student shall not be selected or assigned to receive extended school services for disciplinary purposes or for any kind of in-school suspension. ~~The needs of students in A5 and A6 programs shall be considered in the selection process.~~

(2) Within its scope of authority, a local board of education ~~or school council~~ may mandate the participation of eligible students in[to] extended school services through the adoption of a written policy, which shall describe all conditions under which attendance will be required and shall provide a description of any exceptions permissible under the policy.

(3) The policy for attendance in extended school services ~~Conditions for attendance for extended school service~~ shall include:

(a) Identification of the learning goals and benchmarks that, if achieved, indicate that the student may exit the extended school services program;

(b) The conditions under which a student's absence may be considered excused or unexcused; and

(c) The arrangements for transporting the students mandated to attend.

(4) If requested by the Kentucky Department of Education, the local school board shall provide notice of the policy in the district's annual extended school services program report, which is submitted at the same time as the district's comprehensive school improvement plan.

(5) One (1) or more of the following shall be used to determine which students shall be eligible for and in greatest need of extend-

ed school services:

- (a) Teacher recommendation;
- (b) Academic performance data, including diagnostic, formative, interim, ~~[benchmark,]~~ or summative assessments;
- (c) Student performance on high school, college, or workforce readiness assessments required by KRS 158.6459; or
- (d) Behavioral and developmental progress as documented in formal and informal assessments and reports.

(6) Local school boards shall approve and disseminate procedures whereby pupils who have a greater need as determined by the eligibility criteria shall be referred and selected first to receive extended school services. These procedures shall not exclude students who have greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

(7) A local school district shall solicit input from parents and the community to identify potential barriers to participation. Identified barriers shall be addressed through engagement with community partners or off-campus locations of after school, weekend, or evening services.

(8) Schools shall inform parents and guardians of extended school services including:

- (a) The rationale for offering extended school services, including data about educational achievement and ~~future~~future earnings, opportunities for postsecondary education and training, and consequences of failure to achieve the high school diploma;
- (b) A specific notification to parents or guardians of their child's eligibility to ~~be assigned~~receive or assignment to extended school services, including the manner in which a personalized intervention plan and goals will be included as part of the student's individual learning plan to help ensure that the student is able to achieve the student's academic and career goals; and
- (c) Written procedures for parents or guardians to request reconsideration of their ~~child's~~children's identification or lack of identification of eligibility for extended school services.

Section 4. Funding. (1) Each school district shall be eligible to receive a grant award from available funds to provide extended school services. Available funds shall be the amount of the total appropriation less two (2) percent for state administrative costs.

(2) The commissioner~~[of education]~~ shall ~~distribute~~determine the ~~remaining appropriation as follows~~the amount of the grant award for which each school district is eligible based upon the following division of funds:

- (a) ~~One-third (1/3)~~One-half (1/2) of the total funds shall be distributed based on the most current average daily attendance (ADA);
- (b) ~~One-third (1/3)~~One-sixth (1/6) of the total funds shall be distributed based on the most current rates of economic deprivation (ED); and
- (c) ~~One-third (1/3)~~One-sixth (1/6) of the total funds shall be distributed based on the most current dropout rates (DR); and
- (d) ~~One-sixth (1/6)~~ of the total funds shall be distributed based on the most current state assessment overall score (OS)~~[CATS Academic Indices (AI)]~~.

(3)(a) The state total for ED shall be the sum of all districts' ED quotients. Each district's ED quotient shall be calculated by multiplying the district's ED times the district's ADA.

(b) The state total for OS shall be the sum of all districts' OS quotients.

(c) The state total for ADA shall be the sum of the ADA for all districts.

(4) Actual district allocations shall be calculated as follows:

(a)~~Determine the state total for ADA by summing the ADA for all districts;~~

(b)~~Determine the percentage each district shall receive for ADA by dividing the district's ADA by the state total ADA. The resulting percentage multiplied times the total funds available for average daily attendance shall equal the amount the district shall receive for ADA;~~

(b) Determine the percentage each district shall receive for ED by multiplying the district's ED times the district's ADA and divide the result by the state's total ED, as determined by paragraph (c) of this subsection. The resulting percentage multiplied times the total

funds available for economic deprivation shall equal the amount the district shall receive for ED;

~~(c)[State totals for ED, AI, and DR shall be calculated as follows:~~

~~1. The state total for ED shall be the sum of all districts' ED quotients. Each district's ED quotient shall be calculated by multiplying the district's ED times the district's ADA;~~

~~2. The state total for AI shall be the sum of all districts' AI quotients. Each district's AI quotient shall be calculated by subtracting the AI from 100 and then multiplying the difference by the district's ADA; and~~

~~3. The state total for DR shall be the sum of all district's DR quotients. Each district's DR quotient shall be calculated by multiplying the district's DR times the district's ADA;~~

~~(d) Determine the percentage each district shall receive for ED by multiplying the district's ED times the district's ADA and divide the result by the state's total ED, as determined by paragraph (c)1 of this subsection. The resulting percentage multiplied times the total funds available for economic deprivation shall equal the amount the district shall receive for ED;~~

~~(e) Determine the percentage each district shall receive for OS[AI] by multiplying the district's OS[AI] times the district's ADA and divide the result by the state's total OS[AI] as determined by paragraph (b)[(e)2] of this subsection. The resulting percentage multiplied times the total funds available for overall score[academic indices] shall equal the amount the district shall receive for OS[AI];~~

~~(f) Determine the percentage each district shall receive for DR by multiplying the district's DR times the district's ADA and divide the result by the state's total DR as determined by paragraph (c)3 of this subsection. The resulting percentage times the total funds available for dropout rate shall equal the amount the district shall receive for DR]; and~~

~~(5)[(g)] Sum the district's portions for ADA, ED, and OS [AI, and DR] to determine the district's total ESS allocation.~~

~~(6)[(4)] To ensure the opportunity for all school districts to provide effective extended school services of adequate size and scope, a school district shall not receive a grant of less than \$15,000.~~

~~(7)[(5)] Grant awards shall be made to each school district upon approval by the commissioner[of education] of an application described[as prescribed] in Section 5 of this administrative regulation. Regular grant funds shall be available for use by[school] districts for fifteen (15) months through September 30 of the last year of the grant period. All services shall be delivered by September 30 of the last year of the grant period and all expenditures shall be paid for extended school services by December 30 of the last year of the grant period.~~

~~(8)[(6)](a) Funds received for extended school services shall be expended for instructional and support services necessary to provide an effective program.~~

~~(b) These services shall include salaries of personnel.~~

~~(c) Transportation and staff development related to the provision of extended school services shall be considered permissible support services.[Support may include expenditures for field trips, which shall not exceed two (2) percent of the district's allocation for students served by the extended school services program.]~~

~~(d) Funds for extended school services shall not be used for capital outlay or indirect costs.~~

~~(e) School districts shall be authorized to enter into contractual arrangements if needed to provide comprehensive extended school service programs.~~

~~(f)[The]Funds may be expended for instructional materials and supplies if a need is demonstrated and the district does not have the supplies and materials available.~~

~~(g)[Part of these funds may be used for up to three (3) percent of the district's allocation for operation of plant for a summer extended school services program which shall be prorated if other programs are taking place at the same time and place.~~

~~(h)] Part of these funds may be used for administrative costs, which shall not exceed five (5) percent of the district's allocation.~~

~~(h)[(4)] Students shall not receive monetary compensation to attend the extended school services program.~~

~~(i)[(5)] School districts shall maintain[have] on file the written criteria for the selection of personnel employed in extended school~~

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services and shall ensure staffing decisions are made to best meet the needs of students.

(9)(7) Financial records for extended school services shall be maintained by each school district and shall be submitted to the Department of Education via the state technology system.

Section 5. Requesting Funds. (1) A[The] request for the use of extended school services funds shall be submitted as part of the district's comprehensive improvement plan.

(2)(a) District applications for funds shall be approved by the commissioner[~~of education~~] prior to the encumbrance or expenditure of funds for extended school services by any school district, including the contracting off[for] personnel for extended school services.

(b) Approval of programs as described in each district's comprehensive improvement plan, required program reports, and request for a waiver for alternative service delivery shall be based on this administrative regulation and KRS 158.070.

Section 6. Program Evaluation. For the purpose of program evaluation, the Kentucky Department of Education shall collect in the student information system the following data for all schools:

(1) Number of students receiving extended school services;

(2) Content areas where services received;

(3) Hours of service provided;

(4) Demographic data for students receiving extended school services; and

(5) Student improvement as a result of extended school services[School districts providing extended school services shall submit to the Department of Education:

(1) Student data through the student information system and the Individual Learning Plan at the end of the regular school term and any summer term in which funds are expended for extended school services;

(2) Evaluation and evaluative data as approved in the waiver application, if the school district receives approval to implement extended school services during the regular school day; and

(3) Data relative to the effectiveness of the extended school service program, including:

(a) ~~Pre- and post-student qualitative and quantitative performance data;~~

(b) ~~Student attendance at extended school services; and~~

(c) ~~Promotion and graduation data].~~

Section 7. Waiver for Alternative Service Delivery. (1) The commissioner[~~of education~~] may consider a request for a waiver to operate an extended school services[a] program during the school day or to use an alternative delivery format. A request for a waiver shall include:

(a)(4) A rationale describing why a daytime program is needed;

(b)(2) A description of the instructional program that meets the criteria established in Section 2 of this administrative regulation;

(c)(3) A description of the student selection process that meets the criteria in Sections 2 and 3 of this administrative regulation; and

(d)(4) A detailed and[,] accurate budget that includes[using] correct MUNIS codes. A person compensated with extended school services[ESS] funds shall devote his or her time to delivering extended school[ESS] services during the time period for which he or she is being compensated with extended school services[ESS] funds.

(2) For the purpose of program evaluation, the Kentucky Department of Education shall collect the following additional data from schools receiving a daytime waiver:

(a) Evaluation and evaluative data as approved in the waiver application; and

(b) Data relative to the effectiveness of the extended school service program, including:

1. Pre- and post-student qualitative and quantitative performance data;

2. Student attendance at extended school services; and

3. Promotion and graduation data.

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.

DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 15, 2013 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 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 September 30, 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: This regulation establishes the requirements for the administration of extended school services programs.

(b) The necessity of this administrative regulation: This regulation outlines for districts the appropriate use of their extended school services funds and contains the formula by which those funds will be calculated and distributed to districts.

(c) How this administrative regulation conforms to the content of the authorizing statute:

KRS 158.070(9) requires schools to provide continuing education for students who need additional instructional time to achieve the outcomes defined in KRS 158.6451. KRS 158.070(9) requires the Kentucky Board of Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver those services during the regular school day.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation outlines the criteria for the extended school services grants to school districts so they can provide the services required by KRS 158.070 (9).

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the funding formula to reflect the new accountability system.

(b) The necessity of the amendment to this administrative regulation: The accountability system has changed in Kentucky and the previous funding formula contained an academic index score. Districts no longer receive an academic index score, but now receive an overall score. The update to the formula reflects that change. The formula update also reflects the equal importance that all factors play in interventions for students, including attendance, economic status (to make sure those in greatest need are served), and performance. All of those components are now equalized in the formula.

(c) How the amendment conforms to the content of the authorizing statute: KRS 158.070(9) requires the Kentucky Board of Education to promulgate administrative regulations establishing

criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver those services during the regular school day.

(d) How the amendment will assist in the effective administration of the statutes: The amendment describes how the funds will be allocated as required by the statute.

(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: No action is required by school districts to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Schools already have Extended School Service programs. There would be no additional cost to continue to administer these programs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts with the greatest need in terms of students in poverty and that are implementing practices to ensure students are coming to school will see an increase in the academic performance of their students and will in turn, receive more funds to continue to provide intervention services.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Extended School Services funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There will be no increase in fees with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation 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? All 173 schools/districts will be affected by the change in funding for their Extended School Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.070(9) requires schools to provide continuing education for students who need additional instructional time to achieve the outcomes defined in KRS 158.6451. KRS 158.070(9) requires the Kentucky Board of Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver those services during the regular school day.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The intent is to update the funding formula to reflect the new accountability system and to equalize the factors in the funding formula to help districts intervene with students in need. If a district has a larger population of students at risk, is able to increase the attendance rate of these students and, in turn, increases the academic achievement of these students, the revised formula will yield more funding for that district. Some districts will receive slightly increased funding, while others will see slightly decreased funding.

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

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

(c) How much will it cost to administer this program for the first year? Districts already have Extended School Service programs. There would be no additional cost to continue to administer these programs. The allocation from the legislature remains the same for Extended School Services.

(d) How much will it cost to administer this program for subsequent years? Districts already have Extended School Service programs. There would be no additional cost to continue to administer these programs. The allocation from the legislature remains the same for Extended School Services.

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 Alcoholic Beverage Control (Amendment)

804 KAR 9:040. Quota retail package licenses~~[Retail package liquor license quota]~~.

RELATES TO: KRS 241.060(2), 241.065, 241.075, 242.125, 243.030(7)

STATUTORY AUTHORITY: KRS 241.060(2), EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit in its sound discretion the number of licenses of each kind or class to be issued[issue] in this state or any political subdivision, and restrict the locations of licensed premises.[EO 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol Beverage Control.] This administrative regulation establishes quota retail liquor package licenses in cities that have become wet pursuant to KRS 242.125 separately from their respective counties which remain dry. [individual quotas for smaller political subdivisions within a county if the general retail package liquor license quota established in 804 KAR 9:040, if applied, would result in the issuance of more licenses than the population of the political subdivision could reasonably support].

Section 1. Establishment of general city quotas. (1) Except as provided in subsection (2) of this section and Section 4 of this administrative regulation, the number of quota retail package licenses issued by the department in any city of the Commonwealth which becomes wet separately by virtue of a KRS 242.125 local option election held after January 1, 2013, shall not exceed a number equal to one (1) for every 2,300 persons resident in the city.

(2) The minimum number of quota retail package licenses issued by the department in any city shall be two (2) such licenses.

(3) The estimates of population for Kentucky cities prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used, if available, in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) years after the certification of a wet election pursuant to KRS 242.125 by a city, the city may file a request to the board seeking a specific city quota to increase the number of quota retail package

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licenses for the city from that established in Section 1 of this administrative regulation.

(2) Before seeking this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city's intent to request additional city quota licenses from the board. A city may petition the board for a specific quota increasing the number of quota retail package licenses only once every three (3) years from the date of the denial or establishment of a specific city quota.

(3) A city's request to the board for a specific increased quota shall include:

(a) A certified copy of a city council government resolution approving the request;

(b) A certified copy of the notice referenced in subsection (2) of this section; and

(c) An explanation why the city meets the criteria for a quota increase in conformity with Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may indicate, in writing, its desire for an administrative hearing before the board regarding its request. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(6) In conformity with Section 4 of this administrative regulation, the department may publish notice of quota vacancies and issue quota retail package licenses for the general quota number established by Section 1 of this administrative regulation. A licensee that holds a quota retail package license assumes the business risk that the number of quota licenses might be increased.

(7) Any specific city quota for quota retail package licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(8) This Section does not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section.

Section 3. Criteria for Consideration. The board may consider the following information in its determination of a city's request for an increased quota made under Section 2(3) of this administrative regulation:

(1) Population served by the city;

(2) Total retail sales of the city for the most recent past fiscal year;

(3) Retail sales per capita for the most recent past fiscal year;

(4) Tourist destinations in the area; and

(5) Other economic and commercial data offered to show the city's capacity to support additional licenses.

Section 4. Establishment of Specific City Quotas. (1) Pikeville, which repealed prohibition on April 12, 1983, shall have a quota of thirteen (13) quota retail package licenses.

(2) Madisonville, which repealed prohibition on March 10, 1992, shall have a quota of seven (7) quota retail package licenses.

(3) Central City, which repealed prohibition on July 10, 2002, shall have a quota of four (4) quota retail package licenses.

(4) Dawson Springs, which repealed prohibition on February 5, 2008, shall have a quota of two (2) quota retail package licenses.

(5) Lancaster, which repealed prohibition on August 19, 2008, shall have a quota of three (3) quota retail package licenses.

(6) Paintsville, which repealed prohibition on June 9, 2009, shall have a quota of three (3) quota retail package licenses.

(7) Danville, which repealed prohibition on March 2, 2010, shall have a quota of six (6) quota retail package licenses.

(8) Earlinton, which repealed prohibition on March 29, 2011, shall have a quota of two (2) quota retail package licenses.

(9) Manchester, which repealed prohibition on June 21, 2011, shall have a quota of two (2) quota retail package licenses.

(10) Elizabethtown, which repealed prohibition on October 4, 2011, shall have a quota of twelve (12) quota retail package licenses.

(11) Radcliff, which repealed prohibition on October 4, 2011, shall have a quota of nine (9) quota retail package licenses.

(12) Vine Grove, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(13) Guthrie, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(14) Junction City, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(15) Corbin, which repealed prohibition on February 14, 2012, shall have a quota of three (3) quota retail package licenses.

(16) Somerset, which repealed prohibition on June 26, 2012, shall have a quota of five (5) quota retail package licenses.

(17) Whitesburg, which repealed prohibition on June 26, 2012, shall have a quota of two (2) quota retail package licenses.

(18) Murray, which repealed prohibition on July 17, 2012, shall have a quota of seven (7) quota retail package licenses.

(19) Franklin, which repealed prohibition on July 17, 2012, shall have a quota of three (3) quota retail package licenses.

(20) LaGrange, which repealed prohibition on July 24, 2012, shall have a quota of three (3) quota retail package licenses.

(21) Georgetown, which repealed prohibition on July 31, 2012, shall have a quota of twelve (12) quota retail package licenses.

(22) Princeton, which repealed prohibition on August 7, 2012, shall have a quota of two (2) quota retail package licenses.

Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for wet cities located in dry counties.

(2) When a quota retail package license vacancy is created or it occurs for any reason, the Department of Alcoholic Beverage Control shall within sixty (60) days arrange for the newspaper used for city legal notices to advertise the vacancy and provide information about applying for it.

(3) The Department of Alcoholic Beverage Control shall accept applications for quota retail package license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (2) of this section is published.

Section 6. Quota Reductions. (1) This administrative regulation shall not prohibit renewal or approved transfer of an existing quota retail package license issued in a wet city situated in a dry county.

(2) The number of existing quota retail package licenses in excess of the quota established by this administrative regulation shall be reduced as they expire or are surrendered or revoked.

Section 7. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the quota established for that entire county by 804 KAR 9:010 shall supersede and replace any separate city quota under this administrative regulation. [For Pikeville, following its repeal of prohibition on April 12, 1983, the retail package liquor license quota shall be thirteen (13).

Section 2. For Madisonville, following its repeal of prohibition on March 10, 1992, the retail package liquor license quota shall be seven (7).

Section 3. For Central City, following its repeal of prohibition on July 10, 2002, the retail package liquor license quota shall be four (4).

Section 4. For Dawson Springs, following its repeal of prohibition on February 5, 2008, the retail package liquor license quota shall be one (1).

Section 5. For Lancaster, following its repeal of prohibition on August 19, 2008, the retail package liquor license quota shall be three (3).

FREDERICK HIGDON, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 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 September 17, 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 30, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Trey Hieneman, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hieneman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes automatic quotas for cities that vote to go wet at a ratio of 1:2,300 people. The amendment also creates a mechanism for cities to petition the board to increase their quota. The amendment to this administrative regulation also establishes the retail liquor package license quota for each of the following cities: Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton. The amendment also increases the liquor package license quota to two (2) in Dawson Springs, so as to avoid a monopoly. The amendment to this administrative regulation establishes the method for filling quota vacancies and reducing quotas. Finally, the amendment clarifies that no city quota can exist in a wet county.

(b) The necessity of this administrative regulation: The existing administrative regulation establishes the number of quota licenses for cities based on population and monopoly avoidance while a different regulation, 804 KAR 9:010, establishes county quotas. This regulation is necessary to establish quotas for wet cities located within dry counties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.060(2) requires the board to limit in its sound discretion the number of licenses of each kind or class to be licensed in this state or any political subdivision, and restrict the locations of licensed premises. To this end, the Board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions or subdivisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. The amendment to this administrative regulation enables the board to execute its KRS 241.060(2) duty by setting quotas for newly wet cities situated in dry counties.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes automatic quotas for cities that vote to go wet at a ratio of 1:2,300 people. The amendment also creates a mechanism for cities to petition the board to increase their quota. The amendment to this administrative regulation also establishes the retail liquor package license quota for each of the following cities: Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton. The amendment also increases the liquor package license quota to two (2) in Dawson

Springs, so as to avoid a monopoly. The amendment to this administrative regulation establishes the method for filling quota vacancies and reducing quotas. Finally, the amendment clarifies that no city quota can exist in a wet county.

(b) The necessity of the amendment to this administrative regulation: The existing administrative regulation establishes the number of quota licenses for cities based on population and monopoly avoidance while a different regulation, 804 KAR 9:010, establishes county quotas. This amendment is necessary to establish quotas for wet cities located within dry counties.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.060(2) requires the board to limit in its sound discretion the number of licenses of each kind or class to be licensed in this state or any political subdivision, and restrict the locations of licensed premises. To this end, the Board may make reasonable division and subdivision of the state or any political subdivision into districts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation enables the board to execute its KRS 241.060(2) duty by setting quotas for newly wet cities situated in dry counties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will affect the Kentucky Department of Alcoholic Beverage Control ("Department") by providing a limited number of retail liquor package licenses that may be issued to newly wet cities. It will affect the cities of Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton. The city of Grayson will be affected by this regulation, as they are the only city to repeal prohibition since January 1, 2013. Current quota retail package license holders in the aforementioned cities may be affected if the cities petition for additional licenses and the board approves the petition.

(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:

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: The impact of this amendment to the regulation will be minimal because the Department already issues state licenses and enforces alcohol laws and cities already issue city licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cities identified in question (3) will have little to no cost. The cost impact on the licensees mentioned in question (3) is indeterminable, since the board must decide whether to increase the city's quota.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cities in question (3) will have a set number of quota retail package licenses, with the potential to increase their number of licenses. The licensees mentioned in question (3) will receive no additional benefits.

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

(a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implementation and enforcement 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 amendment.

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. The Commonwealth of Kentucky, Department of Alcoholic Beverage Control's licensing division will be required to process all applications and licenses issued by this administrative regulation. The cities of Paintsville, Danville, Earlington, Manchester, Elizabethtown, Radcliff, Vine Grove, Guthrie, Junction City, Corbin, Somerset, Whitesburg, Murray, Franklin, LaGrange, Georgetown, and Princeton, are already required to process all applications and issue alcoholic beverage licenses in their respective cities. All cities who vote to repeal prohibition after January 1, 2013 will be affected by this regulation.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.060(2) requires the board to limit in its sound discretion the number of licenses of each kind or class to be licensed in this state or any political subdivision, and restrict the locations of licensed premises.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Under KRS 243.070(1)(e)(4), the city of Paintsville could receive up to \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued in the city of Paintsville. Under KRS 243.070(1)(e)(4), the city of Danville could receive up to \$3,600.00 annually (\$600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive \$3,600.00 annually (\$600.00 per license) if six (6) quota retail package licenses were issued in the city of Danville. Under KRS 243.070(1)(e)(4), the city of Earlington could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail liquor package licenses were issued in the city of Earlington. Under KRS 243.070(1)(e)(4), the city of Manchester could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued in the city of Manchester. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to \$8,400.00 annually (\$700.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive \$8,400.00 annually (\$700.00 per license) if twelve (12) quota retail package licenses were issued in Elizabethtown. Under KRS 243.070(1)(e)(4), the city of Radcliff could receive up to \$6,300.00 annually (\$700.00 per license) if nine (9) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive \$6,300.00 annually (\$700.00 per license) if nine (9) quota retail package licenses were issued in Radcliff. Under KRS 243.070(1)(e)(4), the city of Vine Grove could receive up to \$1,400.00 annually (\$700.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive \$1,400.00 annually (\$700.00 per license) if two (2) quota retail package licenses were issued in Vine Grove. Under KRS 243.070(1)(e)(4), the city of Guthrie could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued in Guthrie. Under KRS

243.070(1)(e)(4), the city of Junction City could receive up to \$1,200.00 annually (\$600.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive \$1,200.00 annually (\$600.00 per license) if two (2) quota retail package licenses were issued in the city of Junction City. Under KRS 243.070(1)(e)(4), the city of Corbin could receive up to \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued to the city of Corbin. Under KRS 243.070(1)(e)(4), the city of Somerset could receive up to \$3,000.00 annually (\$600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive \$3,000.00 annually (\$600.00 per license) if five (5) retail liquor package licenses were issued in the city of Somerset. Under KRS 243.070(1)(e)(4), the city of Whitesburg could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued to the city of Whitesburg. Under KRS 243.070(1)(e)(4), the city of Murray could receive up to \$4,200.00 annually (\$600.00 per license) if seven (7) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive \$4,200.00 annually (\$600.00 per license) if seven (7) quota retail package licenses were issued in the city of Murray. Under KRS 243.070(1)(e)(4), the city of Franklin could receive up to \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued in the city of Franklin. Under KRS 243.070(1)(e)(4), the city of LaGrange could receive up to \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued in the city of LaGrange. Under KRS 243.070(1)(e)(4), the city of Georgetown could receive up to \$6,000.00 annually (\$500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$6,000.00 annually (\$500.00 per license) if twelve (12) quota retail package licenses were issued to the city of Georgetown. Under KRS 243.070(1)(e)(4), the city of Princeton could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued to the city of Princeton. Under KRS 243.070(1)(e)(4), the city of Dawson Springs could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued to the city of Dawson Springs. Under KRS 243.070(1)(e)(4), the city of Grayson could receive up to \$1,200.00 annually (\$600.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,200 annually (\$600.00 per license) if two (2) quota retail package licenses were issued to the city of Grayson.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Under KRS 243.070(1)(e)(4), the city of Paintsville could receive up to \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued in the city of Paintsville. Under KRS 243.070(1)(e)(4), the city of Danville could receive up to \$3,600.00 annually (\$600.00 per license) if six (6) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive \$3,600.00 annually (\$600.00 per license) if six (6) quota retail package licenses were issued in the city of Danville. Under KRS 243.070(1)(e)(4), the city of Earlington could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued.

(2) quota retail liquor package licenses were issued in the city of Earlington. Under KRS 243.070(1)(e)(4), the city of Manchester could receive up to 1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued in the city of Manchester. Under KRS 243.070(1)(e)(4), the city of Elizabethtown could receive up to \$8,400.00 annually (\$700.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive \$8,400.00 annually (\$700.00 per license) if twelve (12) quota retail package licenses were issued in Elizabethtown. Under KRS 243.070(1)(e)(4), the city of Radcliff could receive up to \$6,300.00 annually (\$700.00 per license) if nine (9) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive \$6,300.00 annually (\$700.00 per license) if nine (9) quota retail package licenses were issued in Radcliff. Under KRS 243.070(1)(e)(4), the city of Vine Grove could receive up to \$1,400.00 annually (\$700.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(b), the state would receive \$1,400.00 annually (\$700.00 per license) if two (2) quota retail package licenses were issued in Vine Grove. Under KRS 243.070(1)(e)(4), the city of Guthrie could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued in Guthrie. Under KRS 243.070(1)(e)(4), the city of Junction City could receive up to \$1,200.00 annually (\$600.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive \$1,200.00 annually (\$600.00 per license) if two (2) quota retail package licenses were issued in the city of Junction City. Under KRS 243.070(1)(e)(4), the city of Corbin could receive up to \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued to the city of Corbin. Under KRS 243.070(1)(e)(4), the city of Somerset could receive up to \$3,000.00 annually (\$600.00 per license) if five (5) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive \$3,000.00 annually (\$600.00 per license) if five (5) retail liquor package licenses were issued in the city of Somerset. Under KRS 243.070(1)(e)(4), the city of Whitesburg could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued to the city of Whitesburg. Under KRS 243.070(1)(e)(4), the city of Murray could receive up to \$4,200.00 annually (\$600.00 per license) if seven (7) quota retail package licenses were issued. Under KRS 243.030(7)(c), the state would receive \$4,200.00 annually (\$600.00 per license) if seven (7) quota retail package licenses were issued in the city of Murray. Under KRS 243.070(1)(e)(4), the city of Franklin could receive up to \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued in the city of Franklin. Under KRS 243.070(1)(e)(4), the city of LaGrange could receive up to \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,500.00 annually (\$500.00 per license) if three (3) quota retail package licenses were issued in the city of LaGrange. Under KRS 243.070(1)(e)(4), the city of Georgetown could receive up to \$6,000.00 annually (\$500.00 per license) if twelve (12) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$6,000.00 annually (\$500.00 per license) if twelve (12) quota retail package licenses were issued to the city of Georgetown. Under KRS 243.070(1)(e)(4), the city of Princeton could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 annually) if two (2) quota retail package licenses were issued to the city of Princeton. Under KRS 243.070(1)(e)(4), the

city of Dawson Springs could receive up to \$1,000.00 annually (\$500.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,000.00 annually (\$500.00 annually) if two (2) quota retail package licenses were issued to the city of Dawson Springs. Under KRS 243.070(1)(e)(4), the city of Grayson could receive up to \$1,200.00 annually (\$600.00 per license) if two (2) quota retail package licenses were issued. Under KRS 243.030(7)(d), the state would receive \$1,200 annually (\$600.00 annually) if two (2) quota retail package licenses were issued to the city of Grayson.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amendment)

807 KAR 5:001. Rules of procedure.

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

STATUTORY AUTHORITY: KRS 278.040(3), 278.310

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

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

- (a) That is wholly owned by a utility;
- (b) In which a utility has a controlling interest;
- (c) That wholly owns a utility;
- (d) That has a controlling interest in a utility; or
- (e) That is under common control with the utility.

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

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

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

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

- 1. Through one (1) or more intermediary companies, or alone;
- 2. In conjunction with, or pursuant to an agreement;
- 3. Through ownership of ten (10) percent or more of the voting securities;
- 4. Through common directors, officers, stockholders, voting or holding trusts, associated companies;
- 5. By contract; or
- 6. Through direct or indirect means.

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

(6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a

reference to an Internet domain.

(7) "Electronic signature" is defined by KRS 369.102(8).

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

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

(10)[(9)] "Party" means a person who:

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

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

(c) Is named as a defendant in a formal complaint filed pursuant to Section 20[19] of this administrative regulation;

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

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

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

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

(13)[(12)] "Signature" means any manual, facsimile, conformed, or electronic signatures[an original signature or an electronic signature as defined by KRS 369.102(8)].

(14) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

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

(16) "Water district" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

(17) "Web site" means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Duties of Executive Director[to Furnish Information].

(1) Upon request, the executive director shall:

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

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

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

(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases[Formal Proceedings]. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602[40601].

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

(3) Signing of papers.

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

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

(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an

attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.

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

(6) Witnesses and subpoenas.

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

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

(c) A party shall submit a completed subpoena form with its written request as necessary.

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

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

(7) Computation of time.

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

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

(8) Service.

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

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

(9) Filing.

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

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

(10) Privacy protection for filings.

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

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

2. The month and day of an individual's birth; and
3. The digits of the financial account number.

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

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

(11) Intervention and parties.

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

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

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

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

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

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

- a. Include the name of the witness responsible for responding to the questions related to the information provided; and
- b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may in lieu of providing the requested information, provide a reference to the specific location of the re-

quested information in the case record.

4. A responding party shall make timely amendment to its prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, it shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

6. The responding party shall file with the commission its response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with its request for information by motion to the commission, which shall include:

1. A description of the information requested;
2. The reasons why it is relevant to the issues in the case; and
3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated where rights of the parties or the public interest will not be prejudiced.

(b) When ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

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

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

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

Section 6. Proof[Certificate] of Service. (1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by any proof satisfactory to the commission.

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served[All documents served pursuant to 807 KAR Chapter 5 shall have a proof of service certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service].

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

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

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

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

(c) Font. Each filing shall be in type no smaller than twelve (12)

point, except footnotes, which may be in type no smaller than ten (10) point. ~~[(d) Binding. A side-bound or top-bound filing shall also include an identical unbound copy.]~~

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

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

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

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

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

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

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

(4)(a) Audio or video files.

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

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

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

1. In portable document format;

2. Search-capable;

3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If [a] scanned material[document], scanned at a resolution of [no less than] 300 dots per inch.

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

1. A general description of the filing;

2. A list of all material to be filed in paper or physical medium but not included in the electronic submission[filing]; and

3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium[attesting that the electronically filed documents are a true representation of the original documents].

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

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description. ~~[(d) If the electronic submission does not include all documents contained in the paper medium version, the absence of these documents shall be noted in the "Read1st" document.]~~

(6)(a) ~~An[electronic transmission or] uploading session shall not exceed twenty (20) files or 100 megabytes.~~

(b) An individual file shall not exceed thirty (30)[fifty (50)] megabytes.

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

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

(a) The electronic version of the paper[filing] is a true and ac-

curate copy of each paper[document] filed in paper medium;

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

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

(8)(a) Upon completion of an uploading session, the commis-sion shall notify all parties of record by electronic mail that an elec-tronic submission has been made[a party's uploading of an elec-tronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an elec-tronic submission has been made to the commission].

(b) Upon its receipt of this notification, each party shall be sole-ly responsible for accessing the commission's Web site at <http://psc.ky.gov> to view or download the submission[a party's receipt of this message, it shall be the receiving party's responsibil-ity to access the commission's electronic file depository at <http://psc.ky.gov> and view or download the submission].

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

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

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that:

1. The party waives any right to service of commission orders by United States mail; and

2. The party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases where the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall[Unless a party to a case states an objection to the use of electronic filing procedures within seven (7) days of issuance of an order in which the commission orders the use of electronic filing procedures on its own motion, that party shall]:

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

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

1. The party waives any right to service of commission orders by United States mail; and

2. The party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

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

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

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

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

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

(13) Except as expressly provided in this section, a party mak-ing a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) ~~Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if required by statute, waived by the parties in the case, or if the commission finds that a hearing is not necessary in the public interest or for the protection of substantial rights, the commission shall grant a hearing in the following classes of cases]:~~

(a) ~~[If] An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint to the commission's satisfaction[of the commission]; or~~

(b) ~~A request for hearing has been made[If an application has been made in a formal proceeding].~~

(2) Publication of notice.

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

(b) 1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing[pursuant to KRS 424.300] is published by the applicant in a newspaper, it shall be published at least one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. [one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place, and date of hearing.] The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or [Chapter] 278 or 807 KAR Chapter 5. The commission may also, through its own experts or employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

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

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

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

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

and shall not be taken to rulings on objection.

(9) Record of evidence.

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

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

2. The commission shall grant the motion.

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

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

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

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

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

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

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

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

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

(a) ~~[By reference only.]~~ The case or document made a part of the record by reference only shall not be physically incorporated into the record.

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

Section 12. Financial Exhibit. (1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had \$5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a consecutive twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than \$5,000,000 in gross annual

revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the consecutive twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that no material changes have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated [in subsections (1) through (9)]:

(a) [(1)] Amount and kinds of stock authorized;

(b) [(2)] Amount and kinds of stock issued and outstanding;

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

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

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

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

(g) [(7)] Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year[-];

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

(i) [(9)] A detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

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

(a) A request for person who requests confidential treatment of material shall be made by file a motion that:

1. Establishes specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential;

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

3. Includes ten (10) copies of the material in paper medium with those portions obscured for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document, [unambiguous] written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

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

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

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

(d) Unless the commission orders otherwise, [(e)] a party may respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.

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

(3) Procedure for determining confidentiality of material submitted outside of a case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds upon which the material should be classified as confidential;

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

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

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

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

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

(d) [(e)] A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to [petition] the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section. The commission shall establish a case and shall review the application [petition] without regard to the executive director's determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section. The application shall comply with the requirements of subsection (2)(a) of this section.

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

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

(5) If the [petition or] motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.

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

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commis-

sion staff, or another party on grounds of confidentiality[proceeding before the commission shall not fail to respond to discovery by the commission or its staff or another party to the proceeding on grounds of confidentiality].

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation[If a party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, the party shall follow the procedures for petitioning for confidentiality established in this administrative regulation].

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

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

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

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

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

(7) Requests for access to records pursuant to KRS 61.870 to 61.884. A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884. Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

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

(9) Use of confidential material[during formal proceedings].

(a) A person that files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and[A party that files material that contains or reveals material that has previously been deemed confidential shall submit with the filed material:]

1. If the confidential status of the material has been determined previously, a written notice identifying the person that originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or[A written notice identifying the date on which the confidentiality of the original material was determined and, if applicable, the case number in which the determination was made; and]

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted[One (1) copy of the filed material identified by underscoring or highlighting, and ten (10) copies of the material with those portions redacted for which confidentiality has previously been granted].

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

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

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

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

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

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

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

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

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

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

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

(2) If the applicant is a corporation, a statement identifying the state in which it is incorporated and the date of its incorporation, attesting that it is currently in good standing in the state in which it is incorporated, and stating, if it is not a Kentucky corporation, whether it is authorized to transact business in Kentucky.

(3) If the applicant is a limited liability company, a statement identifying the state in which it is organized and the date on which it was organized, attesting that it is in good standing in the state in which it is organized, and stating, if it is not a Kentucky limited liability company, whether it is authorized to transact business in Kentucky.

(4)[Articles of incorporation.

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

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

(c) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall

be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3).

(a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application ~~the following~~:

1. The information required pursuant to Section 14 of this administrative regulation ~~(a) A copy of its articles of incorporation, partnership agreement, or articles of organization pursuant to Section 14(2) of this administrative regulation~~;

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

3. ~~(c)~~ The type of franchise offered; and

4. ~~(d)~~ A statement showing the need and demand for service.

(b) If ~~an~~ the applicant is successful in acquiring the franchise, license, or permit, it shall file a copy with the commission using the commission's electronic tariff filing system.

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

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

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

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

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:

1. Maps to suitable scale showing the location or route of the proposed new construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and

2. Plans and specifications and drawings of the proposed plant, equipment, and facilities ~~The utility shall supply one (1) copy of each map in an electronic format and one (1) copy of each map in a paper format~~;

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

(f) An estimated annual cost of operation after the proposed facilities are placed into service; and

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

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

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

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

(a) Be supported by:

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

2. A fully forecasted test period; and

(b) Include:

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

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

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

~~3~~ 4. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

~~4~~ 5. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by:

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

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

5 ~~6~~. A statement that ~~customer~~ notice has been given in compliance with Section 17 of this administrative regulation ~~subsections (3) and (4) of this section~~ with a copy of the notice; and

6. If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate 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) Notice of intent. A utility with gross annual revenues greater than \$5,000,000 shall notify the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

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

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

(c) When filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to rateintervention@ag.ky.gov ~~The applicant shall also transmit by electronic mail a copy of the notice in a portable document format, to the Attorney General's Office of Rate Intervention at rateintervention@ag.ky.gov~~.

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Manner of notification:

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

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

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

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

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

and shall:

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

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

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

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

(d) Notice given pursuant to this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Additional notice requirements. In addition to the notice requirements established in subsection (4) of this section:

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

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

(7) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form

of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

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

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

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

(5)[(40)] Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

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

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

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

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

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The estimated completion date;

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

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

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

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

1. Operating income statement (exclusive of dividends per share or earnings per share);
2. Balance sheet;
3. Statement of cash flows;
4. Revenue requirements necessary to support the forecasted rate of return;
5. Load forecast including energy and demand (electric);
6. Access line forecast (telephone);
7. Mix of generation (electric);
8. Mix of gas supply (gas);
9. Employee level;
10. Labor cost changes;
11. Capital structure requirements;
12. Rate base;
13. Gallons of water projected to be sold (water);
14. Customer forecast (gas, water);
15. Sales volume forecasts – cubic feet (gas);
16. Toll and access forecast of number of calls and number of minutes (telephone); and
17. A detailed explanation of other information provided, if applicable;
 - (i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;
 - (j) The prospectuses of the most recent stock or bond offerings;
 - (k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);
 - (l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;
 - (m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;
 - (n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;
 - (o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;
 - (p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;
 - (q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;
 - (r) The quarterly reports to the stockholders for the most recent five (5) quarters;
 - (s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;
 - (t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;
 - (u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:
 1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;
 2. The method and amounts allocated during the base period

- and the method and estimated amounts to be allocated during the forecasted test period;
3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and
 4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;
 - (v) If the utility provides gas, electric, sewage[utility], or water utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and
 - (w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:
 1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and
 2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:
 - a. Based on current and reliable data from a single time period; and
 - b. Using generally recognized fully allocated, embedded, or incremental cost principles.
 - (8)[(13)] Each application seeking a general adjustment in rates supported by a forecasted test period shall include[the following data]:
 - (a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;
 - (b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;
 - (c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;
 - (d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;
 - (e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;
 - (f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;
 - (g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;
 - (h) A computation of the gross revenue conversion factor for the forecasted period;
 - (i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;
 - (j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;
 - (k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;
 - (l) A narrative description and explanation of all proposed tariff changes;
 - (m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(9)[(44)] The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies[utility of deficiencies, if applicable, in the application within thirty (30) days of receiving it. For the application to be considered filed with the commission, the utility shall cure deficiencies within thirty (30) days of the commission giving notice of deficiencies].

(10)[(45)] A request for a waiver from the requirements of this section shall include[waiver of provisions of these filing requirements shall establish] the specific reasons for the request. The commission shall grant the request[for waiver] upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and

(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. When filing an application for a general rate adjustment, 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 or is a sewage utility, 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 and is not a sewage utility, 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;

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; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application 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 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 the mailing;

(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; 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. 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, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in basic local service;

(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;

(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 initial publication or mailing of the notice, the commission may take final action on the application.

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

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) An application for authority to issue[Upon application by the utility for an order authorizing the issuance of] securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof[, pursuant to the provisions of KRS 278.300, the application, in addition to complying with the requirements of Section 14 of this administrative regulation,] shall contain:

(a) The information required by Section 14 of this administrative regulation;

(b) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(c)[(b)] The amount and kinds of stock, if any, which the applicant[utility] desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant[utility] desires to issue, with terms, rate of interest, and if and how to be secured;

(d)[(c)] The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance

nance of service, and the discharge or refunding of obligations;

(e)[(d)] The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application[petition];

(f)[(e)] If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application[petition] shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of its written notification to the state local debt officer regarding the proposed issuance[(f) Other facts pertinent to the application].

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

Section 19[18]. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

Section 20[19]. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Com-

mission," shall establish the names of the complainant and[the name of] the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;and

(c) Fully, clearly, and with reasonable certainty, the act or omission[thing done or omitted to be done], of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation[~~section and subsection~~], of which a failure to comply is alleged[a violation is claimed], and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought[violation]. The complainant shall specifically establish the relief desired].

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint[The complaint shall be signed by the complainant or his or her attorney, if applicable, and if signed by an attorney, shall show the attorney's post-office address]. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its[the entity's] attorney.

(3) Number of copies required. When the complainant files his or her original complaint, the complainant shall also file two (2) more copies than the number of persons[or corporations] to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint[same] to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds[is of the opinion] that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant[or his or her attorney to that effect,] and provide the complainant an opportunity[shall be given] to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may[~~in particular cases,~~] require the answer to be filed within a shorter or longer period.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed[further proceedings shall not be taken].

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant[person complained of] shall file an answer to the complaint[~~with certificate of service on other endorsed parties,~~] within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters[matter] constituting a defense.

(b) If the defendant[answering party] does not have information sufficient to[enable him or her to] answer an allegation of the complaint, it[the answering party] may so state in the answer and place the denial upon that ground.

Section 21[20]. Informal Complaints. (1) An informal complaint shall be made to the commission's division of consumer services in a manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint. If an informal complaint is referred to a utility, the utility shall acknowledge

to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period as commission staff may require. If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22[24]. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23[22]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FERC Form-1", Annual Report of Major Electric Utilities, Licensees and Others, March 2007;

(b) "FERC Form-2", Annual Report of Major Natural Gas Companies, December 2007;

(c) "Notice of Election of Use of Electronic Filing Procedures", July 2012;

(d) "PSC Form-T (telephone)", August 2005;

(e) "Form 8-K", January 2012;

(f) "Form 10-K", January 2012;[and]

(g) "Form 10-Q", January 2012; and

(h) "Subpoena Form", August 2013.

(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: August 8, 2013

FILED WITH LRC: August 14, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 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 September 16, 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 September 30, 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, email gerald.wuetcher@ky.gov.

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 of procedures for the hearings and formal proceedings before the Public Service Commission.

(b) The necessity of this administrative regulation: This administrative regulation is needed to provide the structural framework for hearings and formal proceedings that the Public Service Commission conducts.

(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. KRS 278.310 provides that hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that utilities and the commission must follow.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment codifies Commission practices for requesting information in a case, sets forth rules for consolidation of cases, revises the size limit for an electronic uploading session and for individual files in an electronic uploading session, amends the rules for intervention, updates the procedures for confidentiality, and makes technical adjustments to revisions that became effective in January 2013.

(b) The necessity of the amendment to this administrative regulation: This amendment incorporates Commission practices that have not been codified in the Commission's regulations. This amendment makes technical changes to revisions to 807 KAR 5:001 in January 2013. It reflects reporting requirements to the governing bodies of counties that the recent enactment of KRS 65A.100 imposes upon water districts.

(c) How the amendment 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. KRS 278.310 provides that hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies changes that were made in the prior revision and provides more guidance to utilities in regards to proceedings before 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 utilities regulated by the Public Service Commission and all persons who make an appearance or otherwise participate in Commission proceedings.

(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 additional costs to comply with this amendment. The proposed amendment eliminates several filing requirements and reduces the number of documents that a party to a proceeding is required to file. It clarifies several uncertainties in the existing regulation and will likely lessen the number of actions that parties to a Commission proceeding must take to ensure compliance with the Commission's procedural rules.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment provides clarity regarding proceedings before the Commission. It harmonizes the Commission's rules regarding electronic filing with the existing capabilities of the Commission's Electronic Filing System. It standardizes the rules regarding discovery and information requests. It clarifies and more precisely defines the Commission's rules regarding intervention.

(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? Yes. Section 12(1)(a) allows a utility with less than \$5,000,000 in gross annual revenue in the immediate past calendar year to file its financial exhibit for the consecutive twelve (12) month period contained in the utility's most recent annual report on file with the commission with its application. Many smaller jurisdictional utilities do not have the accounting systems in place to produce a financial exhibit based on a consecutive twelve (12) month period ending not more than ninety (90) days prior to the date an application is filed. Moreover, past experience has shown that requiring more current financial exhibits for smaller utilities increases the expense of the filing without any corresponding benefit to the public.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 278.040(3) authorizes the commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission will continue 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? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for subsequent years. The Public Service Commission will continue 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 5:069. Filing requirements and procedures for federally funded construction project of a water association, a water[~~commission, or~~] district, or a combined water, gas, or sewer district.

RELATES TO: KRS 278.020(1), 278.023, 278.190, 278.300

STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may adopt[~~promulgate~~] reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue a certificate of public convenience and necessity for utility construction. KRS 278.300 authorizes the commission to approve the issuance or assumption of an obligation, liability, or evidence of indebtedness by a utility. KRS 278.190 authorizes the commission to approve proposed changes in rates. KRS 278.023 provides that the commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and[~~with~~] the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water[~~commission or~~] district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation establishes[~~prescribes~~] filing requirements and procedures a water association, a water[~~commission, or~~] district, or a combined water, gas, or sewer district[~~districted~~] formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Construction project" means activity involving the construction or installation of facilities, plant, or equipment to provide, extend, or enhance the quality of water or sewer service within the geographical area that a water utility has the responsibility to serve.

(3) "Federal lending agency" means the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

(4) "Water 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 the collection or treatment of sewage for the public;

(b) A water district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74; or

(c) A combined water, gas, or sewer district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. Filing Requirements. A water utility proposing[~~to construct~~] a construction project financed in whole or in part under the terms of an agreement between the water utility and a federal lending agency shall file with the commission[~~by the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development shall file with the commission the following documents and information~~]:

(1) All documents and information required by 807 KAR 5:001, Section 7, 8, and 14;

(2) A copy of the documents from the federal lending agency[~~U.S. Department of Agriculture or U.S. Department of Housing and Urban Development, as appropriate,~~] stating approval of the

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project and including all terms and conditions of the agreement, including all amendments~~[to be met]~~;

(3) A copy of the letter of concurrence in contract~~[bid]~~ award;

(4) A copy of the preliminary and final engineering reports and and bid tabulations;

(5) Notwithstanding 807 KAR 5:001, Sections 7 and 8, one (1) copy of each set of plans and specifications on electronic storage medium in portable document format;

(6) A certified statement from an authorized water utility official confirming:

(a) That the proposed plans and specifications for the construction project have been designed to meet the minimum construction and operating requirements established in:

1. If the construction project involves facilities to treat or distribute water, 807 KAR 5:066, Section 4(3) and (4), Section 5(1), Sections 6 and 7, Section 8(1) through (3), Section 9(1) and Section 10; or

2. If the construction project involves facilities to collect or treat sewage, 807 KAR 5:071, Section 5 and Sections 7(1) through (3);

(b) That all other state approvals or permits have been obtained;

(c) That the proposed rates, if any, shall produce the total revenue requirements recommended~~[set out]~~ in the engineering reports; and

(d) The dates upon which construction will begin and end;

~~(7) [(6)]~~ If applicable, a statement that notice meeting the requirements of Section ~~3[2]~~ of this administrative regulation has been given, together with a copy of the notice;~~[and]~~

~~(8) [(7)]~~ If applicable, a motion requesting approval to deviate from a minimum construction standard or operating condition required by subsection ~~(6) [(5)]~~(a) of this section, together with supporting evidence to identify and explain the reasons that the minimum requirements cannot be met; and

(9) If a water district or combined water, gas, or sewer district proposes to increase any current rate for water or sewer service or implement a new rate for water or sewer service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate 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.

Section 3. Notice. When filing for a change in rates as a result of a construction project, a water utility shall provide notice as follows:

(1) Public postings.

(a) A water 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 water 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 water utility has twenty (20) or fewer customers or is proposing to increase its rates for sewer service, 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 water utility has more than twenty (20) customers and is not proposing to increase its rates for sewer service, 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;

3. Publishing notice in a prominent manner in a newspaper of general circulation in the water utility's service area no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A water utility that provides service in more than one (1) county and is not proposing to increase its rates for sewer service may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of notice. A water utility shall file with the commission no later than fifteen (15) 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 water 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 water 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 water 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. Each notice issued in accordance with this section shall contain a brief description of the construction project and shall also contain:

(a) The proposed effective date of the proposed rate adjustment;

(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 water utility has filed with the Public Service Commission at the offices of (water utility name) located at (water 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;

(h) A statement that the proposed rates are required under the terms of an agreement between (water utility name) and (federal lending agency name) and that KRS 278.023 does not grant the Public Service Commission any discretionary authority to modify or reject any portion of the agreement between (federal lending agency) and (water utility name), or to defer the issuance of all necessary orders to implement the terms of that agreement~~[Section 2. Notice to Customers of Rate Change. If a change in rates is required to finance the construction project, the utility shall, before application is made, mail to each customer, or publish in a newspaper of general circulation in the local service area, a notice that contains the current and proposed rates and a brief description of the construction project].~~

Section 4[3]. Additional Construction Activity. If surplus project funds remain after the approved construction project has been completed, the water utility may construct~~[an]~~ additional facilities~~[plant facility]~~ without prior commission approval if no change in existing rates will result. The water utility shall notify the commission in writing of additional construction proposed under this section, and shall attach to the notice a statement of the federal lending agency authorizing the water utility to use the remaining project funds in the manner proposed.

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Section 5[4]. System Maps and Records. Within thirty (30) days after completion of construction authorized under this administrative regulation, the utility shall revise its system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to include all required information regarding the new construction.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: August 8, 2013

FILED WITH LRC: August 12, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 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 September 16, 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 September 30, 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, email gerald.wuetcher@ky.gov.

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 establishes the contents of applications for certificates of public convenience and necessity, authorization for issuance of evidences of indebtedness or securities, and approval of rate adjustments that are related to construction projects that are undertaken by a water district or water association and financed under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development.

(b) The necessity of this administrative regulation: This revision clarifies the contents of applications for certificates of public convenience and necessity, authorization for issuance of evidences of indebtedness or securities, and approval of rate adjustments that are related to construction projects that are undertaken by a water district or water association and financed under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development. This revision further reflects reporting requirements to the governing bodies of counties that the recent enactment of KRS 65A.100 imposes upon water districts. It further clarifies that the expedited review provisions are available only for projects involving the construction or installation of facilities, plant, or equipment to provide, extend or enhance the quality of water or sewer service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.023 provides that the Public Service Commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the Public Service Commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation establishes filing requirements and pro-

cedures a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or Chapter 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. It further requires a water district to advise the Public Service Commission as to whether it has complied with the requirements of KRS 65A.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It resolves the confusion that earlier Public Service Commission decisions created regarding the application of KRS 278.023 to wastewater projects that were financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. It reminds a water district that is adjusting its rates for water service in accordance with the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development to finance a water construction project of its statutory obligation to advise the governing bodies of the counties in which it serves of its proposed rate adjustment in accordance with KRS 65A.100.

(2) If 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 clarifies that the expedited review provisions are available only for projects involving the construction or installation of facilities, plant, or equipment to provide, extend or enhance the quality of water or sewer service. It specifies the contents of the public notice that water utilities using the expedited procedure must provide to their users. It requires a water utility that uses the expedited procedure to file on electronic storage medium in portable document format a set of plans and specifications for any proposed construction project that is financed under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development.

(b) The necessity of the amendment to this administrative regulation: The amendment establishes the contents of public notices for proposed rate adjustments implemented pursuant to KRS 278.023 and ensures that all persons are adequately notified of such rate adjustment and the extent of Public Service Commission review of the proposed rate adjustment. By requiring a set of plans and specifications for any proposed construction project that is financed under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development, the amendment ensures that the Public Service Commission has a full and complete record of a regulated water utility's facilities. Recent enactment of KRS 65A.100 required procedures to ensure that water districts are aware of the need to advise the governing bodies of the counties in which they serve of any proposed rate adjustment implemented pursuant to KRS 278.023.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.023 provides that the Public Service Commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the Public Service Commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or Chapter 273. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. KRS 65A.100 further requires a water district to advise the governing body of the

county in which the largest number of its customers are located of any pending increase in rates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment seeks to clarify filing procedures, establish uniform public notice requirements, and reduce confusion as to which types of federally-financed projects are subject to limited Public Service Commission review.

(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 138 water districts and water associations.

(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: In addition to the materials that they currently place in their applications, water districts and water associations must provide a copy of the bid tabulations for the proposed water construction project and a set of plans and specifications of the proposed project on electronic storage medium in portable document format. They must also use a slightly longer form of public notice for any proposed rate adjustment made pursuant to KRS 278.023.

(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 significant costs to comply. The water districts are already required to publish notice. The added length of notice is not expected to significantly increase the cost of such notice. The number of times that notice must be published has not changed. Water districts and water associations must provide a set of plans and specifications of the proposed project on electronic storage medium in portable document format. Since most of these documents are currently required to be submitted in a similar format to other regulatory agencies, no significant increase in cost to a water district or association is expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The revised notice should reduce public confusion over proposed rate adjustment and eliminate false expectations regarding Public Service Commission review of any proposed rate adjustments made pursuant to KRS 278.023. Filing a set of plans and specifications of the proposed project on electronic storage medium will reduce need to respond to subsequent Public Service Commission requests for such documents or to maintain additional paper copies in the event of a request outside of a Public Service Commission proceeding.

(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. No new fees or funding 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? Tiering has not been applied. Tiering is neither required nor permitted. KRS 278.023 applies only to water districts and water associations that have entered into an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development to finance a construction project. All water districts and water associations are included. No other type of water utility falls within the statute's coverage.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.023 provides that the Public Service Commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the Public Service Commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or Chapter 273. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. KRS 65A.100 further requires a water district to advise the governing body of the county in which the largest number of its customers are located of any pending increase in rates.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 applications pursuant to KRS 278.023 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. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulating small public utilities 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. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

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 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180, 278.185, 278.190, 278.310, 278.380

STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180, 278.185(4)

NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions. (1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.

(2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either:

(a) The calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission; or

(b) The most recent calendar year period that 807 KAR 5:006, Section 4(1), requires the applicant to have on file with the commission as of the date of the filing of its application for rate adjustment.

(3) "Applicant" means a utility that is applying for an adjustment of rates using the procedure established in this administrative regulation.

(4) "Gross annual revenue" means:

(a) The total revenue that a utility derived during a calendar year; or

(b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.

(5) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(6) "Utility" is defined by KRS 278.010(3).

(7) "Water district" means a special district or special purpose governmental entity created pursuant to KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:

(1) Had gross annual revenue in the immediate past calendar year of \$5,000,000 or less;

(2) Maintained adequate financial records fully separated from a commonly-owned enterprise; and

(3) Filed with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the utility has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:

(1) Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the utility has been in existence that long;

(2) The application required by Section 4 of this administrative regulation;

(3) Information supplied by the applicant in response to requests for information submitted by other parties to the proceeding or the commission;

(4) Written reports submitted by commission staff;

(5) Stipulations and agreements between the parties and commission staff;

(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommen-

dations contained in a written report that commission staff submitted; and

(7) If a hearing is held, the record of that hearing.

Section 4. Application. (1) An application for alternative rate adjustment shall consist of:

(a) A completed ARF Form-1 that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters established in the application;

(b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;

(c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;

(d) A depreciation schedule of all utility plant in service;

(e) A copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;

(f) A detailed analysis of the applicant's customers' bills showing revenues from the present and proposed rates for each customer class;

(g) A copy of the notice of the proposed rate change that is provided to customers of the applicant;

(h) A completed ARF Form-3 for each member of the utility's board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility's chief executive officer; and

(i) If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate 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[1. If the applicant is a corporation, a certified copy of its articles of incorporation and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding; and

2. If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding; or

3. If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments thereto, or a written statement attesting that its partnership agreement and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding].

(2) Except as provided in 807 KAR 5:001, Section 8[Section 13 of this administrative regulation] for electronic filings, the applicant shall:

(a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and

(b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov.

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

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

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

3. The digits of the financial account number.

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

(4) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) A utility may make written request to the executive director

for commission staff assistance in preparing the application.

Section 5. Notice to Customers of Proposed Rate Changes. When filing an application for an alternative rate adjustment, 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 or is a sewage utility, 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 and is not a sewage utility, 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;

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; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application 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 [If the applicant has twenty (20) or fewer customers or is a sewage utility, it shall:

(a) Mail written notice in accordance with subsection (3) of this section to each customer no later than the date on which the application is filed with the commission;

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

(c) Keep the notice posted until the commission has issued a final decision on the application.

(2) An applicant that has more than twenty (20) customers and is not a sewage utility shall post at its place of business a sheet containing the information required by subsection (3) of this section and shall:

(a) Include notice with customer bills mailed by the date the application is filed;

(b) Publish notice in a trade publication or newsletter going to all customers by the date the application is filed;

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

(d) If it provides service in more than one (1) county, use a combination of the methods established in 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 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. Each notice issued in accordance with this section shall contain[state]:

(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[elass] 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[elass] to which the proposed rates[rate-change] 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;

(h) A statement[(d)] that the rates contained in this notice are the rates proposed by (utility name[ef-utility]) 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 initial publication or mailing of the notice, the commission may take final action on the application[(e) That a corporation, association, or person may, within thirty (30) days after the initial publication or mailing of notice of the proposed rate change, submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request and including the status and interest of the party;

(f) That a person may examine this application at the main offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site; and

(g) That the application and all documents filed with the Public Service Commission may be viewed and downloaded at the Public Service Commission's Web site at <http://psc.ky.gov>;

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

(a) If its notice is published in a newspaper of general circulation in the applicant's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

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

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

(5) If an applicant maintains a Web site, the applicant shall:

(a) Post on its Web site within seven (7) days of the filed date of the application:

1. A notice containing the information provided in the written notice to its customers; and

2. A hyperlink to a copy of its application posted on the commission's Web site; and

(b) Keep both items posted until the commission has finally

determined the utility's rates].

Section 6. Except as provided in 807 KAR 5:001, Section 8(2)[13 of this administrative regulation], an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure established in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place the proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.

(2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.

(3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due [a-refund] if the commission orders a refund.

Section 8. Amendment of Proposed Rates. (1) Except when responding to the findings set forth in a commission staff report filed in accordance with Section 11 of this administrative regulation, an applicant shall not amend the proposed rates set forth in its application unless the applicant:

(a) Files written notice of the proposed amendment with the commission; and

(b) Publishes notice of the amended proposed rates in the manner provided in Section 5 of this administrative regulation.

(2) An applicant shall not place its amended proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of the written notice of proposed amendment, whichever occurs first.

(3) If the commission has not issued its order within six (6) months from the date of filing of the notice of amended proposed rates, the applicant may place the amended proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect but shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 9. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's annual report for the immediate past year.

Section 10[9]. Discovery. (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.

(a) A party in the proceeding may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.

(b) Upon serving requests upon the applicant, the party shall file a copy of the party's requests with the commission and serve a copy upon all other parties.

(c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.

(2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.

Section 11[40]. Commission Staff Report. (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties if commission staff will prepare a report on the application.

(2) If a commission staff report is prepared, the:

(a) Commission staff shall:

1. File the report with the commission; and
2. Serve a copy of the report on all parties of record; and

(b) Report shall contain the commission staff's findings and recommendations regarding the proposed rates.

(3)(a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.

(b) This written response shall contain:

1. All objections to and other comments on the findings and recommendations of commission staff;

2. A request for hearing or informal conference, if applicable;

3. The reasons why a hearing or informal conference is necessary; and

4. If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the filing party's position on if the commission should authorize the assessment of the higher rate or the recommended additional rate or charge.

(c) If a party's written response fails to contain an objection to a finding or recommendation contained in the commission staff report, it shall be deemed to have waived all objections to that finding or recommendation. A party's failure to request a hearing or informal conference in the party's written response shall be deemed a waiver of all rights to a hearing on the application and a request that the case stand submitted for decision.

(d) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived all objections to the findings and recommendations contained in the report and all rights to a hearing on the application.

(e) Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations established in the commission staff report.

(f) If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or commission staff recommends the assessment of an additional rate or charge not proposed in the application and[the] commission staff's proposed rates produce a total increase in revenues that exceeds 110 percent[in excess of 115 percent] of the total increase in revenues[revenue] that the applicant's proposed rates will produce and the applicant amends its application to request commission staff's proposed rates, the commission shall order the applicant to provide notice of the finding or recommendation to its customers.

Section 12[44]. Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to the applicant's customers notice of the hearing.

(2) The notice shall state the purpose, time, place, and date of the hearing.

(3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing.

(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.

Section 13[42]. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may, on behalf of an applicant that is a water district, corporation, partnership, or limited liability company, file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) An applicant that is a water district, corporation, partnership, or limited liability company shall, at a hearing conducted on the application, be represented by an attorney who is authorized to practice law in Kentucky.

Section 14. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in 807 KAR 5:001, Section 8, are used, if a document in paper medium is filed with the commission, five (5) additional copies in paper medium shall also be filed.

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

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

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

(c) Font. Except for ARF Form-1 and ARF Form-3, each filing shall be in type no smaller than twelve (12) point, except footnotes, which shall be in type no smaller than ten (10) point.

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

(3) Except as provided for in 807 KAR 5:001, Section 8, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A document submitted by facsimile transmission shall not be accepted.

Section 15[13]. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents.[1] Upon an applicant's[timely] election of the use of electronic filing procedures within the time limits established in 807 KAR 5:001, Section 8(2), the procedures established in 807 KAR 5:001, Section 8,[this section] shall be used in lieu of other filing procedures established in this administrative regulation.[2] At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of the applicant's election using the ARF Form-2; and

(b) If the applicant or its authorized agent does not have an account for electronic filing with the commission, register for an account at <http://psc.ky.gov/Account/Register>.

(3) Each pleading, document, and exhibit shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at <http://psc.ky.gov>. In addition, the filing party shall file the original with the commission as required by subsection (11) of this section.

(4) Each file in an electronic submission shall be:

(a) In portable document format;

(b) Search-capable;

(c) Optimized for viewing over the Internet;

(d) Bookmarked to distinguish sections of the pleading or document; and

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

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

1. General description of the filing;

2. List of all materials not included in the electronic filing; and

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

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

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

(d) If the electronic submission does not include all documents contained in the paper version, the absence of these documents shall be noted in the "Read1st" document.

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

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

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

(7) If filing a document with the commission, the filing party shall certify that:

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

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

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

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

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

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

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

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that:

1. The party waives the right to service of commission orders by United States mail; and

2. The party or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) If a party objects to the use of electronic filing procedures and if good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

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

1. Has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and an order of the commission; and

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

(b) Each party shall attach to the top of the paper submission a paper copy of the electronic mail message from the commission confirming transmission and receipt of the party's electronic submission.

(12) Except as expressly provided in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with a provision of this administrative regulation that requires service of a document or material filed with the commission on other parties in the case.]

Section 16[14]. The provisions of 807 KAR 5:001, Sections 1 through 6, 8 through[9, 10,] 11, and 13, shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 17[15]. Upon a showing of good cause, the commission may permit deviations from this administrative regulation. Requests for deviation shall be submitted in writing by letter to the commission.

Section 18[16]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Rate Adjustment before the Public Service Commission", ARF Form 1, September 2012; and

(b) ["Notice of Election of Use of Electronic Filing", ARF Form 2, September 2011; and

(c) "Statement of Disclosure of Related Party Transactions", ARF Form 3, September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: August 8, 2013

FILED WITH LRC: August 12, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 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 September 16, 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 September 30, 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, email gerald.wuetcher@ky.gov

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 a simplified and less expensive procedure by which small utilities may apply to the commission for rate increases. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001 or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission's authority to regulate the rates of small utilities. This regulation reflects reporting requirements to the governing bodies of counties that the recent enactment of KRS 65A.100 imposes upon water districts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. 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. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment. It reminds a water district that is adjusting its rates of its statutory obligation to advise the governing bodies of the counties in which it serves of its proposed rate adjustment in accordance with KRS 65A.100.

(2) If 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 amends the regulation to clarify the actions that the applicant and the Commission must follow when an applicant amends the rates set forth in his application. It establishes rules for the contents and format of documents that are filed in a proceeding under 807 KAR 5:076. It eliminates the provisions related to electronic filing and instead references the Commission's rules of procedures and thus ensures a uniform set of rules for electronic filing in all Commission proceedings. It clarifies when an applicant must publish notice of his decision to accept Commission Staff-

recommended rates that are higher than those the applicant originally requested.

(b) The necessity of the amendment to this administrative regulation: The amendment addresses technical issues arising from the amendment of 807 KAR 5:076 in 2012 and from the proposed amendment of 807 KAR 5:001 and 807 KAR 5:011. The amendment is necessary to correct drafting errors in the 2012 amendment and to reflect changes brought by the proposed amendment of 807 KAR 5:001 and 807 KAR 5:011. It is also necessary because the regulation did not contain filing procedures if an application was filed in paper medium and did not contain procedures for amending proposed rates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. 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. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How the amendment will assist in the effective administration of the statutes: The amendment seeks to reduce confusion among utilities regarding filing procedures and notice requirements by conforming those procedures to those in the Commission's Rules of Procedure. It clarifies the procedures to be used when filing for an alternative rate filing adjustment.

(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 240 water, natural gas, and sewer utilities whose annual gross revenues are \$5 million or less and their customers.

(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 necessary. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures.

(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. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment should enhance public awareness of utility rate adjustment applications made by small utilities. It provides greater certainty and stability in the ratemaking process that the Public Service Commission uses for small utilities.

(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. No new fees or funding 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? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than \$5 million, tiering has been applied. The Public Service Commission believes that tiering is appropriate because

the operations of smaller utilities are less complex, their record-keeping practices are simpler, and the amount of documentary evidence to verify their financial operations is less than that of larger utilities. Moreover, given the smaller number of customers over which small utilities must spread rate case expense, the use of the same procedures as used for larger utilities will result in larger rate increases for smaller utilities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. 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. KRS 278.180 - .192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 applications for rate adjustment or otherwise regulate small public utilities 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. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities 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. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

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 Kentucky Horse Racing Commission (Amendment)

811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802, 230.990[~~EO 2008-668~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.770(1), (5), (6)[~~EO 2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the commission[~~Authority~~] to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.770(1) establishes the Kentucky standardbred[~~quarter-horse, Appaloosa, and Arabian~~] development fund. KRS 230.770(5) and (6) authorize the commission[~~Authority~~] to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund.[~~EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission.~~] This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sires Stakes Program.

(3) "Kentucky-bred" means, for the purposes of this administrative regulation, a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission and is a resident of Kentucky as provided in this administrative regulation; and

(b) Sired by a standardbred stallion that meets the requirements of this administrative regulation.

(4)[(2)] "Kentucky Sires Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, [sired by standardbred stallions standing within Kentucky at the time of conception] and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

(5) "Kentucky Standardbred Breeders' Incentive Fund" means the trust and revolving fund as set out in KRS 230.802.

(6)[(3)] "Kentucky Standardbred Development Fund" means the trust and revolving fund as set out in KRS 230.770.

(7) "KSBI" means the Kentucky Standardbred Breeders' Incentive Fund.

(8)[(4)] "KSDF" means the Kentucky Standardbred Development Fund.

(9) "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction or country outside of Kentucky during the calendar year in which the stallion is registered.

(10) "USTA" means the United States Trotting Association.

Section 2. (1) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion[~~him~~] for breeding purposes and to have his progeny eligible[~~him qualify~~] for the KSDF or KSBI[~~Kentucky Standardbred Development Fund~~] shall register the stallion with the commission by December 31st of the year of conception of the

horse sought to be eligible[by July 1 of the breeding season with the Kentucky Horse Racing Commission]. Standardbred stallions not residing in Kentucky do not need to register with the commission.

(2) All standardbred stallions must be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(a) A standardbred[(2) A standardbred stallion that has never sired a foal Shall be registered in any breeding season prior to his first breeding.

(3) A] stallion shall be registered on the KSDF/KSBIF Stallion Certificate of Eligibility Form, KHRC 215-2 (7/13)[Standardbred Stallion Certificate, KHRA 300-2 (8/06)]. A stallion owner may appoint an authorized agent to complete the KSDF/KSBIF Stallion Certificate of Eligibility Form, KHRC 215-2 (7/13) by completing and filing with the commission the KSDF/KSBIF Authorized Agent Form, KHRC 215-3 (7/13).

(b)[(4)] A standardbred stallion that satisfies the provisions of this section shall be considered a registered stallion for purposes of this administrative regulation.

(3) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBIF shall register the mare by December 31st of the year of conception of the horse sought to be eligible.

(a) In order to be eligible for registration, the mare shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall have resided in Kentucky for a period of not less than one hundred eighty (180) consecutive days in the calendar year of conception of the horse sought to be eligible.

(b) The mare shall be registered on the KSDF/KSBIF Mare Certificate of Eligibility Form, KHRC 215-4 (7/13).

(c) A standardbred mare that satisfies the provisions of this section shall be considered a registered mare for purposes of this administrative regulation.

(4) Registrations must be physically received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible[Section 3-Initial Registration Fees. (1) The following initial registration fees shall be paid:

(a) The sire registration fee for a stallion with an annual book of twenty-five (25) or more mares shall be one (1) full-advertised stud fee.

(b) The sire registration fee for a stallion with an annual book of twenty-four (24) mares or less shall be twenty (20) percent of the advertised stud fee or a minimum of \$200; and

(c) The registration fee for a stallion standing at Private Treaty shall be the average stud fee charged for all cash breeding agreements for the breeding season.

(2) The annual stallion registration fee shall follow the gait of the stallion.

(3) Stallion fees shall be due on or before October 1 of the year nominated to the KSDF.

(4) If a stallion was nominated to the KSDF, the stallion fee shall be paid on or before the October 1 deadline regardless of whether mares are bred to the nominated stallion.

(5) At the end of a breeding season, the owner or lessee of a stallion standing at Private Treaty shall submit to the Commission a list of mares bred and prices charged.

Section 4. Registration Renewal Fees. (1) The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

(2) The "Standardbred Stallion Certification of Eligibility Renewal", (12/06) form shall be filed by July 1 of the breeding season.

(3) The annual renewal fee for registration of stallions to the Kentucky Standardbred Development Fund shall be:

(a) One (1) full-advertised stud fee for a stallion with an annual book of twenty-five (25) or more mares; and

(b) Twenty (20) percent of the stud fee or a minimum of \$200 for a stallion with an annual book of twenty-four (24) or less mares.

(4) The annual stallion renewal fee shall follow the gait of the stallion.

(5) Stallion fees shall be due on or before October 1 of the year the renewal form is filed.

(6) If a stallion was nominated to the KSDF, the renewal fee shall be paid on or before the October 1 deadline regardless of whether mares were bred to the nominated stallion.

Section 5. An owner, lessee, stallion manager or syndicate manager of a standardbred stallion registered with the Commission shall, by October 1 of each calendar year, submit the stallion registration fee, as set forth in Sections 3 and 4 of this administrative regulation, and a report of each stallion, listing the mares bred by each stallion during the preceding twelve (12) months).

Section 3[6]. (1) In order to qualify for the Kentucky Sire[Sires] Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred[the product of the mating of a mare with a Kentucky registered and resident stallion].

(2) Only a foal that is[(a) Foals, other than] the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo/ovum transplant (ET), shall[not] be eligible for harness racing in Kentucky. [(b)] This rule shall not apply to natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible[not be eligible] for harness racing in Kentucky.

Section 4[7]. (1) If the commission determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion or mare contains false or misleading information, or that an owner, lessee, stallion manager, manager, or syndicate manager of a registered stallion or registered mare has failed[fails] to furnish information the commission has requested relating to the registration or renewal of a stallion or mare, the commission shall:

(a) Temporarily suspend or deny the registration of the stallion or mare; and

(b) Summon the person who committed a violation listed in this subsection, and any person who has knowledge relating to the violation, to appear before the commission at a hearing pursuant to 811 KAR 1:105.

(2) After the hearing, the commission shall determine whether the violation was willful.

(a) If the commission finds the violation was willful, the commission shall do one (1) or more of the following, based on the degree of seriousness of the willful violation:

1. [Officially] Deny the registration;
2. [Officially] Suspend the registration;
3. [Officially] Revoke the registration; or
4. Bar the owner, lessee, stallion manager, manager, or syndicate manager who willfully committed the violation from further registering stallions or mares to the KSDF and KSBIF.

(b) If the commission finds the violation was not willful, the commission shall rescind the temporary denial, suspension, or revocation[suspension or denial] of the registration.

(3) If a person summoned by the commission fails to respond to the summons, the commission:

- (a) Shall suspend or deny the registration[~~of the stallion~~];
- (b) Shall notify the person in writing of the action taken by the commission[Authority]; and

(c) May bar the owner, lessee, stallion manager, manager, or syndicate manager who committed the violation from further registering stallions or mares to the KSDF and KSBIF.[Program.] based on the degree of seriousness of the violation.

Section 5[8]. An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF[Kentucky Standardbred Development Fund] shall be responsible for:

- (1) The registrations and records of the farm; and
- (2) Complying with the requirements of the KSDF and KSBIF[Kentucky Standardbred Development Fund].

Section 9. (1) An owner, lessee, stallion manager or syndicate

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manager of a stallion used for breeding purposes to produce horses eligible for racing in Kentucky may only issue one (1) mating certificate required to register the first born foal produced by a mare in each calendar year, except for natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare.

(2) If it has been determined that an owner, lessee, stallion manager or syndicate manager of the stallion has issued a mating certificate for a foal other than the first born to a mare (donor or recipient), all foals produced by the mare (donor or recipient) in the applicable calendar year shall be ineligible for racing in Kentucky.

Section 10. The Standardbred Authorized Agent Form, KHRA 300-3 shall be filed with the stallion registration.]

Section 6[14]. Kentucky Sires Stakes races in which any part of the purse is provided by the KSDF or KSBIF[Kentucky Standardbred Development Fund], the requirements for which races are established in Sections 7[12] through 27[33] of this administrative regulation, shall be subject to the provisions of KAR Title 811, [811-KAR] Chapter 1.

Section 7[12]. A participant in a[the] Kentucky Sires Stakes race shall:

(1) Be a two (2) or three (3) year old Kentucky-bred[the product of the mating of a mare with a Kentucky registered and resident stallion]; and

(2) Maintain eligibility for the KSDF and KSBIF[Kentucky Standardbred Development Fund].

Section 8[13]. Each race shall be a one (1) mile dash.

Section 9[14]. Post positions for the final and all preliminary legs shall be an open draw with two (2) "also eligibles" drawn for the final race.

Section 10[15]. Eligibility for the Final. (1) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final.

(2) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (1) of this section and toward determining tiebreaker status as set forth in subsection (5)(b) of this section.

(3) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements set forth in subsection (1) of this section.

(4) A horse, in order to start in the final, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(5)(a) If the number of horses eligible and declared into any final event exceeds the maximum number specified by the KSDF or KSBIF[Kentucky Standardbred Development Fund] or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;
2. 2nd place - twenty-five (25) points;
3. 3rd place - twelve (12) points;
4. 4th place - eight (8) points;
5. 5th place - five (5) points;
6. 6th place and all other starters - one (1) point; and
7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to subsection (5) of this section, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final is not declared, the horse with the next highest point total, pursuant to subsection (5) of this section, that is declared shall be eligible for the final.

(6) Also eligibles.

(a) The two (2) horses accumulating the highest point total,

pursuant to subsection (5) of this section, that are declared into the final, but do not qualify for the final, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final as a replacement after the official scratch time deadline that is in effect at the host track.

Section 11[16]. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 12[17]. All starters shall be subject to the detention policy of the racetrack.

Section 13[18]. (1) There shall not be more than:

(a) Ten (10) starters in each final race on a mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 14[19]. (1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of \$500. If a preliminary leg splits into two or more divisions, the declaration fee shall be \$500 per division. For each horse declared to race in the final, there shall be a declaration fee of one (1) percent of the total purse.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purse for the KSDF and KSBIF[Kentucky Standardbred Development Fund] shall consist of money from:

(a) Nominating fees;

(b) Sustaining fees;

(c)[Stallion fees;

(d)] Declaration fees; and

(d)[(e)] Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky Sires Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel consisting of at least one (1) representative from each of the following:

1. The[Kentucky Horse Racing] commission;

2. The Kentucky Harness Horseman's Association;

3. The host racetrack;

4. The Kentucky Standardbred Breeders Association and any other recognized standardbred breeding association organized in Kentucky; and

5. The owner of a stallion registered to the KSDF and KSBIF[Kentucky Standardbred Development Fund].

(b) The final determination regarding distribution of revenue shall be made by the [Kentucky Horse Racing] commission.

Section 15[20]. (1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.
5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.
6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.
7. If the need exists for seven (7) or more divisions of preliminary legs[eliminations], eligibility to the final shall be determined in a manner consistent with the published conditions.
 - (b) One-half (1/2) and five-eighths (5/8) mile track:
 1. Nine (9) to ten (10) horses entered - one (1) division.
 2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.
 3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.
 4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.
 5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.
 6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.
 7. If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 16[24]. (1) Gait shall be specified by the owner of the horse, by the first two (2) year old payment.

- (2) Change of gait:
 - (a) May be made at the time of declaration at the track; and
 - (b) Sustaining payments shall remain in the funds of the original gait specified.
- (3) A horse shall not race on both gaits in the same year.

Section 17[22]. A race shall be raced in separate divisions as follows:

- (1) Colt/gelding/ridgeling divisions; and
- (2) Filly divisions.

Section 18[23]. (1) The purses awarded for all races shall be distributed on the following percentage basis:

- (a) 50-25-12-8-5: five (5) starters or more;
- (b) 50-25-15-10: four (4) starters;
- (c) 60-30-10: three (3) starters;
- (d) 65-35; two (2) starters; and
- (e) 100: one (1) starter.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

(3) In addition to the purses set forth in subsection (1) of this section, \$25,000 shall be awarded in each division of the finals to the owner of the stallion(s) residing in Kentucky that sired the first, second or third place finisher, as follows:

- (a) First place: \$15,000;
- (b) Second place: \$7,500; and
- (c) Third place: \$2,500.

Section 19[24]. (1) If circumstances prevent the racing of an event, and the race is not drawn, all funds that have been allocated to the division in each of the preliminary legs or the final shall be refunded and pro-rated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 25[30] of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF[Kentucky Standardbred Development Fund] shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 14[4][19(4)] of this administrative regulation.

Section 20[25]. Starters shall declare in at each track on or before the time specified and advertised by the association conducting the event.

Section 21[26]. (1) Any horse declared into Kentucky Sires Stakes races shall:

- (a) Show at least one (1) charted race line with no breaks with-

in thirty (30) days prior to the day of the race; and

- (b) Have satisfied the following time requirements:
 1. On a track larger than five-eighths (5/8) of a mile:
 - a. A two (2) year old trotter shall have been timed in 2:08 or faster;
 - b. A two (2) year old pacer shall have been timed in 2:06 or faster;
 - c. A three (3) year old trotter shall have been timed in 2:04 or faster; and
 - d. A three (3) year old pacer shall have been timed in 2:02 or faster.
 2. On a five-eighths (5/8) mile track:
 - a. A two (2) year old[year-old] trotter shall have been timed in 2:09 or faster;
 - b. A two (2) year old[year-old] pacer shall have been timed in 2:07 or faster;
 - c. A three (3) year old[year-old] trotter shall have been timed in 2:05 or faster; and
 - d. A three (3) year old[year-old] pacer shall have been timed in 2:03 or faster.
 3. On a one-half (1/2) mile track:
 - a. A two (2) year old[year-old] trotter shall have been timed in 2:10 or faster;
 - b. A two (2) year old[year-old] pacer shall have been timed in 2:08 or faster;
 - c. A three (3) year old[year-old] trotter shall have been timed in 2:06 or faster; and
 - d. A three (3) year old[year-old] pacer shall have been timed in 2:04 or faster.
- (2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.
- (3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 22[27]. (1) At a scheduled meeting of the commission, the commission:

- (a) Shall establish the distribution of funds for stakes races for the upcoming year; and
 - (b) Shall authorize expenditures at a time it designates.
- (2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 23[28]. The KSDF or KSBIF[Kentucky Standardbred Development Fund] shall provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund[which will be paid out of KSDF funds].

Section 24[29]. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form, KHRC 215-1 (7/13)[Kentucky Sire Stakes Nomination Form, KHRA 300-4] shall be filed with the commission along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF and KSBIF as a three (3) year old.

Section 25[30]. Nomination and sustaining payments shall be made to the KSDF[Kentucky Standardbred Development Fund] in U.S. funds by a money order or a check drawn on a U.S. bank account.

Section 26[34]. (1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, the[The] nomination fee shall be forty (40) dollars per yearling. For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be \$140 per yearling.

(3) Nominated horses shall be registered with the USTA.[A nomination shall be accompanied by a photocopy of the United

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~~States Trotting Association or Standardbred Canada, or other appropriate international harness racing governing agency and must be properly identified to the satisfaction of the commission at the time of the nomination[registration certificate].~~

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:

(a) ~~For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee[A supplemental payment] of \$500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required in subsection (5)(a) of this section; or[- and]~~

(b) ~~For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required in subsection (5)(a) of this section[The two (2) year old payment due by March 15, as provided in subsection (5)(a) of this section, is also made].~~

(5) Sustaining payments shall be as follows:

| (a) TWO (2) YEAR OLD PAYMENTS | |
|---|-------|
| March 15 | \$300 |
| April 15 | \$300 |
| May 15 | \$300 |
| March 15 payment shall be mandatory to make entry eligible as a three (3) year old. | |

| (b) THREE (3) YEAR OLD PAYMENTS | |
|---------------------------------|-------|
| February 15 | \$300 |
| March 15 | \$300 |
| April 15 | \$300 |

Section 27[32]. The commission, during any given year, may provide for separate early closing events for Kentucky-bred horses[both two (2)- and three (3)-year-old standardbreds that are Kentucky-sired].

Section 28[33]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 215-1 (7/13)[~~"Kentucky Sire Stakes Nomination Form-KHRA 300-1", (8/06);~~

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form," KHRC 215-2 (7/13)[~~"Standardbred Stallion Certificate, KHRA 300-2", (8/06);~~

(c) "KSDB/KSBIF Authorized Agent Form," KHRC 215-3 (7/13)[~~"Standardbred Authorization Agent Form, KHRA 300-3", (8/06)"]; and~~

(d) "KSDF/KSBIF Mare Certificate of Eligibility Form," KHRC 215-4 (7/13)[~~"Standardbred Stallion Certification of Eligibility Renewal 300-4", (12/06)].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway,[Pike,] Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC[KHRA] Web site at <http://khrc.ky.gov/www.khrs.ky.gov>].

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 17, 2013

FILED WITH LRC: August 13, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 17, 2013, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 30, 2013. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(I) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes eligibility requirements for the Kentucky Standardbred Development Fund and the Kentucky Standardbred Breeders' Incentive Fund. This regulation also establishes administrative practices to enforce the standards, criteria for the distribution of monies from these funds, mandatory criteria for races, and the administration of purses and payments in the applicable races.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate and oversee the two Funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.770(1) establishes the Kentucky Standardbred Development Fund. KRS 230.770(5) and (6) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky Standardbred Breeders' Incentive Fund. KRS 230.802(2)(b) authorize the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from the fund. This administrative regulation establishes the eligibility and other requirements for both Funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the eligibility requirements for the Funds. The amendments will enable more people to participate in the Funds and help make Kentucky's Funds more competitive with other states.

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

(a) How the amendment will change this existing administrative regulation: The amendments revise the eligibility requirements to enable more people to participate in the Funds and help make Kentucky's Funds more competitive with other states. The amendments also simplify the nomination process and establish nomination fees. They add a \$25,000 breeder incentive award in each division of the Sire Stakes finals to the owner of the stallions residing in Kentucky that sired the first, second or third place finisher.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to respond to the needs of the Standardbred advisory panel and to help Kentucky's Funds compete with other states' funds that are supplemented by monies from expanded gaming revenues.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.770(1) establishes the Kentucky Standardbred Development Fund. KRS 230.770(5) and (6) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky Standardbred Breeders' Incentive Fund. KRS 230.802(2)(b) authorize the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from the fund. This administrative regulation establishes the eligibility and other requirements for both Funds.

(d) How the amendment will assist in the effective administra-

tion of the statutes: The amendments will enable more people to participate in the Funds and help make Kentucky's Funds more competitive with other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will positively affect individuals who participate or wish to participate in the Funds. It will also positively affect standardbred breeders and harness race tracks.

(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: More people will be eligible to participate in the Funds thereby increasing racing entries and creating potential business opportunities for standardbred breeders and harness race tracks. Breeders, trainers and owners who participate in the Funds will be required to comply with the requirements of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Owners who participate in the Funds will be required to make the nomination and sustaining payments per the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from the amendments because more people will be able to participate in the Funds and the Funds will be more competitive with other states that have Funds that are supplemented by expanded gaming revenue.

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

(a) Initially: The amendment will not result in additional costs.

(b) On a continuing basis: The amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The only increased fees are to nominate a foal sired by a stallion that does not reside in Kentucky. The fees to nominate a foal sired by a stallion that resides in Kentucky have not changed.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Horse Racing Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.770, 230.802, 230.990.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will not generate any 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? None.

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

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

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

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

811 KAR 1:220. Harness racing at county fairs.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, [230.300,] 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations as may be necessary for the conduct of county fair races. This administrative regulation establishes conditions, races, purses, and payments in races conducted at county fairs in which funds for purses are provided by the commission, and regulates eligibility for participation in harness racing at county fairs.

Section 1. Definitions. (1) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate, association, joint venture, or any other group or combination acting as a unit.

(2) "Individual or Person domiciled in Kentucky" means:

a. An individual who has his permanent residence in Kentucky; and

b. A person organized under the laws of Kentucky or registered to do business in Kentucky with the Kentucky Secretary State.

(3) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

Section 2. (1) The commission shall determine all questions of domicile.

(2) In determining questions of domicile, the commission shall weigh:

(a) The eligibility factors set forth in Section 3 of this administrative regulation; and

(b) Factors which indicate domicile and intent, including:

1. The amount of time the individual spends in Kentucky each year as compared to the amount of time spent elsewhere;

2. Whether the individual or person owns real estate in Kentucky;

3. Whether the individual is registered to vote in Kentucky;

4. Whether the person is organized under Kentucky law;

5. The permanent residence of the individual or principal place of business of the person, as indicated by the records of the commission and the United States Trotting Association; and

6. Whether the individual has a Kentucky automobile driver's license.

Section 3. Eligibility. A horse is eligible to participate in a stake race at a county fair if:

(1) The horse is:

(a) A two (2) or three (3) year old that is sired by a stallion that was registered with the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund as provided in 811 KAR 1:215 at the time of conception;

(b) A two (2) or three (3) year old whose dam was partially or wholly owned by an individual or person domiciled in Kentucky at the time of conception; or

(c) A two (2) or three (3) year old that is owned by an individual or person domiciled in Kentucky.

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(2) An owner of the participating horse is a current member of the Kentucky Colt Racing Association, Inc.;

(3) An owner of the participating horse holds a current license with the commission; and

(4) The trainer and driver of the participating horse hold a current license with the commission~~[In order to qualify to participate in a stake race at a county fair:~~

~~(1) The participating horse shall be either a two (2) or three (3) year old standardbred that is the product of the mating of a mare with a Kentucky Standardbred Development Fund registered stallion;~~

~~(2) An owner of the participating horse shall be a current member of the Kentucky Colt Racing Association, Inc.;~~

~~(3) An owner of the participating horse shall be currently licensed by the commission; and~~

~~(4) The trainer and driver of the participating horse shall be currently licensed by the commission].~~

Section 4[2]. (1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.

(2) The track shall be inspected and approved by a representative of the commission.

Section 5[3]. A track shall have a hub rail or pylons approved by the commission.

Section 6[4]. (1) A fair shall have safe and adequate stalls for participating horses.

(2) If permanent stalls are not available, either on or off the fairgrounds, tents or other tie-in type stalls may be used.

(3) A county fair shall not charge stall rent for horses racing at the county fairs. However, a county fair may charge stall rent if the fair is held on~~[with the exception of]~~ state-owned property.

Section 7[5]. (1) The Kentucky Colt Racing Association county fair fee shall be as follows:

(a) A nomination fee of fifty (50) dollars per horse due before February 15 of the year in which the fair is being conducted;

(b) A sustaining fee of \$200 per horse due before April 15;

(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry to the fair; and

(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry to the fair.

(2) A \$200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 8[6]. Officials at County Fairs. (1) The Kentucky Colt Racing Association shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges' stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.

(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.

(4) The judges shall review the ownership of any horse that is entered in order to ensure the horse's eligibility~~[that it is eligible]~~ to race.

(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.

Section 9[7]. A fair shall use a licensed starter with adequate equipment.

Section 10[8]. (1) The entry fees established in Section 7[5] of this administrative regulation shall be collected by a fair and used:

(a) To pay racing officials;

(b) To provide purses for overnight racing events; and

(c) To promote fair racing as otherwise needed.

(2) A fair shall, upon request, make a full accounting of the entry fees to the commission.

Section 11[9]. A fair shall apply to the commission for a license to conduct a harness racing event and for approval of funds by December 15 of the year prior to the year of the event. At the time of application, the request for pari-mutuel wagering shall be included.

Section 12[10]. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.

Section 13[11]. An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission annually.

Section 14[12]. There shall not be more than nine (9) starters in any race. If a race is divided into divisions, the purse shall be divided so that each division races for an equal portion of the purse. The purses shall be divided as follows:

(1) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(2) Four (4) starters - fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent;

(3) Three (3) starters - fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent;

(4) Two (2) starters - sixty-five (65) percent and thirty-five (35) percent; and

(5) One (1) starter - 100 percent.

Section 15[13]. (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:

(a) First place finisher - fifty (50) points;

(b) Second place finisher - twenty-five (25) points;

(c) Third place finisher - twelve (12) points;

(d) Fourth place finisher - eight (8) points;

(e) Fifth place finisher - five (5) points; and

(f) Each starter that finishes out of the money - one (1) point.

(2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) of the points awarded for the next lower position. The same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.

(3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.

(4) A horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a county fair start and one (1) point.

(5) If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.

Section 16[14]. A horse shall not be allowed to compete in more than one (1) race at any fair.

Section 17. In order for a horse, for whom the nomination fee has been paid, to remain eligible to race at a county fair after there has been a transfer of ownership, the following payments shall be required:

(1) \$300 the first time ownership is transferred from the owner at the time of nomination; and

(2) An additional \$600 thereafter if the same horse is transferred.

Section 18[15]. (1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a drug test as set forth in 811 KAR 1:090 and 811 KAR 1:260.

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(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned so as to allow the track announcer to be heard.

Section 19[46]. A current negative Coggins test shall be required for each horse racing at a fair.

Section 20[47]. A driver shall wear full colors, white pants, a safety vest that meets the standards set forth in 811 KAR 1:075, Section 21, and a safety helmet that meets the standards set forth in 811 KAR 1:075, Section 20, ~~an approved vest and an approved helmet~~ if on the track less than one (1) hour before the start of a fair racing program.

Section 21[48]. A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

Section 22[49]. An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.

Section 23[20]. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section 24[24]. A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

(1) ~~Non pari-mutuel~~Nonpari-mutuel tracks:

- (a) Horse's name and sex;
- (b) Color and age of horse;
- (c) Sire and dam of horse;
- (d) Owner's name and colors;
- (e) Driver's name;
- (f) Trainer's name; and

(g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and

(2) Pari-mutuel tracks:

- (a) Horse's name and sex;
- (b) Color and age of horse;
- (c) Sire and dam of horse;
- (d) Owner's name;
- (e) Driver's name and colors;
- (f) Trainer's name;

(g) Summary of starts in purse races, earnings, and best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race;

(h) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:

- 1. Date of race;
- 2. Location of race;
- 3. Size of track if other than a one-half (1/2) mile track;
- 4. Symbol for free-legged pacers;
- 5. Track condition;
- 6. Type of race;
- 7. Distance;
- 8. The fractional times of the leading horse including race times;
- 9. Post position;
- 10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;
- 11. Stretch with lengths behind leader;
- 12. Finish with lengths behind leader;
- 13. Individual time of the horse;
- 14. Closing dollar odds;
- 15. Name of the driver;
- 16. Names of the horses that placed first, second, and third by the judges; and

17. The standard symbols for breaks and park-outs shall be used if applicable;

- (i) Indicate drivers racing with a provisional license; and
- (j) Indicate pacers that are racing without hobbles.

Section 25[22]. Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section 26[23]. A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095[, ~~Section 4(4)~~].

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 17, 2013

FILED WITH LRC: August 13, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2013 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 17, 2013, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 30, 2013. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(I) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs the conduct of harness racing at county fairs. It establishes the eligibility requirements and the fees for participation in harness racing at county fairs, as well as the licensing requirements and rules for the county fairs.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to exercise regulatory oversight over the county fairs and their participants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.398 grants the commission the authority to promulgate administrative regulations as may be necessary for the conduct of harness racing at county fairs. This regulation governs the conduct of harness racing at county fairs. It establishes the eligibility requirements and the fees for participation in harness racing at county fairs, as well as the licensing requirements and rules for the county fairs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation governs the conduct of harness racing at county fairs. It establishes the eligibility requirements and the fees for participation in harness racing at county fairs, as well as the licensing requirements and rules for the county fairs.

(2) If 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 eligibility requirements for participation in county fairs to make them consistent with the eligibility requirements for participation in the Kentucky Standardbred Development Fund and the Kentucky Standardbred Breeders' Incentive Fund (811 KAR 1:215), and imposes an eligibility fee when a horse is transferred from one owner to another. The amendments will enable more people to participate in harness racing at county fairs.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary for the commission to respond to the needs of the Kentucky Colt Racing Association, which is responsible for running the county fairs. The Kentucky Colt Racing Association had requested that the commission make the eligibility requirements for participation in harness racing at county fairs consistent with the eligibility requirements for participation in the Kentucky Standardbred Development Fund and the Kentucky Standardbred Breeders' Incentive Fund in order to enable more people to participate in the county fairs and to have consistency between this regulation and 811 KAR 1:215. The amendment was also necessary to impose the eligibility fee when a horse is transferred from one owner to another. This fee used to be contained in the regulation until it was removed by the amendments that went into effect on February 4, 2011. The Kentucky Colt Association requested that the fee requirement be returned to the regulation given the practical realities associated with racing at the county fairs..

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.398 grants the commission the authority to promulgate administrative regulations as may be necessary for the conduct of harness racing at county fairs. The amendment addresses the conduct of harness racing at county fairs.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will make the commission's regulation of the county fairs more efficient by making the eligibility requirements for participation in harness racing at county fairs consistent with the eligibility requirements for participation in the Kentucky Standardbred Development Fund and the Kentucky Standardbred Breeders' Incentive Fund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the county fairs and the owners and trainers with horses that participate in harness racing at county fairs.

(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 owners and trainers who participate in harness racing at county fairs will be required to adhere to the same eligibility requirements as are currently in place for the Kentucky Standardbred Development Fund and the Kentucky Standardbred Breeders' Incentive Fund. The owner of a horse that is transferred from another owner will have to pay an eligibility fee in order for that horse to continue to be eligible to participate in the county fairs. The county fairs will not have any new obligations under the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments impose an eligibility fee when a horse is transferred from one owner to another..

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from consistency in the eligibility requirements between the county fairs and the Kentucky Standardbred Development Fund and the Kentucky Standardbred Breeders' Incentive Fund. Each entity will also benefit from the amendments because more people will be eligible to participate in the county fairs.

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

(a) Initially: The amendment will not result in additional costs.

(b) On a continuing basis: The amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments impose an eligibility fee when a horse is transferred from one owner to another. This fee used to be contained in the regulation until it was removed by the amendments that went into effect on February 4, 2011. The Kentucky Colt Association requested that the fee requirement be returned to the regulation given the practical realities associated with racing at the county fairs.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Horse Racing Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 230.215, 230.260, 230.398.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 will not generate any 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? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Provider Operations

(Amendment)

907 KAR 1:180. Freestanding[Alternative] birth center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.170, 42 U.S.C. 1396a, b, d[~~EO-2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services has responsibility to administer the program of Medical Assistance. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes[~~sets forth~~] the coverage provisions

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for services provided by freestanding[alternative] birth centers for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

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

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

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Freestanding birth center" means a:

(a) Freestanding birth center as defined by 42 U.S.C. 1396d(l)(3)(B); and

(b) Facility that is licensed as an alternative birth center in accordance with 902 KAR 20:150.

(5) "Freestanding birth center services" is defined by 42 U.S.C. 1396d(28) and 42 U.S.C. 1396d(l)(3)(A).

(6) "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.

(7) "Participating freestanding birth center" means a freestanding birth center that is:

(a) Currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

(b) Currently participating in the Medicaid program pursuant to 907 KAR 1:671;

(c) Licensed in accordance with 902 KAR 20:150; and

(d) Authorized to provide the service in accordance with this administrative regulation.

(8) "Provider" is defined by KRS 205.8451(7).

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

(10) "Registered nurse" is defined by KRS 314.011(5).

(11) "Rendering provider" means a provider who:

(a) Provides a service for which reimbursement is:

1. Made to the provider; and

2. Not made to a freestanding birth center; and

(b) Is:

1. A physician who provides a service associated with a freestanding birth center;

2. A physician assistant who provides a service associated with a freestanding birth center;

3. An advanced practice registered nurse who provides a service associated with a freestanding birth center; or

4. A registered nurse who provides a service associated with a freestanding birth center.

Section 2. General Provisions and Requirements. (1) For the department to reimburse for a freestanding birth center service, the service shall:

(a) Be provided:

1. To a recipient; and

2. By a:

a. Participating freestanding birth center that is currently licensed and operating in accordance with 902 KAR 20:150; or

b. Rendering provider;

(b) Be covered in accordance with this administrative regulation; and

(c) Be medically necessary.

(2)(a) A participating freestanding birth center shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 902 KAR 20:150; and

4. All applicable state and federal laws.

(b) A rendering provider shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. All applicable state and federal laws.

(3)(a) If a participating freestanding birth center or rendering provider receives any duplicate payment or overpayment from the department, regardless of reason, the participating freestanding birth center or rendering provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Non-duplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d)1. A freestanding birth center shall comply with KRS 205.622.

2. A rendering provider shall comply with KRS 205.622.

Section 3.[Services shall be covered only when provided to an eligible Medicaid recipient by a participating alternative birth center which is appropriately licensed and operating in accordance with 904 KAR 20:150. Section 2.] Covered Services. The following services may be provided by a freestanding[alternative] birth center[centers]:

(1) Prenatal visits, to include one (1) initial visit and follow-up visits as appropriate;[-]

(2) Standby services, with the rendering provider[medical professional (obstetrician or nurse midwife)] physically present throughout the course of the labor;[-]

(3) Delivery including[-, which includes] the actual delivery, necessary supplies and material for the delivery, and the post-delivery[postdelivery] examination;[-]

(4) Postnatal visits;

(a) [-] Not to exceed two (2); and

(b) Which shall be accomplished within six (6) weeks of the delivery; or[-]

(5) Laboratory services directly related to the provision of a freestanding birth center service[as specified by the Cabinet for Health and Family Services].

Section 4[3]. Records, Reporting and Monitoring. A freestanding birth center shall:

(1) Maintain complete and legible records of services provided and in a manner that ensures the confidentiality of the recipient of the service; and

(2) Provide the records referenced in subsection (1) of this section, upon request, to:

(a) The department;

(b) The Cabinet for Health and Family Services, Office of the Inspector General or its designee;

(c) The Office of the Auditor of Public Accounts or its designee;

(d) The Office of the Attorney General or its designee;

(e) The Centers for Medicare and Medicaid Services or its designee;

(f) The Office of Inspector General of the United States Department of Health and Human Services or its designee; or

(g) The United States Government Accountability Office or its designee.

Section 5. Federal Financial Participation. A provision or requirement 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 provision or requirement; or

(2) Disapproves the provision or requirement.

Section 6. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563[The facility shall maintain complete records of services rendered, and provide to the cabinet the records and reports the cabinet requires for the effective implementation and administration of the service. Facility records shall be available to the Cabinet for Health and Family Services, the United States Department of Health and Human Services, and the Comptroller General, and their representatives or designees for auditing or monitoring purposes].

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2013
FILED WITH LRC: August 13, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 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 September 16, 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 30, 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.

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 establishes the Department for Medicaid Services' (DMS's) service and coverage provisions and requirements related to freestanding birth center services. Freestanding birth centers are authorized to provide delivery services for deliveries that are not complicated.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's service and coverage provisions and requirements related to freestanding birth center services. Covering freestanding birth centers is mandated by Section 2301 of the Affordable Care Act.

(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 DMS's service and coverage provisions and requirements related to freestanding birth center services.

(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 DMS's service and coverage provisions and requirements related to freestanding birthing center services.

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

(a) How the amendment will change this existing administrative regulation: The amendment inserts general provider requirements that were not previously stated in the administrative regulation; changes the facility's term from "alternative birthing center" to "freestanding birth center" to be consistent with language in the Affordable Care Act (and resulting federal law and regulation); establishes that policies are contingent upon receipt of federal funding/federal approval; and contains language or formatting changes to ensure compliance with KRS Chapter 13A standards (as the regulation has not been amended since 1992.)

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adopt the same term for these facilities as used in federal law and regulation and to insert general requirements that were not previously stated in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by using language consistent with federal law and regulation and inserting general provider requirements such as program integrity or related requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by using language consistent with federal law and regulation and inserting general provider requirements such as program integrity or related requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Freestanding birth centers; physicians, advanced practice registered nurses, registered nurse, and physician assistants who would work for a freestanding birth center; and Medicaid recipients who would like to have a baby in a freestanding birth center as opposed to an inpatient hospital would be affected by the administrative regulation. DMS understands that currently there are no freestanding birth centers licensed or operating 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. No actions are required by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Freestanding birth centers and providers who provide services through the centers will benefit by being reimbursed for the services. Medicaid recipients will benefit by having an option to have a baby in a freestanding birth center rather than in an inpatient hospital. Freestanding birth centers provide a homelike setting for deliveries and perform deliveries in a manner that is less medically-oriented or rigid in protocol as inpatient hospitals. For example, freestanding birth centers typically do not induce or augment labor with oxytocin, do not provide continuous electronic fetal monitoring, do not provide epidural anesthesia, do not provide narcotics, and do not perform surgical deliveries.

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

(a) Initially: The cost is indeterminable as currently, there are no freestanding birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

(b) On a continuing basis: The cost is indeterminable. Please see the above response to question (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 2301 of the Affordable Care Act which was codified into 42 U.S.C. 1396d(a)(28), 42 U.S.C. 1396d(l)(3), and 42 U.S.C. 1396a(a)(30)(A).

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2. State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396d(a)(28) establishes that medical assistance (Medicaid) includes "freestanding birth center services (as defined in subsection (l)(3)(A)) and other ambulatory services that are offered by a freestanding birth center (as defined in (l)(3)(B)) and that are otherwise included in the plan." 42 U.S.C. 1396d(l)(3) states:

(3)(a) The term freestanding birth center services means services furnished to an individual at a freestanding birth center (as defined in subparagraph (B)) at such center.

(b) The term freestanding birth center means a health facility

(i) That is not a hospital;

(ii) Where childbirth is planned to occur away from the pregnant woman's residence;

(iii) That is licensed or otherwise approved by the State to provide prenatal labor and delivery or postpartum care and other ambulatory services that are included in the plan; and

(iv) That complies with such other requirements relating to the health and safety of individuals furnished services by the facility as the State shall establish.

(c) A State shall provide separate payments to providers administering prenatal labor and delivery or postpartum care in a freestanding birth center (as defined in subparagraph (B)), such as nurse midwives and other providers of services such as birth attendants recognized under State law, as determined appropriate by the Secretary. For purposes of the preceding sentence, the term birth attendant means an individual who is recognized or registered by the State involved to provide health care at childbirth and who provides such care within the scope of practice under which the individual is legally authorized to perform such care under State law (or the State regulatory mechanism provided by State law), regardless of whether the individual is under the supervision of, or associated with, a physician or other health care provider. Nothing in this subparagraph shall be construed as changing State law requirements applicable to a birth attendant." 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services..."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements are not stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will generate no revenue for DMS.

(b) How 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 will generate no revenue for DMS.

(c) How much will it cost to administer this program for the first year? The cost is indeterminable as currently, there are no free-standing birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

(d) How much will it cost to administer this program for subsequent years? The cost is indeterminable. Please see the above response in paragraph (c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Amendment)**

907 KAR 1:190. Payments for freestanding[alternative] birth center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 447.325, 42 U.S.C. 1396a, b, d, EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the program of Medical Assistance. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for alternative birth center services.

Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Freestanding birth center" means a:

(a) Freestanding birth center as defined by 42 U.S.C. 1396d(l)(3)(B); and

(b) Facility that is licensed as an alternative birth center in accordance with 902 KAR 20:150.

(5) "Freestanding birth center services" is defined by 42 U.S.C. 1396d(28) and 42 U.S.C. 1396d(l)(3)(A).

(6) "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.

(7) "Participating freestanding birth center" means a freestanding birth center that is:

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(a) Currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

(b) Currently participating in the Medicaid program pursuant to 907 KAR 1:671;

(c) Licensed in accordance with 902 KAR 20:150; and

(d) Authorized to provide the service in accordance with this administrative regulation.

(8) "Provider" is defined by KRS 205.8451(7).

(9) "Recipient" is defined by KRS 205.8451(9).

(10) "Registered nurse" is defined by KRS 314.011(5).

(11) "Rendering provider" means a provider who:

(a) Provides a service for which reimbursement is:

1. Made to the provider; and

2. Not made to a freestanding birth center; and

(b) Is:

1. A physician who provides a service associated with a freestanding birth center;

2. A physician assistant who provides a service associated with a freestanding birth center;

3. An advanced practice registered nurse who provides a service associated with a freestanding birth center; or

4. A registered nurse who provides a service associated with a freestanding birth center.

Section 2. General Requirements. (1) For the department to reimburse for a freestanding birth center service, the service shall:

(a) Be provided:

1. To a recipient; and

2. By a:

a. Participating freestanding birth center that is currently licensed and operating in accordance with 902 KAR 20:150; or

b. Rendering provider;

(b) Be covered in accordance with 907 KAR 1:180; and

(c) Be medically necessary.

(2)(a) A participating freestanding birth center shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 902 KAR 20:150; and

4. All applicable state and federal laws.

(b) A rendering provider shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. All applicable state and federal laws.

(3)(a) If a participating freestanding birth center or rendering provider receives any duplicate payment or overpayment from the department, regardless of reason, the participating freestanding birth center or rendering provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Non-duplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d)1. A freestanding birth center shall comply with KRS 205.622.

2. A rendering provider shall comply with KRS 205.622[The cabinet shall reimburse participating licensed alternative birth centers for covered services rendered eligible Medicaid recipients when the services are provided in accordance with the provisions of 902 KAR 20:150, Alternative birth centers].

Section 3. Reimbursement. (1)(a) The department shall reimburse a professional fee to a rendering provider for a prenatal visit, a standby service, or a postnatal visit at the lesser of:

1. The rendering provider's usual and customary charge for the service;

2. The reimbursement for the service pursuant to 907 KAR 3:010 if the rendering provider is a physician; or

3. Seventy-five (75) percent of the reimbursement for the service pursuant to 907 KAR 3:010 if the rendering provider is:

a. An advanced practice registered nurse;

b. A physician assistant; or

c. A registered nurse.

(b) The department shall:

1. Reimburse for no more than two (2) postnatal visits per recipient; and

2. Not reimburse for a postnatal visit that occurs after six (6) weeks have lapsed since the delivery.

(2) The department shall reimburse a freestanding birth center:

(a) Twenty-five (25) dollars for referring a recipient to an inpatient hospital for delivery services if the freestanding birth center determined before providing delivery-related services that the recipient's delivery was complicated and needed to be handled in an inpatient hospital;

(b) \$156 for:

1. Providing delivery-related services to a recipient; and

2. Determining, after providing delivery-related services to a recipient, that the recipient's delivery was complicated and needed to be handled in an inpatient hospital; or

(c) \$1,557 for services related to a complete delivery that occurred at the freestanding birth center[2. Payments.-(1) Prenatal visits, standby services and postnatal visits billed by a birthing center shall be paid at the lower of the billed charge or seventy-five (75) percent of the upper limit for physicians for the same services provided on an outpatient basis when services are provided by the medical professional (i.e., physician or nurse-midwife who is an appropriately licensed and certified advanced registered nurse practitioner). Laboratory services shall be paid at the lower of the billed charges or the upper limit for physicians.

(2) The delivery fee payable to the center shall be the facility's usual and customary rate not to exceed \$365 per delivery. This fee is inclusive of all costs associated with the delivery, including the professional fee for the delivery, necessary supplies and materials, and the post-delivery examination].

(3)(a) The department's reimbursement[Program payment] shall be considered payment in full for all services, supplies, and devices provided to a recipient.

(b)1. A freestanding birth center shall not bill a recipient or party other than the department for a service provided to the recipient if the service was covered by the department.

2. A rendering provider shall not bill a recipient or party other than the department for a service provided to the recipient if the service was covered by the department.

(4)(a) A managed care organization's reimbursement shall be considered payment in full for all services, supplies, and devices provided to an enrollee.

(b)1. A freestanding birth center shall not bill an enrollee or party other than the enrollee's managed care organization for a service provided to the enrollee if the service was covered by the managed care organization.

2. A rendering provider shall not bill an enrollee or party other than the managed care organization for a service provided to the enrollee if the service was covered by the managed care organization.

Section 4. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse in accordance with this administrative regulation for a service or item covered pursuant to 907 KAR 1:180 and this administrative regulation.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a service or item covered pursuant to 907 KAR 1:180 and this administrative regulation.

Section 5. Federal Financial Participation. A provision or requirement 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 provision or requirement; or

(2) Disapproves the provision or requirement[during the visit billed, and no additional amounts may be requested from the recipient, the Medicaid program, or any other source. This shall not, however, preclude the collection of appropriate amounts from liable third-party sources which shall serve to reduce the liability of the cabinet].

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 13, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 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 September 16, 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 30, 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.

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 establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements related to freestanding birth center services. Freestanding birth centers are authorized to provide delivery services for deliveries that are not complicated.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements related to freestanding birth center services. Reimbursing for freestanding birth centers is mandated by Section 2301 of the Affordable Care Act.

(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 DMS's reimbursement provisions and requirements related to freestanding birth center services.

(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 DMS's reimbursement provisions and requirements related to freestanding birth center 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 increases reimbursement for freestanding birth centers by paying \$1,557, rather than \$365, to a freestanding birth center as the facility component of freestanding birth center services. DMS will continue to pay a professional component (to the rendering provider) based on reimbursed established in DMS's physicians' services reimbursement regulation (907 KAR 3:010.) Additional amendments including inserting necessary definitions for clarity; inserting general provider requirements (such as program integrity or related); establishing that managed care organizations are not required to reimburse the same amount as DMS reimburses; and establishing that policies are contingent upon receipt of federal funding/federal approval.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to elevate DMS's reimbursement for freestanding birth center services to a level that is compatible with other states and will provide an incentive to freestanding birth centers to participate in the Medicaid program. Reimbursing for deliveries in a freestanding birth center (which are non-complicated deliveries) are less expensive than reimbursing for the same delivers in an inpatient hospital.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by reimbursing for freestanding birth centers at a level compatible with other states and by encouraging such deliveries as they are less expensive than deliveries in an inpatient hospital.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by reimbursing for freestanding birth centers at a level compatible with other states and by encouraging such deliveries as they are less expensive than deliveries in an inpatient hospital.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Freestanding birth centers; physicians, advanced practice registered nurses, registered nurse, and physician assistants who would work for a freestanding birth center; and Medicaid recipients who would like to have a baby in a freestanding birth center as opposed to an inpatient hospital would be affected by the administrative regulation. DMS understands that currently there are no freestanding birth centers licensed or operating 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. No actions are required by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Freestanding birth centers and providers who provide services through the centers will benefit by being reimbursed for the services. Medicaid recipients will benefit by having an option to have a baby in a freestanding birth center rather than in an inpatient hospital. Freestanding birth centers provide a homelike setting for deliveries and perform deliveries in a manner that is less medically-oriented or rigid in protocol as inpatient hospitals. For example, freestanding birth centers typically do not induce or augment labor with oxytocin, do not provide continuous electronic fetal monitoring, do not provide epidural anesthesia, do not provide narcotics, and do not perform surgical deliveries.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The cost is indeterminable as currently, there are no freestanding birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

(b) On a continuing basis: The cost is indeterminable. Please see the above response to question (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither imposes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 2301 of the Affordable Care Act which was codified into 42 U.S.C. 1396d(a)(28), 42 U.S.C. 1396d(l)(3), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396d(l)(3)(C) states: "A State shall provide separate payments to providers administering prenatal labor and delivery or postpartum care in a freestanding birth center (as defined in subparagraph (B)), such as nurse midwives and other providers of services such as birth attendants recognized under State law, as determined appropriate by the Secretary. For purposes of the preceding sentence, the term birth attendant means an individual who is recognized or registered by the State involved to provide health care at childbirth and who provides such care within the scope of practice under which the individual is legally authorized to perform such care under State law (or the State regulatory mechanism provided by State law), regardless of whether the individual is under the supervision of, or associated with, a physician or other health care provider. Nothing in this subparagraph shall be construed as changing State law requirements applicable to a birth attendant." 42 U.S.C. establishes that medical assistance (Medicaid) includes "freestanding birth center services (as defined in subsection (l)(3)(A)) and other ambulatory services that are offered by a freestanding birth center (as defined in (l)(3)(B)) and that are otherwise included in the plan." 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services..."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements are not stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by this amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will generate no revenue for DMS.

(b) How 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 will generate no revenue for DMS.

(c) How much will it cost to administer this program for the first year? The cost is indeterminable as currently, there are no free-standing birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

(d) How much will it cost to administer this program for subsequent years? The cost is indeterminable. Please see the above response – in paragraph (c).

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 Behavioral Health, Developmental
and Intellectual Disabilities
Division of Administration and Financial Management
(Amendment)

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050(1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance, and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.710 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance, and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (3) of this section that is provided.

(2) The per diem rate for room and board for each facility shall be as follows:

| Facility | | Rate |
|--------------------------------|--------|------------------|
| Central State Hospital | | \$865[\$770] |
| Bingham Gardens | | \$1,590[\$1,370] |
| Western State Hospital | | \$740 |
| Western State Nursing Facility | | \$325[\$285] |
| Outwood ICF/MR | | \$650[\$565] |
| Oakwood Community Center | Unit 1 | \$1,320[\$1,430] |
| | Unit 2 | \$1,200[\$1,345] |
| | Unit 3 | \$1,200[\$1,305] |
| | Unit 4 | \$1,200[\$1,345] |
| Hazelwood Center | | \$890[\$800] |
| Glasgow State Nursing Facility | | \$355[\$340] |
| Del Maria | | \$630[\$585] |
| Meadows | | \$735[\$725] |
| Windsong | | \$770[\$630] |
| Eastern State Hospital | | \$565[\$495] |
| Volta House | | \$140] |

(3) A separate charge shall be imposed if the following treatment services are provided at a Department for Behavioral Health, Developmental and Intellectual Disabilities[Mental Health and Mental

Retardation Services] facility listed in subsection (2) of this section:

- (a) Physician's services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;
- (g) Laboratory;
- (h) Speech therapy;
- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia;
- (n) Electroshock therapy;
- (o) Physician assistant; and
- (p) Advanced practice registered nurse.

Section 2. Board, Maintenance, and Treatment Charges. The cost per day for board, maintenance, and treatment charges shall be established using the last available cost report adjusted for inflation. Current rates shall be posted at each facility.

BETSY DUNNIGAN, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013
FILED WITH LRC: August 13, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 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 September 16, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until September 30, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Mudd or Ray Peters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the patient cost per day for board, maintenance, and treatment for a facility operated by the cabinet which shall be the uniform charge for persons receiving those services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with the provisions of KRS 210.720(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish, at frequent intervals, the patient cost per day for board, maintenance, and treatment for a facility operated by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet as required by KRS 210.720(2). The per diem rates are determined by applying a formula that has been in use since the 1980s. This formula calculates per diem rates by dividing actual costs for a state operated facility (using cost reports from a previous fiscal year) by the total number of patient days.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to establish the revised patient cost per day for facilities operated by the cabinet as required by KRS 210.720(2).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assure that the cabinet complies with KRS 210.720(2) by establishing the patient cost per day for board, maintenance, and treatment for each facility operated by the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish the patient cost per day for board, maintenance, and treatment for a facility operated by the cabinet at frequent intervals.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720(1) requires that every patient admitted to a facility operated by the cabinet, except for prisoners transferred in accordance with KRS 202A.201, shall be charged for board, maintenance, and treatment. This administrative regulation establishes a rate for room, board, and treatment which is based on a formula in use for over twenty (20) years that calculates per diem rates by dividing actual costs for a state operated facility (using cost reports from the previous fiscal year) by the total number of patient days.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are fifteen (15) state operated facilities affected by this administrative regulation. In addition, this amendment will affect only a small number of patients (approximately ten (10) on any given day out of an average daily statewide census in excess of 1,000) admitted to these facilities who have the financial resources to be 100 percent self-pay and are uninsured. Medicaid pays at the reimbursement rates it establishes under CMS requirements, not the per diem rates found in this regulation. Private insurers and MCOs will pay a negotiated rate to state operated facilities - just as they do with other health care providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility will be required to change the charge rates in their billing systems.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost for a state operated facility to comply with this administrative regulation. For those few patients who are uninsured and have the resources to be 100 percent self-pay, the per diem rate will increase in some state operated facilities. Thus, they would pay more for services. In other state operated facilities, the per diem rate will decrease resulting in a lower cost for patients who are 100 percent self-pay and uninsured.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will ensure that the facilities are reimbursed for services and treatments they rendered to self-pay patients.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no additional cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Residential services are funded primarily with restricted agency funds generated from patient charges.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation adjusts the charge rates as required by statute. Because only a small number of patients (those who have the

resources to be 100 percent self-pay and who are uninsured) will be required to pay the revised rates, it is anticipated that the revenue increase would be approximately \$14,000. Medicare, Medicaid, and private insurance payors do not base their reimbursement on this billed amount but on Medicare and Medicaid reimbursement requirements and, in the case of private insurers and MCOs, on negotiated rates.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation establishes, as required by law, charges for room, board, and treatment at state operated facilities. At some state operated facilities the per diem rate will increase; at other facilities the per diem rate will decrease. Per diem rates are set utilizing the facilities most recently completed cost reports.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because all facility rates are set based on actual cost.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the fifteen (15) state operated facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.720 (2).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much 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 a minimal amount of additional revenue for the Department for Behavioral Health, Developmental and Intellectual Disabilities – approximately \$14,000 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 a minimal amount of additional revenue for the Department for Behavioral Health, Developmental and Intellectual Disabilities – approximately \$14,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost associated with administering this regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost related to administering this 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 (+/-): This administrative regulation does not generate any revenue.

Expenditures (+/-): This administrative regulation sets per diem rate for facilities operated by the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Administration and Financial Management (Amendment)

908 KAR 3:060. "Means test" for determining patient liability.

RELATES TO: KRS 210.710, 210.720, and 210.730

STATUTORY AUTHORITY: KRS 194A.050, 210.710(4), 210.720(3), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS

210.710(4) and 210.720(3) require the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the Cabinet for Health and Family Services, for individuals with behavioral health, developmental and intellectual disabilities~~[the mentally ill or mentally retarded]~~. This administrative regulation establishes the "Means test" for making that determination.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward their care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

(a) Salaries;

(b) Wages;

(c) Self-employed gross revenues, less operating expenses;

(d) Benefit payments, except for Supplemental Security Income payments;

(e) Social Security payments;

(f) Rents;

(g) Royalties;

(h) Pensions;

(i) Retirement payments;

(j) Veteran's Administration payments;

(k) Black lung benefits;

(l) Railroad retirement benefits;

(m) Gifts;

(n) Settlements;

(o) Trust receipts;

(p) Alimony, but does not include child support payments;

(q) Interest income; and

(r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2)(a) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the "Patient or Responsible Party Financial Record" form.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3:050, less any amount paid by Medicare, Medicaid, and other

third-party payment sources; or

(b) The amount the patient is deemed able to pay in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) The following shall be allowed deductions from income:

(a) Federal income taxes;

(b) State income taxes;

(c) Social security taxes;

(d) Normal retirement contributions;

(e) Unpaid medical and dental bills;

(f) Health insurance premiums;

(g) Medicare Part B insurance premiums;

(h) Long-Term Care insurance premiums;

(i) A personal needs allowance of forty (40) dollars per month;

(j) Student loan payments;

(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;

(l) Child support payments;

(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and

(n) A basic maintenance allowance, derived from the Poverty Guidelines, as contained in the Basic Maintenance Allowance Table of Section 3(7) of this administrative regulation for the size of the patient's family if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;

2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort;

3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration; and

4. Dependents used in the calculation of the basic maintenance allowance shall include a legally-recognized spouse and each individual less than eighteen (18) years of age and in the patient's care.

(6) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed in lieu of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction if they can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

(a) Prepaid burial plans of up to \$1,500 per family member;

(b) Automobiles;

(c) Housing structures;

(d) Land;

(e) Retirement accounts;

(f) Pension funds;

(g) Trust funds that cannot be accessed;

(h) The applicable amount contained in the Ability To Pay Assets Table of Section 3(7) of this administrative regulation for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n)4 of this section; and

(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay.

(1) The facility shall calculate the ability to pay amount utilizing either the "Ability to Pay Worksheet" or the "Deductible Ability to Pay Worksheet" as appropriate and by using the following formula:

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(5) of this administrative regulation;

(c) Subtract the allowed deductions from income; and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

ble for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3:050. Any remaining liability shall be satisfied as follows with the exception of ability to pay amounts arising from deductibles:

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and

(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability or psychiatric hospital in accordance with 907 KAR 1:655, that Medicaid income assessment shall be relied upon in lieu of the ability to pay provisions established in this administrative regulation.

(6)(a) After the ability to pay is determined for the patient or person responsible for the patient, a "Patient or Responsible Party Financial Agreement and Assignment" form shall be completed.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty threshold guidelines established in this subsection:

(a) The poverty guidelines effective July 31, 2011[2009] shall be as follows:

| TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE | |
|--|--------------------------------|
| Size of Family | Allowed deduction from income* |
| 1 | \$10,890 [\$10,830] |
| 2 | \$14,710 [\$14,570] |
| 3 | \$18,530 [\$18,310] |
| 4 | \$22,350 [\$22,050] |
| 5 | \$26,170 [\$25,790] |
| 6 | \$29,990 [\$29,530] |
| 7 | \$33,810 [\$33,270] |
| 8 | \$37,630 [\$37,010] |

*For each additional dependent, add \$3,820[\$3,740] dollars.

| TABLE II. ABILITY TO PAY ASSETS TABLE | |
|---------------------------------------|--------------------------------|
| Size of Family | Allowed Deduction from Assets* |
| 1 | \$2,000 |
| 2 | \$4,000 |
| 3 | \$4,050 |
| 4 | \$4,100 |

*For each additional dependent, add fifty (50) dollars

(b) The poverty guidelines effective the effective date of this administrative regulation shall be as follows:

| TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE | |
|--|--|
|--|--|

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| Size of Family | Allowed deduction from income* |
|----------------|----------------------------------|
| 1 | \$11,490 [\$10,890] |
| 2 | \$15,510 [\$14,710] |
| 3 | \$19,530 [\$18,530] |
| 4 | \$23,550 [\$22,350] |
| 5 | \$27,570 [\$26,170] |
| 6 | \$31,590 [\$29,990] |
| 7 | \$35,610 [\$33,810] |
| 8 | \$39,630 [\$37,630] |

*For each additional dependent, add \$4,020 [~~\$3,820~~] dollars.

| TABLE II. ABILITY TO PAY ASSETS TABLE | |
|---------------------------------------|--------------------------------|
| Size of Family | Allowed Deduction from Assets* |
| 1 | \$2,000 |
| 2 | \$4,000 |
| 3 | \$4,050 |
| 4 | \$4,100 |

*For each additional dependent, add fifty (50) dollars.

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

- (a) Income revisions;
- (b) Asset revisions including exhaustion of available assets;
- (c) Change in allowed deductions;
- (d) Change in a dependent of the patient or person responsible for the patient; or
- (e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised "Ability to Pay Worksheet" or "Deductible Ability to Pay Worksheet" shall be prepared along with a revised "Patient or Responsible Party Financial Record" form and a revised "Patient or Responsible Party Financial Agreement and Assignment" form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "Patient or Responsible Party Financial Agreement and Assignment" form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures. (1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal

within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40621-0001. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's or person responsible for the patient's position and include all necessary supporting documentation.

(3) Waivers.

(a) The director of each facility may waive payment of his or her facility's charges under this administrative regulation if waiver is deemed to be in the best interest of all parties.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is deemed to be in the best interest of all parties.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MHMR 3:060-1 Ability to Pay Worksheet", June 2008;

(b) "MHMR 3:060-2 Deductible Ability to Pay Worksheet", June 2008;

(c) "MHMR 3:060-3 Patient or Responsible Party Financial Agreement and Assignment", August 2004; and

(d) "MHMR 3:060-4 Patient or Responsible Party Financial Record", March 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities [Mental Health and Mental Retardation Services], 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001, Monday through Friday, 8 a.m. to 4:30 p.m.

BETSY DUNNIGAN, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 13, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if request, be held on September, 23, 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 September 16, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until September 30, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Ky. 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Mudd or Ray Peters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a "means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the provisions of KRS 210.720(3) and establish a homogeneous methodology to determine the ability of a patient or person responsible for the patient to pay for services received at a facility

operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(3) requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the cabinet in determining the entire financial resources available to a patient or person responsible for the patient.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to update the Basic Maintenance Allowances table based on the most recent version of the federal poverty guideline allowance amounts.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation, which revises tables related to benefit and support limits based on federal poverty guidelines, is necessary to accurately determine the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(3) requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient. This amendment allows the cabinet to more accurately assess the entire financial resources available to a patient or person responsible for the patient.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are fifteen (15) state operated facilities affected by this administrative regulation, and this amendment will primarily affect patients admitted to facilities operated by the cabinet.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This administrative regulation will assure that state operated facilities equitably charge patients served. Increases in poverty guidelines factor into patient's ability to benefit from allowable deductions.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Facility staff will be required to assess the financial resources of the clients or clients' financially responsible party.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to facilities to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows facilities to assess and recoup costs associated with treatment and services. No resident presented for admission shall be denied treatment due to their inability to pay.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There

is not an additional cost 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: This administrative regulation will not generate any increase in fees or funding.

(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 or increase fees.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because the "Means Test" to determine ability to pay apply equally to all patients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 fifteen (15) state operated facilities are impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.710, KRS 210.720, and KRS 210.730.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There is not a cost to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is not a cost to administer 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:

NEW ADMINISTRATIVE REGULATIONS

**GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(New Administrative Regulation)**

302 KAR 21:001. Definitions for 302 KAR Chapter 21.

RELATES TO: KRS 246.420, 256.010, 257.160, 257.196, 525.130, 7 U.S.C. 2131-2159

STATUTORY AUTHORITY: KRS 257.196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.196 requires the Board of Agriculture to promulgate administrative regulations establishing on-farm livestock and poultry care standards recommended to it by the Kentucky Livestock Care Standards Commission. This administrative regulation establishes the definitions for 302 KAR Chapter 21.

Section 1. Definitions. (1) "Ambulatory disabled" means being capable of walking, but with a physical impairment that severely limits or threatens the ability to walk.

(2) "Distress" means a condition that occurs when livestock or poultry are injured, sick, or in physical pain.

(3) "Euthanasia" means the act of putting an animal to death by methods specified as acceptable for that species by the 2007 Report of the American Veterinary Medical Association (AVMA) Panel on Euthanasia, incorporated by reference in 302 KAR 21:020.

(4) "Handling" means the moving or confining of livestock or poultry for management practices, relocating, loading, or unloading.

(5) "Housing" means space used to shelter or confine livestock and poultry.

(6) "Management practices" means procedures in livestock and poultry production to improve animal health, reproduction, comfort, safety, productivity, and product acceptability.

(7) "Non-ambulatory disabled" means being unable to rise from a recumbent position or being unable to walk.

(8) "Responsible party" means a person who is the owner of the livestock or poultry or a person who has current responsibility of custody of the livestock or poultry.

(9) "Soring" means:

(a) An irritating or blistering agent has been applied, internally or externally, by a person to a limb of a horse;

(b) A burn, cut, or laceration has been inflicted by a person on a limb of a horse;

(c) A tack, nail, screw, or chemical agent has been injected by a person into or used by a person on a limb of a horse; or

(d) 1. Any other substance or device has been used by a person on a limb of a horse or a person has engaged in a practice involving a horse and, as a result of the application, infliction, injection, use, or practice, the horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness if walking, trotting, or otherwise moving; and

2. Shall not include an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine.

(10) "Veal" means a young bovine harvested at or under 750 pounds, and fed for the purpose of veal meat production.

(11) "Veterinarian-client-patient relationship" is defined by KRS 321.185.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2013, five working

days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates definitions for the administrative regulation establishing livestock and poultry care standards.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.196 by establishing livestock and poultry care standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 257.196 by establishing livestock and poultry care standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 257.196 by clearly establishing the definitions for livestock and poultry care standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: More than 85,000 farms and all 120 counties potentially may be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Farm operations that include or may wish to include livestock and poultry will be required to be familiar with the minimum care standards. With the exception of a few isolated individual cases each year, the overwhelming number of the farmers in our state already comply with the care standards as normal production practices. County officials tasked with response to complaints would need to be familiar with the regulations to provide appropriate evaluations and responses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minimum care standards implementation will help identify bad actors in the circumstances of violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA does not anticipate the need for specific funding for the implementation of these regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required for this amended regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Department of Agriculture, Office of the State Veterinarian.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.196.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 changes will occur.

(a) How much 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 fiscal changes will occur.

(b) How 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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(New Administrative Regulation)

302 KAR 21:020. General livestock and poultry provisions.

RELATES TO: KRS 246.420, 256.010, 257.160, 257.196, 525.130, 7 U.S.C. 2131-2159

STATUTORY AUTHORITY: KRS 257.196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.196 requires the Board of Agriculture to promulgate administrative regulations establishing on-farm livestock and poultry care standards recommended to it by the Kentucky Livestock Care Standards Commission. This administrative regulation establishes general livestock and poultry standards.

Section 1. Feed and Water. (1) Livestock and poultry shall receive feed and water so as to maintain a body condition appropriate for age, use, stage of production, and weather condition.

(2) Feed and water may be withheld for the following reasons:

(a) Specific management practices;

(b) In an emergency situation such as extreme weather condition or loss of utilities; or

(c) Health care purposes.

Section 2. Space. (1) Space sufficient to maintain livestock and poultry shall be provided and it may be:

(a) Confined;

(b) Semi-confined; or

(c) An outdoor lot or pasture.

(2) If used, facilities may be environmentally controlled.

(3) Separation of individual animals shall be authorized.

(4) Indoor stocking densities shall allow for a single layer of animals.

(5) If fencing is used, it shall be maintained in accordance with KRS 256.010(1).

Section 3. Health care. (1) Health care sufficient to maintain livestock and poultry shall be provided promptly and it may include:

(a) Use of pharmaceuticals and biologicals. They shall be used in accordance with label directions or as directed by a licensed veterinarian; and

(b) Prescription and extra-label medications. They shall be administered as directed by a licensed veterinarian with a valid veterinarian-client-patient relationship.

(2) Livestock and poultry shall be routinely observed for well-being.

(3) Dead livestock and poultry shall be disposed of pursuant to KRS 257.160.

Section 4. Livestock handling and transport. (1) The following shall be done in a manner that minimizes the risk of injury:

(a) Handling of poultry and livestock; and

(b) Loading or unloading of livestock and poultry for or from transport.

(2) If used, the following shall be used in a manner that minimizes the risk of injury that is consistent with the manufacturer's recommendations:

(a) Facilities and equipment; and

(b) Handling, sorting, or other devices either to move livestock or for diagnostic evaluation.

(3) Livestock and poultry shall be able to stand in their natural posture or position or rest in a single layer once loaded for transport.

(4) Livestock and poultry shall be loaded in a way that allows fallen animals to rise.

Section 5. Handling of Disabled Livestock and Poultry. (1) The responsible party for ambulatory disabled, non-ambulatory disabled, or distressed livestock or poultry shall provide appropriate protection from other animals, predators, and weather extremes as required by the condition of the animal.

(2) Ambulatory disabled, non-ambulatory disabled, or distressed livestock or poultry shall have access to water, and if maintained longer than twenty-four (24) hours, access to feed.

(3) Handling and moving of ambulatory disabled, non-ambulatory disabled, or distressed animals shall be done in a manner that minimizes the risk of additional distress.

(4) Non-ambulatory disabled livestock shall be loaded only for transport to a terminal market or for treatment.

(5) Livestock and poultry in severe distress with an irreversible condition shall be euthanized.

Section 6. Preparing animals for exhibition. (1) Training, fitting, and restraint of livestock or poultry for exhibition shall be performed in a manner that minimizes the risk of injury.

(2) Livestock for exhibition shall not be tampered with pursuant to KRS 246.420.

Section 7. Euthanasia. Euthanasia of livestock shall be performed using the approved methods pursuant to the 2007 Report of the American Veterinary Medical Association (AVMA) Panel on Euthanasia. A licensed veterinarian, law enforcement officer, or

approved animal control or humane society personnel may provide assistance in identifying an acceptable method of euthanasia for the current situation and environment.

Section 8. Biosecurity. (1) Biosecurity protocols and limitation of public access to farms may be established by the responsible party.

(2) Use of animals, devices, or fencing for predator control shall be authorized.

Section 9. Exemptions. This administrative regulation shall not:

(1) Limit or prevent a veterinarian or person under the supervision of a veterinarian from providing necessary care for an animal; or

(2) Apply to the care of livestock and poultry used by an on-farm research facility that is regulated by the United States Department of Agriculture under the Animal Welfare Act, 7 U.S.C. 2131-2159.

Section 10. Incorporation by Reference. (1) "Report of the AVMA Panel on Euthanasia", June 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates general livestock and poultry care standards.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.196 by establishing livestock and poultry care standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 257.196 by establishing livestock and poultry care standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 257.196 by clearly establishing general provisions for livestock and poultry care standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: More than 85,000 farms and all 120 counties potentially may be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Farm operations that include or may wish to include livestock and poultry will be required to be familiar with the minimum care standards. With the exception of a few isolated individual cases each year, the overwhelming number of the farmers in our state already comply with the care standards as normal production practices. County officials tasked with response to complaints would need to be familiar with the regulations to provide appropriate evaluations and responses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minimum care standards implementation will help identify bad actors in the circumstances of violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA does not anticipate the need for specific funding for the implementation of these regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required for this amended regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Department of Agriculture, Office of the State Veterinarian.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.196.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 changes will occur.

(a) How much 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 fiscal changes will occur.

(b) How 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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first

year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(New Administrative Regulation)**

302 KAR 21:030. Beef Cattle, Bison, and Veal Specific Provisions.

RELATES TO: KRS 257.196, 525.130

STATUTORY AUTHORITY: KRS 257.196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.196 requires the Board of Agriculture to promulgate administrative regulations establishing on-farm livestock and poultry care standards recommended to it by the Kentucky Livestock Care Standards Commission. This administrative regulation establishes additional livestock standards and specifically authorized practices for beef cattle, bison, and veal.

Section 1. The provisions of 302 KAR 21:020 apply to on-farm livestock and poultry in Kentucky, except as provided by this administrative regulation. This administrative regulation adds additional standards and specifically authorized practices to 302 KAR 21:020 for beef cattle, bison, and veal.

Section 2. (1) Additional Standards.

(a) Veal calves shall be fed two (2) or more times per day following a regular routine, if not provided unlimited access. On all farms that house veal calves, there shall be access to hot water for the purpose of sanitation and mixing milk-based liquid diet or milk replacer.

(b) During calving, there shall be sufficient space to enable cows to separate themselves from other animals.

(c) If used, housing systems shall allow animals to access feed and water.

(2) Authorized Practices. The following shall be authorized practices:

(a) Group pens and individual pens.

1. Except as provided by subparagraph 2 of this paragraph, group pens and individual pens for veal calves shall be authorized if the pens allow for air circulation and lighting, allow socialization between veal calves, and allow the calves to stand without impediment, rest in normal postures, groom, and eat.

2. After December 31, 2017, veal calves shall be raised in group pens;

(b) Castration;

(c) Disbudding;

(d) Dehorning;

(e) Identification;

(f) Supernumerary teat removal;

(g) Hoof trimming;

(h) Artificial insemination;

(i) Embryo transfer;

(j) Navel dipping;

(k) Breeding soundness evaluations;

(l) Ear notching; and

(m) Surgery.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

September 25, 2013 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates specific care standards for beef, bison, and veal animals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.196 by establishing livestock and poultry care standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 257.196 by establishing livestock and poultry care standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 257.196 by clearly establishing provisions for livestock and poultry care standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: More than 85,000 farms and all 120 counties potentially may be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Farm operations that include or may wish to include livestock and poultry will be required to be familiar with the minimum care standards. With the exception of a few isolated individual cases each year, the overwhelming number of the farmers in our state already comply with the care standards as normal production practices. County officials tasked with response to complaints would need to be familiar with the regulations to provide appropriate evaluations and responses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minimum care standards implementation will help identify bad actors in the circumstances of violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA does not anticipate the need for specific funding for the implementation of these regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required for this amended regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Department of Agriculture, Office of the State Veterinarian.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.196.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 changes will occur.

(a) How much 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 fiscal changes will occur.

(b) How 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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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

Department of Agriculture

Office of Consumer and Environmental Protection

Division of Environmental Services

(New Administrative Regulation)

302 KAR 21:040. Dairy Cattle Specific Provisions.

RELATES TO: 257.196, 525.130

STATUTORY AUTHORITY: KRS 257.196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.196 requires the Board of Agriculture to promulgate administrative regulations establishing on-farm livestock and poultry care standards recommended to it by the Kentucky Livestock Care Standards Commission. This administrative regulation establishes additional livestock standards and specifically authorized practices for dairy cattle.

Section 1. The provisions of 302 KAR 21:020 apply to on-farm livestock and poultry in Kentucky, except as provided by this administrative regulation. This administrative regulation adds addi-

tional standards and specifically authorized practices to 302 KAR 21:020 for dairy cattle.

Section 2. (1) Additional Standards. (a) If used, facilities shall be free of excessive manure.

(b) Calves shall be fed milk or milk replacer until weaned.

(2) Authorized Practices. The following shall be authorized practices:

(a) Tie stalls. Tie stalls shall be authorized if:

1. Cattle are turned out routinely for exercise;

2. The tie stalls are designed and maintained so that the length and width provides space sufficient to accommodate the size of the animal's body so that the animal is not forced to lie with her rear quarter contacting the alleyway or gutter; and

3. Cattle have room to stretch, eat, drink, and eliminate comfortably;

(b) Free stalls. Free stalls shall be authorized if:

1. The free stalls are designed and maintained so that the length and width provide space sufficient to accommodate the size of the animal's body so that the animal is not forced to lie with her rear quarter contacting the alleyway or gutter; and

2. Stocking rates allow for adequate time per animal for rest, exercise, and feed and water consumption;

(c) Dehorning;

(d) Disbudding;

(e) Tail switch trimming;

(f) Tail docking.

1. Tail docking may be performed using an elastrator castration band if:

a. It is performed no sooner than the first confirmation of pregnancy;

b. The animal is managed using a dairy herd management system that practices tail docking; and

c. The responsible party provides a fly control program.

2. All other methods of tail docking shall be performed only by a licensed veterinarian and shall meet the requirements established in subparagraph 1. of this paragraph;

(g) Castration; and

(h) Removal of supernumerary teats. Removal shall be authorized for young heifers. If extra teats are removed within the first six (6) months of life, they shall be removed with an emasculator, a scalpel, or sharp scissors in a hygienic manner. If extra teats on older calves or heifers are removed, the teats shall be removed under local anesthesia by a veterinarian.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates specific care standards for dairy animals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.196 by establishing livestock and poultry care standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 257.196 by establishing livestock and poultry care standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 257.196 by clearly establishing provisions for livestock and poultry care standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: More than 85,000 farms and all 120 counties potentially may be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Farm operations that include or may wish to include livestock and poultry will be required to be familiar with the minimum care standards. With the exception of a few isolated individual cases each year, the overwhelming number of the farmers in our state already comply with the care standards as normal production practices. County officials tasked with response to complaints would need to be familiar with the regulations to provide appropriate evaluations and responses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minimum care standards implementation will help identify bad actors in the circumstances of violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA does not anticipate the need for specific funding for the implementation of these regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required for this amended regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Department of Agriculture, Office of the State Veterinarian.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.196.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 changes will occur.

(a) How much 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 fiscal changes will occur.

(b) How 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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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

Department of Agriculture

Office of Consumer and Environmental Protection

Division of Environmental Services

(New Administrative Regulation)

302 KAR 21:050. Equine Specific Provisions.

RELATES TO: KRS 257.196, 525.130

STATUTORY AUTHORITY: KRS 257.196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.196 requires the Board of Agriculture to promulgate administrative regulations establishing on-farm livestock and poultry care standards recommended to it by the Kentucky Livestock Care Standards Commission. This administrative regulation establishes additional livestock standards and specifically authorized practices for equine.

Section 1. The provisions of 302 KAR 21:020 apply to on-farm livestock and poultry in Kentucky, except as provided by this administrative regulation. This administrative regulation adds additional standards and specifically authorized practices to 302 KAR 21:020 for equine.

Section 2. (1) Additional Standards.

(a) Drink. Water containers shall be cleaned regularly and free of any hazard.

(b) Feed. Horses shall be provided a diet sufficient to maintain a healthy weight and body condition. Geriatric or ill horses may have less than an ideal body condition.

(c) Space. 1. Stalls in which horses are housed untethered for more than four (4) hours shall be large enough to allow horses to turn around completely, lie down comfortably, and stand completely erect. Stalls shall have adequate ventilation and drainage and be kept free of excessive waste.

2. If a horse is tethered, it shall be done in a way and under supervision sufficient to minimize the risk of injury.

3. Pastures shall be routinely monitored for the presence of hazards.

4. Space shall be provided for exercise that is sufficient to

maintain a horse's health.

(2) Authorized practices. The following shall be authorized practices:

- (a) Castration;
- (b) Identification;
- (c) Hoof trimming;
- (d) Shoeing;
- (e) Artificial insemination;
- (f) Embryo transfer;
- (g) Navel dipping;
- (h) Breeding soundness evaluations;
- (i) Surgery; and
- (j) Restraint by use of a twitch.

(3) Unauthorized practices. Soring shall be prohibited.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates specific care standards for equine animals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.196 by establishing livestock and poultry care standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 257.196 by establishing livestock and poultry care standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 257.196 by clearly establishing provisions for livestock and poultry care standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: More than 85,000 farms and all 120 counties potentially may be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment,

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Farm operations that include or may wish to include livestock and poultry will be required to be familiar with the minimum care standards. With the exception of a few isolated individual cases each year, the overwhelming number of the farmers in our state already comply with the care standards as normal production practices. County officials tasked with response to complaints would need to be familiar with the regulations to provide appropriate evaluations and responses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minimum care standards implementation will help identify bad actors in the circumstances of violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA does not anticipate the need for specific funding for the implementation of these regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required for this amended regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Department of Agriculture, Office of the State Veterinarian.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.196.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 changes will occur.

(a) How much 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 fiscal changes will occur.

(b) How 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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(New Administrative Regulation)**

302 KAR 21:060. Swine Specific Provisions.

RELATES TO: KRS 257.196, 525.130

STATUTORY AUTHORITY: KRS 257.196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.196 requires the Board of Agriculture to promulgate administrative regulations establishing on-farm livestock and poultry care standards recommended to it by the Kentucky Livestock Care Standards Commission. This administrative regulation establishes additional livestock standards and specifically authorized practices for swine.

Section 1. The provisions of 302 KAR 21:020 apply to on-farm livestock and poultry in Kentucky, except as provided by this administrative regulation. This administrative regulation adds additional standards and specifically authorized practices to 302 KAR 21:020 for swine.

Section 2. (1) Additional Standards.

(a) If being transported, swine shall be able to stand in their natural position without touching the top of the transport conveyance.

(b) Body condition may be evaluated using the Pork Quality Assurance Guidelines.

(2) Authorized Practices. The following shall be authorized practices:

(a) Castration;

(b) Needle teeth clipping;

(c) Boar tusk removal;

(d) Tail docking;

(e) Identification using ear notching, tattooing, or ear tagging;

(f) Environmentally controlled housing. Swine may be raised in environmentally controlled housing designed in a manner that minimizes the effects of adverse weather conditions;

(g) Stalls, pens, or outdoor lots with shelters if used for gestating sows; and

(h) Crates, pens, or outdoor huts if used for farrowing and lactating sows.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates specific care standards for swine.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.196 by establishing livestock and poultry care standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 257.196 by establishing livestock and poultry care standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 257.196 by clearly establishing provisions for livestock and poultry care standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: More than 85,000 farms and all 120 counties potentially may be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Farm operations that include or may wish to include livestock and poultry will be required to be familiar with the minimum care standards. With the exception of a few isolated individual cases each year, the overwhelming number of the farmers in our state already comply with the care standards as normal production practices. County officials tasked with response to complaints would need to be familiar with the regulations to provide appropriate evaluations and responses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minimum care standards implementation will help identify bad actors in the circumstances of violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA does not anticipate the need for specific funding for the implementation of these regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required for this amended regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Department of Agriculture, Office of the State Veterinarian.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 257.196.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 changes will occur.

(a) How much 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 fiscal changes will occur.

(b) How 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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services
(New Administrative Regulation)

302 KAR 21:070. Ovine, Caprine, Camelid, and Cervid Specific Provisions.

RELATES TO: KRS 257.196, 525.130

STATUTORY AUTHORITY: KRS 257.196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.196 requires the Board of Agriculture to promulgate administrative regulations establishing on-farm livestock and poultry care standards recommended to it by the Kentucky Livestock Care Standards Commission. This administrative regulation establishes specifically authorized practices for small ruminants.

Section 1. The provisions of 302 KAR 21:020 apply to on-farm livestock and poultry in Kentucky, except as provided by this administrative regulation. This administrative regulation adds specifically authorized practices to 302 KAR 21:020 for small ruminants.

Section 2. Authorized Practices. The following shall be authorized practices: (1) Ovine:

- (a) Castration;
- (b) Hoof trimming;
- (c) Tail docking;
- (d) Identification;
- (e) Shearing;
- (f) Artificial insemination; and
- (g) Embryo transfer;
- (2) Caprine:
 - (a) Dehorning;
 - (b) Disbudding;
 - (c) Hoof trimming;
 - (d) Identification;
 - (e) Shearing;
 - (f) Artificial insemination; and
 - (g) Embryo transfer;
- (3) Camelids:
 - (a) Hoof trimming;
 - (b) Identification; and
 - (c) Shearing; or
- (4) Cervids:
 - (a) Hoof trimming;
 - (b) Identification;

- (c) Artificial insemination; and
- (d) Embryo transfer.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates specific care standards for Ovine, Caprine, Camelid and Cervid animals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.196 by establishing livestock and poultry care standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 257.196 by establishing livestock and poultry care standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 257.196 by clearly establishing provisions for livestock and poultry care standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: More than 85,000 farms and all 120 counties potentially may be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Farm operations that include or may wish to include livestock and poultry will be required to be familiar with the minimum care standards. With the exception of a few isolated individual cases each year, the overwhelming number of the farmers in our state already comply with the care standards as normal production practices. County officials tasked with response to complaints would need to be familiar with the regulations to provide appropriate evaluations and responses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minimum care standards implementation will help identify bad actors in the circumstances of violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA does not anticipate the need for specific funding for the implementation of these regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required for this amended regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Department of Agriculture, Office of the State Veterinarian.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.196.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 changes will occur.

(a) How much 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 fiscal changes will occur.

(b) How 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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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

Department of Agriculture

Office of Consumer and Environmental Protection,

Division of Environmental Services

(New Administrative Regulation)

302 KAR 21:080. Poultry Specific Provisions.

RELATES TO: KRS 257.196, 525.130

STATUTORY AUTHORITY: KRS 257.196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.196 requires the Board of Agriculture to promulgate administrative regulations establishing on-farm livestock and poultry care stand-

ards recommended to it by the Kentucky Livestock Care Standards Commission. This administrative regulation establishes additional standards and specifically authorized practices for poultry.

Section 1. The provisions of 302 KAR 21:020 apply to on-farm livestock and poultry in Kentucky, except as provided by this administrative regulation. This administrative regulation adds additional standards and specifically authorized practices to 302 KAR 21:020 for poultry.

Section 2. (1) Additional Standards.

(a) Stocking densities shall allow all poultry to rest or perch at the same time in a single layer.

(b) Ambulatory disabled and non-ambulatory disabled poultry that cannot reach feed or water shall be euthanized.

(2) Authorized Practices. The following shall be authorized practices:

(a) Non-feed withdrawal molt methods for layers and breeders;

(b) Trimming of the beak;

(c) The partial or complete removal of the comb, snood, toe nail;

(d) Withholding of feed or water in circumstances such as:

1. Preparation for administration of vaccines or medication in the water; or

2. Preparation for transportation; and

(e) Housing methods:

1. A caged egg production system in an enclosed or open-sided building having some openwork for confining poultry. Types of caged housing systems include conventional, belt-battery, enriched, and reverse;

2. A cage-free egg production system in an enclosed or open-sided building in which the poultry are free to move within the building. Types of cage-free housing systems include slat floor, litter floor, partial slat or litter floor, stretched wire floor, and aviary systems; and

3. A free-roam or free-range egg production system where poultry have access to the outside or range and are provided shelter.

(3) Euthanasia or Depopulation. Additional authorized euthanasia or depopulation methods for poultry shall include inhalants such as carbon dioxide, nitrogen or argon, manual cervical dislocation, tool-assisted cervical dislocation, gunshot, blunt force trauma, decapitation, non-penetrating captive bolt, electrocution, maceration, water based foam, and barbiturates.

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 15, 2013

FILED WITH LRC: August 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates specific care standards for poultry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.196 by establishing livestock and poultry care standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 257.196 by establishing livestock and poultry care standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 257.196 by clearly establishing provisions for livestock and poultry care standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: More than 85,000 farms and all 120 counties potentially may be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Farm operations that include or may wish to include livestock and poultry will be required to be familiar with the minimum care standards. With the exception of a few isolated individual cases each year, the overwhelming number of the farmers in our state already comply with the care standards as normal production practices. County officials tasked with response to complaints would need to be familiar with the regulations to provide appropriate evaluations and responses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minimum care standards implementation will help identify bad actors in the circumstances of violations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KDA does not anticipate the need for specific funding for the implementation of these regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required for this amended regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Department of Agriculture, Office of the State Veterinarian.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.196.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 changes will occur.

(a) How much 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 fiscal changes will occur.

(b) How 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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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 State Fair Board
(Repealer)

303 KAR 1:042. Repeal of 303 KAR 1:041.

RELATES TO: KRS 247.140

STATUTORY AUTHORITY: KRS 247.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.145 authorizes the Kentucky State Fair Board to promulgate administrative regulations relating to the operation, maintenance and use of the property under its authority and control to protect the public interest and maintain good order. KRS 247.140 states that the Kentucky State Fair Board shall have custody and control over property which is transferred to it by the State Properties and Building Commission. The Kentucky Exposition Center and the Kentucky International Convention Center are within the purview of the Kentucky State Fair Board's custody and control. State and local law provide guidance related to concealed weapons and proper attire in public places such as the Kentucky Exposition Center and the Kentucky International Convention Center. 301 KAR 1:041 as originally promulgated in 1978 is in part no longer compliant with the law. Therefore, this administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 303 KAR 1:041, which established certain objects and attire prohibited on the premises.

Section 1. 303 KAR 1:041, Certain objects and attire prohibited on premises, is hereby repealed.

CLIFFORD "RIP" RIPPETOE, President and CEO

ROBERT STEWART, Secretary

APPROVED BY AGENCY: July 26, 2013

FILED WITH LRC: August 6, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2013, at 10:00 a.m. in the Executive Board Room at the Kentucky Exposition Center, 937 Phillips Lane, Louisville, Kentucky 40233. 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 September 30, 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: Ellen F. Benzing, General Counsel, Kentucky State Fair Board, P.O. Box 37130, Louisville, Kentucky 40233-7130, phone (502) 367-5244, fax (502) 367-5109.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 303 KAR 1:041, Certain objects and attire prohibited on premises.

(b) The necessity of this administrative regulation: 303 KAR 1:041, Certain objects and attire prohibited on premises is being repealed as the administrative regulation is obsolete as state and local law address concealed weapons and attire respectively.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals obsolete regulatory material as authorized by KRS 247.145.

(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 patrons of the Kentucky State Fair Board by eliminating potentially contradictory policies established by a thirty (30) year old 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 conflicting administrative regulation material, is expected.

(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.

cil.

(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 State Fair Board 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:

TRANSPORTATION CABINET Motor Vehicle Commission (New Administrative Regulation)

605 KAR 1:210 Nonprofit motor vehicle dealer requirements and licensing.

RELATES TO: KRS 190.010 (29), (30), 190.032

STATUTORY AUTHORITY: KRS 190.032, 190.073

NECESSITY, FUNCTION AND CONFORMITY: KRS 190.032 requires the Motor Vehicle Commission to establish requirements for initial application for and renewal of a license to be a nonprofit motor vehicle dealer and directs the commission to establish relevant requirements which must include standards for disability or disadvantaging conditions concerning the clients served by nonprofit motor vehicle dealers. This administrative regulation establishes those requirements and standards.

Section 1. In addition to the attributes described in KRS 190.010(29) and the application requirements contained in 605 KAR 1:030, Sections 4, 5, and 10, a nonprofit motor vehicle dealer

applicant shall certify that it is an organization exempt from taxation under 26 U.S.C. Section 501(c)(3) of the Internal Revenue Code and that it has made all required filings with the Internal Revenue Service.

Section 2. In addition to the attributes described in KRS 190.010(30), an applicant shall demonstrate to the commission that its sales program serves only clients meeting two (2) or more of the following disability or disadvantaging conditions:

(1) The client's household income is at or below the current federal Poverty Guidelines as established by the United States Department of Health and Human Services;

(2) The client has been designated as physically disabled by any state or federal agency;

(3) The client has an actual need for a motor vehicle in order to meet work, educational, or medical needs and the client cannot obtain a reliable vehicle without the dealer's assistance;

(4) The client has received state or federal funding specifically designed to allow the purchase of a vehicle for personal or household use; or

(5) The client has experienced the loss of a functioning vehicle as a result of an event certified as a natural disaster by any applicable state or federal agency.

Section 3. Upon the submission of its initial application and each renewal application thereafter, the applicant or licensee shall submit the current IRS Form 990 filed by the organization. If the applicant or licensee files a short form version of IRS Form 990, the commission may require the applicant or licensee to submit additional information which would be contained on IRS Form 990.

Section 4. A nonprofit motor vehicle dealer that is not also licensed as either a new motor vehicle dealer or a used motor vehicle dealer shall not sell any vehicles except as allowed by KRS 190.032(3).

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2013 at 10:00 a.m. local time at the Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If you have a disability for which the Motor Vehicle Commission 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 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 30, 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: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlos R. Cassady

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for the initial application and renewal of the license to be a nonprofit motor vehicle dealer in Kentucky.

(b) The necessity of this administrative regulation: KRS

190.032 requires the Motor Vehicle Commission to establish requirements for the initial application for and renewal of a license to be a nonprofit motor vehicle dealer and directs the Commission to establish relevant requirements, which must include standards for disability or disadvantaging conditions concerning the clients served by nonprofit motor vehicle dealers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the standard to be met by applicants and licensed nonprofit motor vehicle.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the eligibility requirements for applicants who wish to become and remain nonprofit motor vehicle dealers in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effect of administration of the statutes:

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who wish to become nonprofit motor vehicle dealers in Kentucky. The number of such entities 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: This regulation establishes eligibility requirements for licensing as a nonprofit motor vehicle dealer and the entities identified in question (3) will have to submit the required application, including all information required by the regulation.

(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 of the identified entities cannot be reasonably ascertained but it is believed to be minimal as it is assumed that applicants will already possess the relevant requirements which will merely have to be certified to in applications and renewals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as nonprofit motor vehicle dealers in Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 establishes the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. It does not establish or increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because all nonprofit motor vehicle dealers affected by this regulation 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? Motor Vehicle Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.032, 190.073.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew for the applicable license.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Repealer)

902 KAR 20:027. Repeal of 902 KAR 20:021 and 902 KAR 20:026.

RELATES TO: KRS 216B.010-216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the cabinet to promulgate administrative regulations to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. In accordance with KRS 13A.310(3)(c), this administrative regulation repeals 902 KAR 20:021 and 902 KAR 20:026 as the licensure standards and procedures established within both administrative regulations are no longer enforced by the Office of Inspector General (OIG). The OIG has not licensed any long-term care facility as a "skilled nursing facility" pursuant to 902 KAR 20:021 and 902 KAR 20:026 since February 2005. The majority of long-term care facilities in Kentucky are licensed as a "nursing facility" pursuant to 902 KAR 20:300 and 902 KAR 20:310, administrative regulations which were initially adopted in 1991 to implement the Nursing Home Reform section of the Omnibus Reconciliation Act of 1987 (OBRA-87). The OIG does not anticipate any applicants seeking approval in the future as a "skilled nursing facility" under 902 KAR 20:021 and 902 KAR 20:026.

Section 1. The following administrative regulations are hereby repealed: (1) 902 KAR 20:021. Facility specifications; skilled nursing; and

(2) 902 KAR 20:026. Operations and services; skilled nursing

facilities.

MARY REINLE BEGLEY, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 13, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2013 at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 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 September 30, 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: Mary Begley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(c), repeals 902 KAR 20:021 and 902 KAR 20:026.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 20:021 and 902 KAR 20:026 as the licensure standards and procedures established within both administrative regulations are no longer enforced by the Office of Inspector General (OIG).

(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 repealing obsolete administrative regulations no longer enforced by the OIG.

(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 repealing obsolete administrative regulations no longer enforced by the OIG.

(2) If 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 administrative regulation is not expected to affect individuals, businesses, organizations, or local government as it simply repeals obsolete administrative regulations no longer enforced by the OIG.

(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 needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals obsolete administrative regulations no longer enforced by the OIG.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

(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 or funding increase is necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals obsolete administrative regulations no longer enforced by the OIG.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 is not expected to affect individuals, businesses, organizations, or local government as it repeals obsolete administrative regulations no longer enforced by the OIG.

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)(c)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on the administrative body.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of August 5, 2013

Call to Order and Roll Call

The August 2013 meeting of the Administrative Regulation Review Subcommittee was held on Monday, August 5, 2013, at 1:00 p.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 July 2013 meeting were approved.

Present were:

Members: Senators Joe Bowen, Perry Clark, Sara Beth Gregory, and Ernie Harris; and Representatives Jimmie Lee and Tommy Turner.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Laura Napier, and Betsy Cupp.

Guests: Becky Gilpatrick, Kentucky Higher Education Assistance Authority; C. Lloyd Vest II, Board of Medical Licensure; Mark Brengelman, Board of Physical Therapy; Jim Grawe, Tom Veit, Kentucky Real Estate Appraisers Board; James C. Cobb, Gil Crumbee, Brian Judy, Larry Rhodes, Stephen Wyatt, Board of Registration for Professional Geologists; Stephen Foreman, Ryan Halloran, Applied Behavior Analysis Licensing Board; Margaret Everson, Dan Figert, Benji Kinman, Kentucky Department of Fish and Wildlife; Ann D'Angelo, Randall Royer; Transportation Cabinet; Mike Pettit, Kristi Redmon, Labor Cabinet; Trey Hieneman, Frederick A. Higdon, Department of Alcoholic Beverage Control; Jack Coleman, Michael T. Davis, Gary Feck, Department of Housing, Buildings and Construction; Mary Begley, Stephanie Brammer-Barnes, Sarah McCoun, Elizabeth Caywood, Mark Cornett, Michelle DeJohn, Mary Beth Jackson, Teresa C. James, Dionna Mullins, Emily Parento, Cabinet for Health and Family Services; Andrea Bennett, Kentucky Youth Advocates; Brenda Bowman, Southside Christian Child Care; Marion Gibson, Fayette County Race, Community and Child Welfare; Mike Hammons, Children, Inc.; Richard Morris, Child Care Advocates of Kentucky and Licensed Centers; Julie Swindler, Consultant for Kentucky Board of Medical Licensure; Sarah Vessels, Child Care.

The Administrative Regulation Review Subcommittee met on Monday, August 5, 2013, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:
Division of Student and Administrative Services: Kentucky
Loan Program**

11 KAR 3:100. Administrative wage garnishment. Becky Gilpatrick, director, student aid services, represented the division.

KHEAA Grant Programs

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

A motion was made and seconded to approve the following amendment: to amend Section 1(23) to insert a missing phrase in the definition of "resident of Kentucky" to comply with the drafting requirements of KRS 13A.222(4)(a). Without objection, and with agreement of the agency, the amendment was approved.

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.

A motion was made and seconded to approve the following amendments: to amend Section 1(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.

Commonwealth Merit Scholarship Program

11 KAR 15:040. Kentucky Educational Excellence Scholarship award determination procedure.

A motion was made and seconded to approve the following amendments: to amend Section 1(2) to comply with the drafting requirements of KRS 13A.222(4)(j). Without objection, and with agreement of the agency, the amendments were approved.

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.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board

201 KAR 22:045. Continued competency requirements and procedures. Mark Brengelman, board counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:055E. Interim standards for supervision for physical therapists.

201 KAR 22:130. Per diem of board members.

Real Estate Appraisers Board: Board

201 KAR 30:120. Temporary appraisal licenses and certificates. James Grawe, assistant attorney general, and Tom Veit, executive assistant, represented the board.

In response to a question by Senator Bowen, Mr. Veit stated that the fee increase in this administrative regulation was commensurate with similar fees in surrounding states.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:125. Continuing education for appraisers.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to add Section 4 to incorporate by reference the application; and (3) to amend Section 1 to establish a \$200 late fee. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:150. Education provider approval.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without

objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:200. Reciprocity requirements for applicants licensed or certified in another state.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Registration for Professional Geologists: Board

201 KAR 31:010. Fees. Brian Judy, assistant attorney general, and Larry Rhodes, chair, represented the board.

In response to a question by Senator Bowen, Mr. Judy stated that the authorizing statute changed the fee schedule from annually to biennially for these licenses; therefore, the fees were not actually doubling but appeared to double because fees that previously covered twelve (12) months now covered twenty-four (24) months.

A motion was made and seconded to approve the following amendments: (1) to delete Section 3, which proposed an initial licensure fee; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to clarify provisions and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:020. Compensation of board members.

201 KAR 31:040. Applications and examinations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 and the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:050. Renewals.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 4 for consistency with statutory terminology; and (2) to amend Section 5 and the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:060. Code of professional conduct.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:080. Geologist-in-training.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to update statutory citations; and (2) to amend Section 5 and the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:090. Complaint management process.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to delete references to "applicant" because those provisions did not apply to an applicant; and (2) to amend Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Applied Behavior Analysis Licensing Board: Board

201 KAR 43:010. Application procedures for licensure. Stephen Foreman, vice chair, and Ryan Halloran, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers. Margaret Everson, assistant attorney general; Dan Flaggert, assistant director of wildlife; and Benjy Kinman, deputy commissioner, represented the department.

In response to a question by Co-Chair Harris, Mr. Kinman stated that a rifle may be used to take a coyote during daylight hours, but only a shotgun could be used at night.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Office of Audits: Division of Road Fund Audits: Motor Carriers

601 KAR 1:147. Auditing of U-drive-it permit holders. Ann D'Angelo, assistant general counsel, and Randall Royer, director, represented the division.

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. Mike Pettit, OSH standards specialist, and Kristi Redmon, OSH standards specialist, represented the division.

In response to questions by Senator Bowen, Ms. Redmon stated that these administrative regulations made minor technical revisions to correspond to federal revisions. For example, personal protective equipment standards now established the option to use current standards or the previous standards, which provided more flexibility for the regulated community. These administrative regulations did not contain new compliance requirements.

803 KAR 2:307. Hazardous materials.

A motion was made and seconded to approve the following amendment: to amend Section 2 to correct a citation. Without objection, and with agreement of the agency, the amendment was approved.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:314. Machinery and machine guarding.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of

KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

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.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

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. Trey Hieneman, legislative liaison, and Frederick A. Higdon, commissioner, represented the department.

804 KAR 4:250. Special temporary licenses.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:390 & E. License renewals.

804 KAR 4:430E. Issuance of Licenses.

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. Jack Coleman, deputy commissioner; Michael T. Davis, general counsel; and Gary Feck, director, represented the division.

In response to a question by Senator Bowen, Mr. Davis stated that the revisions to this administrative regulation were not substantial. Mr. Coleman stated that the division usually allowed a period of preparation prior to enforcement of revisions to the code. That period was inadvertently omitted, and this amendment provided for that preparation period. Mr. Feck stated that the International Model Residential Code included provisions for seismic maps; however maps were split within counties and were difficult to interpret. The amendment simplified seismic maps and provided more current standards.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to update the Kentucky Residential Code to establish that the new requirements shall not take effect until January 1, 2014. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:030. Certificate of Need expenditure minimums. Diona Mullins, policy advisor, and Emily Parento, executive director, represented the cabinet.

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.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Inspector General: Office

906 KAR 1:200. Use of Civil Money Penalty Funds collected from certified Long-term Care Facilities. Mary Begley, inspector general; Stephanie Brammer-Barnes, policy analyst; and Sarah McCoun, staff assistant, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include an additional relevant citation; (2) to amend Section 1 to include additional relevant definitions; and (3) to amend Sections 3 and 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.

Department for Community Based Services: Child Welfare

922 KAR 1:130 & E. Kinship Care Program. Elizabeth Caywood, internal policy analyst; Mark Cornett, deputy commissioner; and Teresa C. James, commissioner, represented the cabinet. Andrea Bennett, chief external affairs officer, Kentucky Youth Advocates; Marion Gibson, co-chair, Fayette County Race, Community, and Child Welfare; and Patricia Tennen, member, Kentucky Youth Advocates, appeared in opposition to these administrative regulations.

Ms. James stated that the goal of the Kinship Care Program was to keep families together through extended family guardianship in cases of abuse or neglect while in the care of a parent or guardian. Under the basic program a guardian family was provided \$350 per month for each child. The programmatic expenses were approximately thirty-two (32) million dollars annually. The program currently experienced an eighty-six (86) million dollar deficit. The program needed to be reorganized for efficiency to better meet the needs of families for less cost. The current programmatic changes were primarily for cost containment.

Mr. Cornett stated that these administrative regulations established a program moratorium, except that existing participants continued to be supported through the existing program and certain new participants would continue to be admitted. Requirements were established to continue background checks after April 1. Other programs and services outside of the Kinship Care Program remained available. Ms. James stated that many children would still be eligible for Medicaid assistance to maintain medical and dental care, and Social Security Insurance was issued in some cases.

In response to a question by Senator Bowen, Ms. James stated that as of June 1, 2013, there were 11,319 children who had experienced substantiated abuse or neglect and were in need of placement in the Kinship Care program. Ten (10) years ago, there were approximately 3,000 children eligible for the program. That constituted a significant increase in substantiated cases of abuse or neglect.

In response to a question by Co-Chair Harris, Ms. James stated that the cabinet was considering means testing of placement guardians to determine the amount of support that would be appropriate. Mr. Cornett stated that the cabinet performed means testing on the eligible child, which included only the child's income, such as Social Security Insurance, not the income of the placement guardian.

Representative Lee stated that children eligible for the Kinship Care Program already had court substantiation of abuse or neglect. There were many children who were not eligible for the Kinship Care Program because abuse or neglect had not been formally adjudicated. The Kinship Care Program needed to be reorganized to include these other children.

In response to a question by Senator Gregory, Ms. James stated that, while it was possible that the moratorium on the Kinship Care Program may funnel more children into the state's foster

care system, data collected since the moratorium began did not indicate that as a current trend. The cabinet was monitoring the situation on a regional and monthly basis.

Ms. Bennett stated that the Kinship Care Program was better for children and for families than the foster care system. Kentucky Youth Advocates anticipated more children being placed in the foster care system as a result of the Kinship Care Program moratorium. In addition to being better for children and families, the Kinship Care Program was less expensive for the state than the foster care system. Ms. Bennett requested that the Subcommittee find these administrative regulations deficient.

Ms. Gibson stated that racial and ethnic disparity would be exacerbated by the moratorium on the Kinship Care Program. The foster care system was significantly more expensive per child per day than the Kinship Care Program. The Kinship Care Program provided stability for families and fewer school transfers. Children placed into the foster care system were more likely to fail, be incarcerated, and drop out of education opportunities.

Ms. Tennen stated that she agreed with the comments made by Ms. Bennett.

Representative Lee stated that he shared concerns about losing the Kinship Care Program, and the Governor also was concerned. Kentucky Youth Advocates and Fayette County Race, Community, and Child Welfare should remain involved in reorganizing the Kinship Care Program to include children not officially adjudicated as abused or neglected. Ms. Bennett stated that Kentucky Youth Advocates would like to work with the cabinet on reorganizing or reforming the Kinship Care Program. Representative Lee stated that statistical data was needed to assist in budgeting and effective administration of program funds.

In response to a question by Senator Bowen, Ms. Bennett stated that Kentucky Youth Advocates was supportive of programs to prevent abuse or neglect. Education for first-time parents had been shown to reduce the likelihood of abuse or neglect. Children in the Kinship Care Program had already experienced abuse or neglect and needed treatment and placement.

In response to a question by Representative Gooch, Ms. Tennen stated that Kentucky Youth Advocates did not have data on repeat maltreatment if children were returned to families after abuse or neglect. Ms. Bennett stated that the aim of the Kinship Care Program was to provide permanent placement with alternative relatives. Representative Gooch stated that the cabinet seemed overly eager to place children back into risky homes just to keep families together.

In response to a question by Senator Clark, Ms. Gibson stated that Fayette County Race, Community, and Child Welfare had national statistical data, but not Kentucky-specific data.

Ms. James stated that the cabinet had national and Kentucky-specific data, and the cabinet was beginning to track post-placement outcomes. In the past, federal funds had allowed the Kinship Care Program to continue, but now that federal funds were no longer available options were limited. Families were being adversely affected.

Representative Lee stated that, for both the Kinship Care Program and the foster care system, there were both good and bad placement families. More statistical data was needed in order for the cabinet to provide the most effective support with cost-efficiency measures. Ms. James stated that, as part of reorganizing the program, the cabinet was considering basing support on age because needs changed as a child aged. The cabinet was also considering auditing current participants.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 6, 8, 13, 17, and 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:140 & E. Foster care and adoption permanency services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 6, and 11 to update citations; and (2) to amend Sections 1, 8, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without

objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:320 & E. Service appeals.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2 and 6 to update citations; and (2) to amend Sections 2, 3, and 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.

922 KAR 1:400 & E. Supportive services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Child Care: Day Care

922 KAR 2:020. Child Care Assistance Program (CCAP) improper payments, claims, and penalties. Elizabeth Caywood, internal policy analyst; Mark Cornett, deputy commissioner; and Teresa C. James, commissioner, represented the cabinet. Brenda Bowman, CEO, Southside Christian Child Care and Child Care Advocates of Kentucky; Mike Hammons, director of advocacy, Children, Inc; Richard Morris, owner, Child Care Advocates of Kentucky and eleven (11) licensed centers; Susan Vessels, executive director, 4-C Child Care; and Andrea Bennett, chief external affairs officer, Kentucky Youth Advocates, appeared in opposition to these administrative regulations.

Ms. James stated that funding for child care was important and expensive. Because of funding problems, a moratorium was being placed on this program, except for existing participants. Existing participants would encounter stricter requirements upon renewal. Previously, requirements included meeting up to 150 percent of federal poverty standards. The new requirements required up to 100 percent of federal poverty standards. The other administrative regulations in this group provided for stricter precautions regarding fraud and abuse of funds.

Ms. Bowman requested that the Subcommittee find these administrative regulations deficient. She represented six (6) others who would be affected by these administrative regulations. A child care license may be revoked for financial or administrative issues, even paperwork mistakes, even if the licensee was appropriately complying with health and safety requirements. A revoked license shall not be reinstated for at least seven (7) years. Fraud seemed inconsistently defined in these administrative regulations. Sometimes it seemed to indicate substantiated fraud and sometimes suspected. These administrative regulations had already been found unlawful by the Franklin County Circuit Court. Facilities were required to protect the confidentiality of the children being cared for; however, forms required by these administrative regulations made that impossible. Information for multiple children was to be on a single form.

Mr. Morris stated that the vast majority of compliant licensees should not be punished because of a minority who commit fraud and abuse of funds. These administrative regulations will have a negative impact on children and families. Employees could be terminated if a license was revoked because of a paperwork error. Many child care facilities had already closed or were closing.

Mr. Hammons stated that Child, Inc. served over 3,000 children. Mr. Hammons requested that the Subcommittee find these administrative regulations deficient. At least one-third of the funding for this program was being cut; that was more than the amount of cuts to other state agencies. These administrative regulations would likely negatively affect more than 25,000 of Kentucky's children. These measures would cost state and local government and would be detrimental to the economy. Parents who lose jobs because of inability to afford child care would have less money to spend, which would affect other businesses. Reduced staff at child care facilities because of fewer children would add to unemployment. The effect of these administrative regulations was likely to be children placed in unsafe situations and an increase in protective placements and associated expenses, including court costs. This program needed more funding not less. The requirement that re-

newing participants demonstrate less than 100 percent of the federal poverty standards resulted in Kentucky being the lowest qualifier in the nation. Child, Inc. was available to work with the cabinet to reorganize this program.

In response to a question by Co-Chair Harris, Mr. Hammons stated that the two (2) primary issues with these administrative regulations were: (1) funding cuts; and (2) due process concerns, especially regarding suspected fraud. Co-Chair Harris stated that the General Assembly had authorized the governor to shift funds among programs as necessary.

Representative Lee stated that the funding was unavailable because federal funds were no longer available after sequestration. More cuts were expected. If the Subcommittee found these administrative regulations deficient, the funding problems would continue. Mr. Hammons stated that the cabinet was aware of federal funding issues before sequestration. Providers had alternative savings ideas that were not addressed. Representative Lee stated that he and the cabinet would entertain alternative savings ideas, and these administrative regulations could be recalled by the Subcommittee as necessary.

Senator Gregory stated that she hoped to address these funding issues during the upcoming budget session of the General Assembly. She was concerned about due process issues and the confidentiality of forms. Ms. Bowman stated that the confidentiality concern was easy to address; the form could be amended to contain information for a single child. Ms. Vessels stated that such an amendment would also reduce paperwork in the event of an audit.

Co-Chair Harris stated that budget concerns, while crucial, could not be addressed through the administrative regulation process. The remainder of the discussion regarding these administrative regulations should focus on the due process and confidentiality issues.

Ms. Caywood stated that many of the concerns regarding fraud were expressed during the public hearing and public comment period. The cabinet responded to those concerns in the STATEMENT OF CONSIDERATION. A new facility shall not be licensed and a license shall not be transferred to another owner during an investigation of fraud in order to protect the public and avoid investigatory complications. Only if fraud was substantiated would a license be revoked. Some commenters regarding the fraud issue were mistaken regarding suspected fraud resulting in license revocation. All issues in the Franklin County Circuit Court matter have been settled. The form incorporated by reference was not new but was a standardized vehicle for transmitting already required information. The form was not any more of a confidentiality concern than a guardian or child spotted entering a child care facility. The form was amended in the Amended After Comments version to make it more user friendly. The form would enhance billing accuracy. Amending the form again now would require deferral, which would result in the emergency administrative regulations expiring before the ordinary administrative regulations were effective. Such an expiration would create a gap in the cabinet's ability to enforce these requirements.

Ms. James stated that the cabinet recently experienced serious incidences of fraud pertaining to this program. It was vital for good stewardship of state funds to ensure that children reported as receiving child care actually received that care.

In response to a question by Senator Bowen, Ms. Caywood stated that the form was based on the federal model. The cabinet was willing to change the form, but these administrative regulations needed to continue through the process now. The cabinet agreed to amend the form in the near future.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to place definitions in alphabetical order; and (2) to amend Section 10 to delete language referencing provisions that were deleted in the Amended After Comments version of 922 KAR 2:160. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:090 & E. Child-care center licensure.

Ms. Bowman stated that Section 6 of this administrative regulation required an employee to be discharged if that employee was found to have a felony conviction, even if the conviction was for matters unrelated to the health and safety of children, such as a

conviction for endorsing checks without sufficient funds.

922 KAR 2:100. Certification of family child-care homes.

922 KAR 2:110. Child-care center provider requirements.

922 KAR 2:120. Child-care center health and safety standards.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to make a technical correction; and (2) to amend Section 13 to clarify provisions. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:160 & E. Child Care Assistance Program.

Ms. Vessels stated that 4-C Child Care had alerted the cabinet of incidences of fraud, and the facility supported some portions of this administrative regulation; however, some requirements were more burdensome than federal requirements without justification. Some requirements placed undue burdens on small businesses. It was possible that innocent mistakes in paperwork may be deemed intentional fraud. Discrepancies in paperwork had sometimes caused audits resulting in overburdensome paperwork, including a situation in which copying costs alone were over \$1,400. Ms. Vessels requested that the Subcommittee find this administrative regulation deficient.

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 Section 7 to make technical corrections; and (3) to amend Sections 10 and 17 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.

The following administrative regulations were deferred to the September 2013 meeting of the Subcommittee:

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 1:145. Registration of agricultural seed dealers, non-certified 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. C. Lloyd Vest II, general counsel, represented the board.

Mr. Vest stated that the board inadvertently failed to file the suggested amendment in time for the Subcommittee meeting. The board requested deferral to the September meeting of the Subcommittee. Without objection, and with agreement of the Subcommittee, this administrative regulation was deferred to the September meeting.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality Standards

401 KAR 10:030. Antidegradation policy implementation methodology.

Department for Natural Resources: Division of Technical and Administrative Support: General Administrative Procedures

418 KAR 1:040. Grant applications.

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**CABINET FOR HEALTH AND FAMILY SERVICES: Department
for Public Health: Division of Maternal and Child Health: Ken-
tucky 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.

**The Subcommittee adjourned at 3:25 p.m. until the September
meeting date, which would be scheduled once other commit-
tee schedules could be determined.**

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.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

C - 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

C - 8

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 40 of the *Administrative Register of Kentucky*.

Technical Amendment Index

C - 13

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

C - 14

The Subject Index is a general index of administrative regulations published in VOLUME 40 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 39 Ky.R. Page No. | Effective Date | Regulation Number | 39 Ky.R. Page No. | Effective Date |
|--|----------------------|-------------------|----------------------|----------------------|-------------------|
| VOLUME 39 | | | | | |
| The administrative regulations listed under VOLUME 39 are those administrative regulations that were originally published in Volume 38 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2013 Kentucky Administrative Regulations Service</i> was published. | | | | | |
| SYMBOL KEY: | | | 201 KAR 2:030 | | |
| * Statement of Consideration not filed by deadline | | | Amended | 2378 | |
| ** Withdrawn, not in effect within 1 year of publication | | | 201 KAR 2:074 | | |
| *** Withdrawn before being printed in Register | | | Amended | 1753 | |
| **** Emergency expired after 180 days | | | Amended | 2175 | |
| (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. | | | As Amended | 2312 | 6-19-13 |
| | | | 201 KAR 18:040 | | |
| | | | Amended | 2380 | |
| | | | 201 KAR 18:072 | | |
| | | | Amended | 2382 | |
| | | | 201 KAR 18:142 | | |
| | | | Amended | 2383 | (See 40 Ky.R.) |
| | | | 201 KAR 20:057 | | |
| | | | Amended | 2191 | (See 40 Ky.R.) |
| | | | 201 KAR 20:059 | | |
| | | | Amended | 2046 | |
| | | | As Amended | 2314 | 6-19-13 |
| | | | 201 KAR 20:070 | | |
| | | | Amended | 2194 | (See 40 Ky.R.) |
| | | | 201 KAR 20:085 | | |
| | | | Amended | 2196 | 7-17-2013 |
| | | | 201 KAR 20:110 | | |
| | | | Amended | 2197 | 7-17-2013 |
| | | | 201 KAR 20:400 | | |
| | | | Amended | 2047 | (See 40 Ky.R.) |
| | | | 201 KAR 20:500 | | |
| | | | Amended | 2049 | |
| | | | As Amended | 2315 | 6-19-13 |
| | | | 201 KAR 31:010 | | |
| | | | Amended | 2386 | (See 40 Ky.R.) |
| | | | 201 KAR 31:020 | | |
| | | | Amended | 2387 | |
| | | | 201 KAR 31:040 | | |
| | | | Amended | 2388 | (See 40 Ky.R.) |
| | | | 201 KAR 31:050 | | |
| | | | Amended | 2390 | (See 40 Ky.R.) |
| | | | 201 KAR 31:060 | | |
| | | | Amended | 2391 | (See 40 Ky.R.) |
| | | | 201 KAR 31:080 | | |
| | | | Amended | 2393 | (See 40 Ky.R.) |
| | | | 201 KAR 31:090 | | |
| | | | Amended | 2395 | (See 40 Ky.R.) |
| | | | 202 KAR 7:330 | | |
| | | | Amended | 2050 | (See 40 Ky.R.) |
| | | | 202 KAR 7:520 | | |
| | | | Amended | 2056 | (See 40 Ky.R.) |
| | | | 202 KAR 7:540 | 2092 | (See 40 Ky.R.) |
| | | | 301 KAR 1:015 | | |
| | | | Amended | 2199 | 8-2-13 |
| | | | 301 KAR 1:122 | | |
| | | | Amended | 2201 | (See 40 Ky.R.) |
| | | | 301 KAR 2:049 | | |
| | | | Amended | 2061 | 6-6-13 |
| | | | 301 KAR 2:122 | | |
| | | | Amended | 2064 | 6-6-13 |
| | | | 301 KAR 2:251 | | |
| | | | Amended | 2397 | (See 40 Ky.R.) |
| | | | 401 KAR 10:030 | | |
| | | | Amended | 584 | |
| | | | 401 KAR 5:320 | 2094 | (See 40 Ky.R.) |
| | | | 501 KAR 6:070 | | |
| | | | Amended | 1949 | |
| | | | As Amended | 2316 | 7-5-13 |
| | | | 503 KAR 1:170 | | |
| | | | Amended | 2066 | |
| | | | As Amended | 2317 | 7-5-13 |
| 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.) | | | |
| 201 KAR 2:020 | | | | | |
| Amended | 2377 | | | | |

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| Regulation Number | 39 Ky.R. Page No. | Effective Date | Regulation Number | 39 Ky.R. Page No. | Effective Date |
|-------------------|-------------------|----------------|---|-------------------|----------------|
| 505 KAR 1:160 | | | Repealed | 2448 | |
| Amended | 1952 | | 907 KAR 1:090 | | |
| As Amended | 2173 | | Repealed | 2448 | |
| 601 KAR 9:135 | | | 907 KAR 1:092 | | |
| Amended | 1953 | | Repealed | 2448 | |
| 702 KAR 3:130 | | | 907 KAR 1:320 | | |
| Amended | 1321 | | Repealed | 2448 | |
| Amended | 1891 | | 907 KAR 10:017 | | |
| As Amended | 2173 | | Repealed | 2448 | |
| 702 KAR 4:160 | | | 907 KAR 10:372 | | |
| Amended | 2073 | (See 40 Ky.R.) | Repealed | 2448 | |
| 703 KAR 5:121(r) | 2098 | | 907 KAR 10:376 | | |
| Withdrawn | | 6-11-13 | Repealed | 2448 | |
| 703 KAR 5:250 | 2099 | | 907 KAR 1:071(r) | 2448 | |
| Withdrawn | | 6-11-13 | 907 KAR 1:563 | | |
| 787 KAR 1:010 | | | Amended | 2434 | (See 40 Ky.R.) |
| Amended | 2400 | | 907 KAR 1:595 | | |
| 787 KAR 1:290 | | | Amended | 2438 | |
| Amended | 2401 | | 907 KAR 3:225 | 2449 | (See 40 Ky.R.) |
| 804 KAR 9:040 | | | 907 KAR 3:230 | 2454 | |
| Amended | 1958 | | 907 KAR 3:015 | 2284 | (See 40 Ky.R.) |
| Amended | 2178 | | 907 KAR 17:005 | | |
| Withdrawn | | 7-10-13 | Amended | 1792 | |
| 804 KAR 9:050 | | | As Amended | 2322 | 6-27-13 |
| Amended | 1961 | (See 40 Ky.R.) | 907 KAR 17:010 | 1822 | |
| 815 KAR 4:027 | 1970 | | Amended | 2181 | |
| As Amended | 2174 | | As Amended | 2343 | 6-27-13 |
| 815 KAR 7:120 | | | 907 KAR 17:015 | 1831 | |
| Amended | 1506 | (See 40 Ky.R.) | As Amended | 2350 | |
| 815 KAR 20:020 | | | 907 KAR 17:020 | 1836 | |
| Amended | 2203 | 8-2-13 | As Amended | 2353 | 6-27-13 |
| 815 KAR 20:034 | | | 907 KAR 17:025 | 1841 | |
| Amended | 2208 | (See 40 Ky.R.) | As Amended | 2356 | 6-27-13 |
| 815 KAR 20:120 | | | 907 KAR 17:030 | 1846 | 6-27-13 |
| Amended | 2210 | 8-2-13 | 921 KAR 2:015 | | |
| 900 KAR 5:020 | | | Amended | 1813 | 6-19-13 |
| Amended | 1322 | | 921 KAR 3:090 | | |
| Amended | 1895 | | Amended | 2218 | (See 40 Ky.R.) |
| As Amended | 2174 | | 922 KAR 1:130 | | |
| 900 KAR 10:010 | 2443 | (See 40 Ky.R.) | Amended | 2220 | (See 40 Ky.R.) |
| 902 KAR 30:001 | | | 922 KAR 1:140 | | |
| Amended | 2403 | (See 40 Ky.R.) | Amended | 2225 | (See 40 Ky.R.) |
| 902 KAR 30:110 | | | 922 KAR 1:320 | | |
| Amended | 2405 | | Amended | 2228 | (See 40 Ky.R.) |
| 902 KAR 30:120 | | | 922 KAR 1:400 | | |
| Amended | 2410 | | Amended | 2233 | (See 40 Ky.R.) |
| 902 KAR 30:130 | | | 922 KAR 2:020 | | |
| Amended | 2413 | (See 40 Ky.R.) | Amended | 2236 | (See 40 Ky.R.) |
| 902 KAR 30:150 | | | 922 KAR 2:090 | | |
| Amended | 2419 | | Amended | 2241 | (See 40 Ky.R.) |
| 902 KAR 30:160 | | | 922 KAR 2:100 | | |
| Amended | 2422 | | Amended | 2247 | (See 40 Ky.R.) |
| 902 KAR 30:180 | | | 922 KAR 2:110 | | |
| Amended | 2425 | | Amended | 2256 | (See 40 Ky.R.) |
| 902 KAR 30:200 | | | 922 KAR 2:120 | | |
| Amended | 2428 | | Amended | 2261 | (See 40 Ky.R.) |
| 902 KAR 55:110 | | | 922 KAR 2:160 | | |
| Amended | 629 | | Amended | 2269 | (See 40 Ky.R.) |
| Amended | 1218 | | 922 KAR 2:180 | | |
| As Amended | 1413 | | Amended | 2278 | |
| As Amended | 2033 | | | | |
| 906 KAR 1:160 | | | SYMBOL KEY: | | |
| Amended | 335 | | * Statement of Consideration not filed by deadline | | |
| As Amended | 632 | | ** Withdrawn before being printed in Register | | |
| Amended | 1221 | | (r) Repealer regulation: KRS 13A.310 - on the effective date | | |
| 907 KAR 1:055 | | | of an administrative regulation that repeals another, the | | |
| Amended | 2084 | (See 40 Ky.R.) | regulations compiler shall delete the repealed administrative | | |
| 907 KAR 1:070 | | | regulation and the repealing administrative regulation | | |
| Repealed | 2448 | | | | |
| 907 KAR 1:072 | | | | | |

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|---|----------------------|-------------------|----------------------|----------------------|-------------------|
| VOLUME 40 | | | | | |
| EMERGENCY ADMINISTRATIVE REGULATIONS: | | | Amended | 104 | |
| (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.) | | | 12 KAR 1:165 | | |
| | | | Amended | 106 | |
| | | | 13 KAR 1:020 | | |
| | | | Amended | 334 | |
| | | | 16 KAR 3:080 | | |
| | | | Amended | 621 | |
| | | | 16 KAR 9:080 | | |
| | | | Amended | 623 | |
| | | | 30 KAR 5:010 | | |
| | | | Amended | 342 | |
| | | | 30 KAR 5:020 | | |
| | | | Amended | 343 | |
| | | | 30 KAR 5:030 | | |
| | | | Amended | 346 | |
| | | | 30 KAR 5:040 | | |
| | | | Amended | 348 | |
| | | | 30 KAR 5:050 | | |
| | | | Amended | 351 | |
| | | | 30 KAR 5:060 | | |
| | | | Amended | 353 | |
| | | | 101 KAR 2:076 | | (See 39 Ky.R.) |
| | | | As Amended | 259 | |
| | | | 101 KAR 2:095 | | (See 39 Ky.R.) |
| | | | As Amended | 259 | |
| | | | 101 KAR 2:102 | | (See 39 Ky.R.) |
| | | | As Amended | 261 | |
| | | | 101 KAR 3:015 | | (See 39 Ky.R.) |
| | | | As Amended | 265 | |
| | | | 101 KAR 3:050 | | (See 39 Ky.R.) |
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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>.

‡ - A technical amendment was made during the promulgation process to this administrative regulation pursuant to KRS 13A.320(1)(d).

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