

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 40, NUMBER 4
TUESDAY, OCTOBER 1, 2013

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, September 13, 2013.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet October 8, 2013 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 751-753 of this Administrative Register.

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

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, October 8, 2013, at 1:00 p.m., Room 149 Capitol Annex**

COUNCIL ON POSTSECONDARY EDUCATION

Nonpublic Colleges

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

EDUCATION PROFESSIONAL STANDARDS BOARD

Administrative Certificates

16 KAR 3:080. Career and technical education school principals.

Alternative Routes to Certification

16 KAR 9:080. University-based alternative certification program.

GENERAL GOVERNMENT CABINET

Board of Licensure for Long-Term Care Administrators

Board

201 KAR 6:020. Other requirements for licensure.
201 KAR 6:030. Temporary permits.
201 KAR 6:040. Renewal, reinstatement, and reactivation of license.
201 KAR 6:050. Licensure by endorsement.
201 KAR 6:060. Fees.
201 KAR 6:070. Continuing education requirements.
201 KAR 6:080. Code of ethics.
201 KAR 6:090. Complaint process.

Board of Hairdressers and Cosmetologists

Board

201 KAR 12:020. Examination. (Deferred from September)
201 KAR 12:040. Apprentices; ratio to operators. (Deferred from September)
201 KAR 12:045. Apprentice, nail technician, esthetician, and instructor's licensing. (Deferred from September)
201 KAR 12:050. Reciprocity for valid licensee. (Deferred from September)
201 KAR 12:060. Inspections. (Deferred from September)
201 KAR 12:065. New, relocated and change of owner salons. (Deferred from September)
201 KAR 12:082. School's course of instruction. (Not Amended After Comments)
201 KAR 12:083. Educational requirements. (Not Amended After Comments)
201 KAR 12:088. Esthetic course of instruction. (Deferred from September)
201 KAR 12:100. Sanitation standards. (Deferred from September)
201 KAR 12:101. Equipment sanitation. (Deferred from September)
201 KAR 12:120. School faculty. (Deferred from September)
201 KAR 12:125. Schools' student administrative regulations. (Deferred from September)
201 KAR 12:150. School records. (Not Amended After Comments)
201 KAR 12:176. Repeal of 201 KAR 12:175, 201 KAR 12:200, and 201 KAR 12:210. (Deferred from September)
201 KAR 12:180. Hearing procedures. (Deferred from September)
201 KAR 12:190. Investigations and complaints. (Deferred from September)
201 KAR 12:260. License fees, examination fees, renewal fees, restoration fees and miscellaneous fees. (Deferred from September)
201 KAR 12:270. Threading practice. (Deferred from September)

Real Estate Appraisers Board

Board

201 KAR 30:040. Standards of practice. (Amended After Comments)

Board of Interpreters for the Deaf and Hard of Hearing

Board

201 KAR 39:040. Fees.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Fish

301 KAR 1:130. Live bait for personal use.
301 KAR 1:132. Sale of live bait.
301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.
301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting. ("E" expires 2/10/2014)

State Fair Board

Fairgrounds and Exhibition Center

303 KAR 1:042. Repeal of 303 KAR 1:041.

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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)

Department for Natural Resources Division of Mine Reports

Permits

405 KAR 8:010. General provisions for permits. (Not Amended After Comments)

Bond and Insurance Requirements

405 KAR 10:001 & E. Definitions for 405 KAR Chapter 10. ("E" expires 12/30/2013) (Not Amended After Comments)

405 KAR 10:015. General bonding provisions. (Not Amended After Comments)

405 KAR 10:070 & E. Kentucky reclamation guaranty fund. ("E" expires 12/30/2013) (Not Amended After Comments)

405 KAR 10:080 & E. Full-cost bonding. ("E" expires 12/30/2013) (Not Amended After Comments)

405 KAR 10:090 & E. Production fees. ("E" expires 12/30/2013) (Deferred from September)

405 KAR 10:201E. Repeal of 405 KAR 10:200. ("E" expires 12/30/2013) (Deferred from September)

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

Office of the Secretary

501 KAR 6:050. Luther Luckett Correctional Complex.

501 KAR 6:110. Roederer Correctional Complex.

Kentucky Law Enforcement Council

Council

503 KAR 1:180. Firearms qualification for certified peace officers.

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. (Amended After Comments)

Motor Vehicle Commission

Commission

605 KAR 1:050. Dealer and salesman.

605 KAR 1:060. Temporary off-site sale or display event.

605 KAR 1:070. Change of ownership.

605 KAR 1:090. Business names.

605 KAR 1:130. Procedures.

605 KAR 1:190. Motor vehicle advertising.

605 KAR 1:210. Nonprofit motor vehicle dealer requirements and licensing.

EDUCATION AND WORKFORCE DEVELOPMENT Kentucky Board of Education Department of Education

General Administration

702 KAR 1:115. Annual in-service training of district board members.

Office of Instruction

704 KAR 3:390. Extended school services.

ENERGY AND ENVIRONMENT CABINET Public Service Commission

Utilities

807 KAR 5:001. Rules of procedure.

807 KAR 5:069. Filing requirements and procedures for federally funded construction project of a water association, a water district, or a combined water, gas, or sewer district.

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission

Harness Racing

811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

811 KAR 1:220. Harness racing at county fairs.

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)(Deferred from September)

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

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

Office of the Inspector General Division of Health Care

Health Services and Facilities

902 KAR 20:027. Repeal of 902 KAR 20:021 and 902 KAR 20:026.

Office

906 KAR 1:190. Kentucky Applicant Registry and Employment Screening Program. (Amended After Comments)

Department for Medicaid Services Division of Policy and Provider Operations

Medicaid Services

907 KAR 1:180. Freestanding birth center services.

Division of Healthcare Facilities Management

Medicaid Services

907 KAR 1:190. Payments for freestanding birth center services.

Division of Administration and Financial Management

Medicaid Services

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

Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Administration and Financial Management

Institutional Care

908 KAR 3:050. Per diem rates.

908 KAR 3:060. "Means test" for determining patient liability.

REMOVED FROM OCTOBER 2013 AGENDA

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems

General Rules

105 KAR 1:140 & E. Employer's administrative duties. ("E" expires 12/28/2013) (Comments Received; SOC ext.)

GENERAL GOVERNMENT CABINET Real Estate Appraisers Board

Board

~~201 KAR 30:360. Operation of an appraisal management company. (Withdrawn 9/13/2013)~~

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

Hunting and Fishing

301 KAR 3:022. License, tag and permit fees. (Comments Received)

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

Livestock

302 KAR 21:001. Definitions for 302 KAR Chapter 21. (Comments Received)

302 KAR 21:020. General livestock and poultry provisions. (Comments Received)

302 KAR 21:030. Beef cattle, bison, and veal specific provisions. (Comments Received)

302 KAR 21:040. Dairy cattle specific provisions. (Comments Received)

302 KAR 21:050. Equine specific provisions. (Comments Received)

302 KAR 21:060. Swine specific provisions. (Comments Received)

302 KAR 21:070. Ovine, caprine, camelid and cervid specific provisions. (Comments Received)

302 KAR 21:080. Poultry specific provisions. (Comments Received)

EDUCATION AND WORKFORCE DEVELOPMENT Kentucky Board of Education Department of Education

Office of Instruction

704 KAR 3:035. Annual professional development plan. (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. (Amended After Comments) (Deferred from October)

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control

Quotas

804 KAR 9:040. Quota retail package licenses. (Comments Received)

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.

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EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
31 KAR 4:070E

The emergency amendment to this administrative regulation is being promulgated in response to SB 13, which requires the State Board to promulgate an administrative regulation adopting a form and procedures for conducting a recanvass for a local option election. SB 13 was effective June 25, 2013. This emergency amendment must be effective immediately so as to have an adopted form and procedure for county boards of elections to use in the event a recanvass of a local option election is requested. An ordinary amendment is not sufficient because it will not be effective prior to the next local option election that may be called. This emergency amendment shall be replaced by an ordinary amendment to be concurrently filed with the Regulations Compiler. The ordinary amendment to the administrative regulation is identical to this emergency amendment to the administrative regulation.

HONORABLE STEVEN L. BESHEAR, Governor
HONORABLE ALISON LUNDERGAN GRIMES, Chair

KENTUCKY STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 4:070E. Recanvass procedures.

RELATES TO: KRS 117.305, 118.425, 242.120

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.305(2), (3), (4), 242.120(3), (4), (5)

EFFECTIVE: September 4, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.305(2) and KRS 242.120(3) require [requires] the State Board of Elections to prescribe forms to be used by county boards of elections to report all recanvassed votes, KRS 117.305(3) and KRS 242.120(4) require[requires] that the board promulgate administrative regulations to set reporting standards for recanvass reports, and KRS 117.305(4) and KRS 242.120(5) require[requires] that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky. This administrative regulation establishes the reporting forms[form] to be used in the event of a recanvass, reporting standards for an election if a recanvass is requested and received in a timely manner, and establishes the proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky.

Section 1. (1) The Recanvass of Official Count and Record of Election Totals form, SBE 49A, shall be used by the county board of elections to report all recanvassed votes, except for local option elections.

(2) The Recanvass of Official Count and Record of Election Totals for Local Option Election form, SBE 49B, shall be used by the county board of elections to report recanvassed votes for local option elections.

(3) The county board of elections shall state the name of the county in which the recanvass is being conducted, the date of the report, the date of the election, the office for which the recanvass is being made, the name of each candidate for the office being recanvassed, and the machine votes, absentee votes, provisional votes and total votes for each candidate. The report shall be signed by each member of the county board of elections.

(4) For a recanvass of a local option election, the county board of elections shall state the name of the county in which the recanvass is being conducted, the date of the report, the date of the local option election, the proposition for which the recanvass is being made, the names of the leaders of the committees favoring or opposing the proposition being recanvassed, and the machine votes, absentee votes, and vote totals for "yes" or "no" votes. The report shall be signed by each member of the county board of elec-

tions.

Section 2. (1) The county board of elections shall file its recanvass report, SBE 49A, immediately upon completion of the recanvass for those vote totals reported to the Secretary of State, pursuant to KRS 118.425(3).

(2) The county board of elections shall file its recanvass report, SBE 49A, immediately upon completion of the recanvass for the vote totals reported to the county clerk, pursuant to 118.425(2).

(3) The county board of elections shall file its recanvass report for a local option election, SBE 49B, immediately upon completion of the recanvass for the vote totals reported to the county clerk, pursuant to KRS 242.110.

Section 3. If KRS 117.305(1) or KRS 242.120(2)(a) requires a recanvass, the provisions established in this section shall apply.

(1) In a general election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(2) In a partisan primary election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate of the same political party seeking the same office.

(3) In a nonpartisan election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(4) In a local option election, the county board of elections shall check and tabulate the "yes" and "no" votes.

Section 4. A county board of elections shall recanvass the votes recorded depending on the machine and voting method utilized, as follows:

(1) If an electronic voting system with a central tabulation system is used, the recanvass shall be taken:

(a) By clearing the system, such as by setting the tabulation system to zero and retabulating the votes recorded on the memory cartridges on election day by using the central tabulation system; or

(b) By comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(2) If an electronic voting system without a central tabulation system is used, the recanvass shall be taken by comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(3) Paper ballots, which were judged to be valid by the county board of elections on election day and which were not counted using a central tabulation system but were hand-counted on election day, shall be recanvassed by utilizing the same procedure actually used to count those paper ballots on election day following the procedures for the uniform definition of a vote established by 31 KAR 6:030.

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

(a) "Recanvass of Official Count and Record of Elections Totals", SBE 49A, [{}December 2003 edition; and

(b) "Recanvass of Official Count and Record of Elections Totals for Local Option Election", SBE 49B, August 2013 edition[}]-is incorporated by reference[}].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: September 4, 2013

FILED WITH LRC: September 4, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2013, at 10:00 a.m., at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interest-

ed in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment. Written comments shall be accepted until October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Maryellen Allen, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen Allen

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 242.120(3) requires the State Board of Elections to prescribe forms to be used by county boards of elections to report recanvassed votes for a local option election; KRS 242.120(4) requires that the board promulgate administrative regulations to set reporting standards for recanvass reports for local option elections; and KRS 242.120(5) requires that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky for local option elections. This administrative regulation establishes the reporting form to be used in the event of a recanvass of a local option election, reporting standards for a local option election if a recanvass is requested and received in a timely manner, and proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky for a local option election.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the requirements of KRS 242.120(3), (4) and (5).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a recanvass reporting form for local option elections, reporting standards, and the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky for a local option election.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements of KRS 242.120(3), (4) and (5).

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

(a) How the amendment will change the existing administrative regulation: This amendment adopts a new reporting form for recanvassed votes for a local option election, amends the procedure to conduct a recanvass when it is for a local option election and amends the reporting requirements when the recanvass is for a local option election.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to establish a reporting form and procedures for conducting a recanvass for a local option election.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 242.120(3), (4) and (5) by prescribing a recanvass reporting form for local option elections and establishing procedures for conducting a recanvass for local option elections.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will adopt a recanvass reporting form for local option elections and procedures for conducting a recanvass for local option elections under KRS 242.120 (3), (4) and (5).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: All county boards of elections and county clerks.

(4) 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 to an existing administrative regulation: The above groups will be furnished the new recanvass reporting form for local option elections and will know the proper recanvass procedures to meet the reporting requirements listed in KRS 242.120(3), (4), and (5).

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' budget.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this amendment to an existing administrative regulation: 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? County boards of elections

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.305 and KRS 242.120

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

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

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

STATEMENT OF EMERGENCY 101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2014 plan year handbook for the self-insured plan offered to the Public Employee Health Insurance Program, commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a)3. KRS 18A.2254(1)(a) requires the secretary of the

Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. The 2014 plan year handbook, or Benefits Selection Guide, contains the required and necessary information for public employees to make health insurance coverage decisions during open enrollment in October 2013. This administrative regulation incorporates by reference the 2014 Benefits Selection Guide that will be distributed by the Personnel Cabinet's Department of Employee Insurance to public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2013 plan year. The existing language in the Benefits Selection Guide for the 2013 plan year should remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2014 replaces this emergency administrative regulation.

STEVEN BESHEAR, Governor
Tim Longmeyer, Secretary of Personnel Cabinet

**PERSONNEL CABINET
Office of the Secretary
(Emergency Amendment)**

101 KAR 2:210E. 2013 and 2014 Plan Year Handbooks[Handbook] for the Public Employee Health Insurance Program.

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

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

EFFECTIVE: September 9, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2013 and 2014 Plan Years[Year] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2013 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2014 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2014 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2014.

Section 3. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a) "2013 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2013 edition; and

(b) "2014 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2014 edition[is incorporated by reference].

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

TIM LONGMEYER, Secretary of Personnel Cabinet

APPROVED BY AGENCY: September 6, 2013

FILED WITH LRC: September 9, 2013 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2014 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2014.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2014 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute authorizing the self-insured plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2014 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2013 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for plan year 2013. The amendment adds and incorporates by reference the 2014 plan year handbook which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan for plan year 2014.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance and deductibles for each plan provided to public employees under the Public Employee Health Insurance Program for plan year 2014. This amendment is also ne-

cessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2014 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2014 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 158,860 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 267,456 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by affected entities to comply with the incorporation of the 2014 plan year handbook in the administrative regulation. The 2014 plan year Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health plans offered for the 2014 plan year. Specifically, the 2014 plan year handbook will provide information about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2014 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will give notice to participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program regarding employer and employee premium contributions for health insurance coverage in 2014. There is no direct cost impact resulting from incorporating the 2014 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2014, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. As a result of health care inflation and federal health care reform mandates effective January 1, 2014, there were necessary employee premium contribution and health benefit modifications for plan year 2014. Also, in plan year 2014, there will be a two percent budgeted employer contribution increase.

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

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

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

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees participating in the Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law, an amended administrative regulation will be promulgated in 2014 and each subsequent plan year.

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

Revenues (+/-):
Expenditures (+/-)
Other:

**STATEMENT OF EMERGENCY
501 KAR 6:020E**

Congress mandated the establishment of national standards for the detection, prevention, reduction, and punishment of prison rape in the Prison Rape Elimination Act (PREA), 42 U.S.C. §15607. The Department of Justice established national standards for adult prisons and jails in 28 C.F.R. §115, Subpart A. Congress tied grant funds to states for prison purposes to compliance with the national standards. Failure to comply with the standards causes loss of federal grant funds for prison programs or restrictions on the use of a percentage of grant funds. This regulation promulgates part of the PREA standard requirements. This administrative regulation is authorized to be filed as an emergency administrative regulation pursuant to KRS 13A.190(1)(a)(2). An ordinary administrative regulation alone will not cause the required policies to be adopted by the federal deadline. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

HON. STEVEN L. BESHEAR, Governor of Kentucky
LADONNA H. THOMPSON, Commissioner

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Emergency Amendment)**

501 KAR 6:020E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

EFFECTIVE: August 20, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," August 20, 2013~~[December 17, 2012]~~, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 12/08/09)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 10/12/12)
- 2.12 Abandoned Inmate Funds (Amended 6/12/12)
- 3.1 Code of Ethics (Amended 8/20/13~~[07/09/07]~~)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 5/15/08)
- 3.9 Student Intern Placement Program (Added 9/13/2010)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 9/13/10)
- 3.14 Employee Time and Attendance Requirements (Added 9/13/2010)
- 3.17 Uniformed Employee Dress Code (Amended 4/10/06)
- 3.22 Staff Sexual Offenses (Added 8/20/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 4.4 Educational Assistance Program (Amended 8/25/09)
- 5.1 Research and Survey Projects (Amended 5/15/08)
- 5.3 Program Evaluation and Measurement (Amended 6/12/12)
- 6.1 Open Records Law (Amended 5/14/07)
- 8.2 Fire Safety (Amended 2/15/06)
- 8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 12/17/12)

- 9.6 Contraband (Amended 6/12/12)
- 9.8 Search Policy (Amended 8/20/13~~[11/9/10]~~)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 9.20 Electronic Detection Equipment (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 8/20/13~~[12/47/42]~~)
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Nutritional Adequacy of Inmate Diet (Amended 5/15/08)
- 11.4 Alternative Dietary Patterns (Amended 5/15/08)
- 13.1 Pharmacy Policy and Formulary (Amended 8/25/09)
- 13.2 Health Maintenance Services (Amended 11/9/10)
- 13.3 Medical Alert System (Amended 10/14/05)
- 13.5 Advance Healthcare Directives (Added 4/12/05)
- 13.6 Sex Offender Treatment Program (Amended 5/15/08)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 12/13/05)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 10/12/12)
- 14.3 Marriage of Inmates (Amended 10/14/05)
- 14.4 Legal Services Program (Amended 07/09/07)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 8/20/13~~[6/42/12]~~)
- 14.7 Sexual Abuse~~[Assault]~~ Prevention and Intervention Programs (Amended 8/20/13~~[11/45/06]~~)
- 15.1 Hair, Grooming and ID Card Standards (Amended 10/12/12)
- 15.2 Rule Violations and Penalties (Amended 9/13/10)
- 15.3 Meritorious Good Time (Amended 12/13/05)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
- 15.6 Adjustment Procedures and Programs (Amended 10/14/05)
- 15.7 Inmate Account Restriction (Amended 11/9/10)
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 10/12/12)
- 16.2 Inmate Correspondence (Amended 10/12/12)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 07/09/07)
- 17.1 Inmate Personal Property (Amended 6/12/12)
- 17.2 Assessment Center Operations (Amended 11/15/06)
- 17.3 Controlled Intake of Inmates (Amended 5/15/08)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
- 18.1 Classification of the Inmate (Amended 07/09/07)
- 18.2 Central Office Classification Committee (Amended 10/14/05)
- 18.5 Custody and Security Guidelines (Amended 6/12/12)
- 18.7 Transfers (Amended 07/09/07)
- 18.9 Out-of-state Transfers (Amended 2/15/06)
- 18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 07/09/07)
- 18.15 Protective Custody (Amended 11/15/06)
- 18.16 Information to the Parole Board (Effective 11/15/06)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Added 2/13/04)
- 19.3 Inmate Wage/Time Credit Program (Amended 12/08/09)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 22.1 Privilege Trips (Amended 10/14/05)
- 23.1 Religious Programs (Amended 10/12/12)

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25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)

25.3 Prerelease Program (Effective 11/15/06)

25.4 Institutional Inmate Furloughs (Amended 07/09/07)

25.6 Community Center Program (Amended 07/09/07)

25.8 Extended Furlough (Amended 4/12/05)

25.10 Administrative Release of Inmates (Amended 11/9/10)

25.11 Victim Services Notification (Amended 8/25/09)

26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12)

(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: August 20, 2013

FILED WITH LRC: August 20, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, 2013 at 9:00 a.m. in the at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 Kentucky Department of Corrections 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 and 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 Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of 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: The amendment brings the Kentucky Department of Corrections into compliance with ACA standards and updates current practices for the department and its institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 28 C.F.R. Ch. I, Pt. 115, Subpart A.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Secretary of the Cabinet or his dele-

gate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,939 employees, 21,388 inmates, visitors, volunteers, and others who enter state correctional institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation. Others who enter correctional institutions will have to comply with policies and procedures concerning entry, search, contraband and others when they enter an institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(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 state correctional institutions.

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

(a) Initially: No increase in fees is anticipated. All of the PREA costs have not yet been determined and the funding impact is not yet known.

(b) On a continuing basis: No increase in fees is anticipated. All of the PREA costs have not yet been determined and the funding impact is not yet known.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the biennium.

(7) Provide an assessment of whether an 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. All of the PREA costs have not yet been determined and the funding impact is not yet known.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to the regulation do not establish additional fees or increase any existing fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections and each state correctional institution.

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, 28 C.F.R. Ch. I, Pt. 115, Subpart A

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for the Kentucky Department of Corrections or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendments to this regulation do not create any revenue for the Kentucky Department of Corrections or other government entity.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The DOC anticipates increases in costs in training, PREA audit costs, staff overtime, medical, transportation and possibly other costs associated with general PREA standards implementation in a currently unknown amount.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The DOC anticipates increases in costs in training, PREA audit costs, staff overtime, medical, transportation and possibly other costs associated with general PREA standards implementation in a currently unknown amount.

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

Revenues (+/-):

Expenditures (+/-): The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The DOC anticipates increases in costs in training, PREA audit costs, staff overtime, medical, transportation and possibly other costs associated with general PREA standards implementation in a currently unknown amount.

Other Explanation:

STATEMENT OF EMERGENCY 900 KAR 5:020E

This emergency administrative regulation is being promulgated to amend the 2013-2015 State Health Plan to address the need for long term care beds in the Commonwealth. Pursuant to KRS 216B.040(2)(a)2.a, the Cabinet for Health and Family Services is charged with responsibility for promulgating regulations to establish criteria for the issuance and denial of certificates of need. The State Health Plan is required to contain a need assessment for long term care beds, which shall be based on a statistically valid analysis of the present and future needs. The Cabinet must take this action to amend the State Health Plan regarding long term care to allow for the relocation of long term care beds to meet the needs of a growing and aging population, thereby protecting human health. The amendment would allow a transferring entity with a bed inventory of at least 250 beds to transfer no more than fifty (50) percent of its beds to a county within the Area Development District which had an increase in the age sixty-five (65) and over population of greater than fifty (50) percent from 2000-2010 and is projected to experience greater than (75) percent increase in the age sixty-five (65) and over population from 2010-2020. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) will compromise the state's ability to act quickly in its efforts to address the long term care needs of the Commonwealth. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

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

900 KAR 5:020E. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2a

EFFECTIVE: August 30, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the Certificate of Need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2013-2015 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2013-2015 State Health Plan", August[April] 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 275 East Main Street, 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 24, 2013

FILED WITH LRC: August 30, 2013 at 10 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2013-2015 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation revises the 2013-2015 State Health Plan to address the long term care review criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the State Health Plan will assist in the effective administration of KRS 216B.040(2)(a)2.a. The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

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

(a) How the amendment will change this existing administrative regulation: The amendment will revise the long term care review criteria in the State Health Plan.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to comply with the content of the authorizing statutes as the present and future needs of the population are to be addressed in the State

Health Plan. The establishment of a nursing facility with more than 250 beds is not desirable from an operational or resident satisfaction standpoint. The amendment would allow a facility with an inventory of at least 250 nursing facility beds to relocate no more than fifty (50) percent of its beds to a county within the same Area Development District which had an increase in the age sixty-five (65) and over population of over fifty (50) percent from 2000-2010 and is projected to experience more than a seventy-five (75) percent growth in the age sixty-five (65) and over population from 2010-2020.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised criteria of the 2013-2015 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the long term care review criteria of the State Health Plan will address the present and future needs of the population and assist in the effective administration of KRS 216B.040(2)(a)2.a.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately ten (10) long term care facilities file certificate of need applications.

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

(a) List 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 which submit certificate of need applications for long term care services will be subject to the revised criteria set forth in the revised 2013-2015 State Health Plan.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications for long term care services will be subject to the revised criteria set forth in the revised 2013-2015 State Health Plan, which addresses the present and future long term care needs.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed long term care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

3. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

STATEMENT OF EMERGENCY 900 KAR 10:030E

This emergency administrative regulation is being promulgated to establish the policies and procedures relating to eligibility and enrollment 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. This administrative regulation must be promulgated on an emergency basis: To meet the deadlines and requirements of 42 C.F.R. 155.105, which sets the standards for approval for Kentucky to operate a state-based Exchange. Pursuant to 42 U.S.C. Section 18031, which sets forth the federal requirements in establishing a state-based Exchange, Kentucky must implement procedures for eligibility determination and enrollment in qualified health plans. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the Exchange to timely determine eligibility and facilitate enrollment in qualified health plans. Eligibility determination and enrollment in qualified health plans is necessary for the provision of health care services provided in the Commonwealth through the Exchange. Additionally, individuals must enroll through the Exchange to receive advanced payments of the premium tax credit and cost sharing deductions. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

AUDREY TAYSE HAYNES, Secretary

Cabinet for Health and Family Services Office of the Kentucky Health Benefit Exchange (New Emergency Administrative Regulation)

900 KAR 10:030E. Kentucky Health Benefit Exchange Eligibility and Enrollment in a Qualified Health Plan.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

EFFECTIVE: August 22, 2013

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of the Kentucky Health Benefit Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities

ties 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 eligibility and enrollment in a qualified health plan in the individual market 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) "Advance payments of the premium tax credit" or "APTC" means payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange in accordance with section 1412 of the Affordable Care Act.

(2) "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) "Annual open enrollment period", except for the initial open enrollment period, is defined by 45 C.F.R. 155.410(e).

(4) "Applicant" is defined by 45 C.F.R. 155.20.

(5) "Application filer" is defined by 45 C.F.R. 155.20.

(6) "Benefit year" means a calendar year for which a health plan provides coverage for health benefits.

(7) "Catastrophic plan" means a health plan that meets the conditions of 45 C.F.R. 156.155.

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

(9) "Cost sharing" is defined by 45 C.F.R. 155.20.

(10) "Cost sharing reduction" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in the KHBE or for an individual who is an Indian enrolled in a qualified health plan in the KHBE.

(11) "Date of the notice" means the date on the notice plus five (5) calendar days.

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

(13) "Dependent" is defined by 26 C.F.R. 54.9801-2.

(14) "Enrollee" means an eligible individual enrolled in a qualified health plan.

(15) "Family size" means the number of individuals in a family for whom a taxpayer properly claims a deduction for a personal exemption under 151 of the Internal Revenue Code for the taxable year.

(16) "Federal poverty level" or "FPL" means the most recently published federal poverty level, updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as of the first day of the annual open enrollment period for coverage in a qualified health plan through the Kentucky Health Benefit Exchange.

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

(18) "Household income" is defined by 26 C.F.R. 1.36B-1(e).

(19) "Indian" is defined by 25 U.S.C. 450b(d).

(20) "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 a qualified health plan through an exchange for the 2014 benefit year.

(21) "Insurance affordability program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act;

(b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act.

(22) "Internal Revenue Code" or "Code" means the Internal Revenue Code of 1986.

(23) "Issuer" is defined by 45 C.F.R. 144.103.

(24) "Kentucky Children's Health Insurance Program" or "KCHIP" means the separate child health program established by the Commonwealth of Kentucky under title XXI of the Social Security Act in accordance with implementing regulations at 42 C.F.R. 457.

(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, that includes an:

(a) Individual exchange; and

(b) Small Business Health Options Program.

(26) "Lawfully present" is defined by 45 C.F.R. 155.2.

(27) "MAGI-based income" is defined by 42 C.F.R. 435.603(e).

(28) "Medicaid" means the program established under title XIX of the Social Security Act in accordance with implementing regulations at 42 C.F.R. parts 430 through 456.

(29) "Minimum essential coverage" is defined by 26 U.S.C. 5000A(f).

(30) "Non-citizen" is defined by 8 U.S.C. 1101(a)(3).

(31) "Personal exemption deduction" means an amount that can be deducted from taxable income based on the exemption given to any tax filer who cannot be claimed as a dependent by another tax filer.

(32) "Public insurance program" means an insurance program that is paid for by a governmental entity and provided to consumers, including Medicare, Medicaid, or Children's Health Insurance Program.

(33) "Qualified Health Plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification issued by the OKHBE.

(34) "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market.

(35) "Qualifying coverage in an eligible employer-sponsored plan" means coverage in an eligible employer-sponsored plan that meets the affordability and minimum value standards specified in 26 U.S.C. 36B(c)(2)(C).

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

(37) "Silver-level" is defined by 42 U.S.C. 18022(d)(1)(B).

(38) "Special enrollment period" as described in 45 C.F.R. 155.420 means a period during which a qualified individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP through the KHBE outside the initial and annual open enrollment periods.

(39) "Tax filer" is defined by 45 C.F.R. 155.300.

Section 2. Eligibility Standards to Enroll in a Qualified Health Plan. (1) An applicant shall be eligible to enroll in a QHP through the KHBE if the applicant:

(a) 1. Is a citizen or national of the United States;

2. Is a non-citizen who is lawfully present in the United States and is reasonably expected to become a citizen or national; or

3. Is a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(b) Except for an incarceration pending a disposition of a charge, is not incarcerated; and

(c) Meets a residency requirement in 45 C.F.R. 155.305(a)(3).

(2) An applicant may submit an application as described in 45 C.F.R. 155.405 for a determination of eligibility at any time during a year; however, the applicant shall only enroll during open enrollment or special enrollment periods.

(3) An applicant determined eligible for enrollment in a QHP as set forth in subsection (1) of this section shall be eligible to enroll in a QHP during:

(a) An initial open enrollment period as set forth in Section 6(2) of this administrative regulation;

(b) An annual open enrollment period as set forth in Section 6(3) of this administrative regulation; or

(c) A special enrollment period as set forth in Sections 6(4) and 7 of this administrative regulation.

(4) An applicant determined eligible to enroll in a QHP who

does not select a QHP within the applicable enrollment period as set forth in Sections 6 and 7 or is not eligible for an enrollment period, who seeks a new enrollment period prior to the date on which the applicant's eligibility is redetermined as set forth in Section 9 of this administrative regulation, shall attest to whether or not information affecting the applicant's eligibility has changed since the most recent eligibility determination.

(5) An applicant shall submit an application for enrollment in a QHP:

(a) Via the KHBE Web site at www.kynect.ky.gov;

(b) By telephone by contacting the KHBE contact center at 1-800-459-6328;

(c) By mail; or

(d) In person.

(6)(a) An applicant who has a Social Security number shall provide the number to the KHBE.

(b) An individual who is not seeking coverage for himself or herself shall not be required to provide a Social Security number, except as specified in Section 3(8) of this administrative regulation.

(7) In accordance with 45 C.F.R. 155.310(a)(2), an individual who is not seeking coverage for himself or herself on any application or any supplemental form shall not be required to provide information regarding:

(a) Citizenship;

(b) Status as a national; or

(c) Immigration status of an individual who is not seeking coverage for himself or herself on an application or supplemental form.

(8)(a) Except as specified in Section 11(2) of this administrative regulation, an applicant who requests an eligibility determination for an insurance affordability program shall have an eligibility determination for all insurance affordability programs.

(b) An applicant who requests an eligibility determination for a QHP only shall not have an eligibility determination for an insurance affordability program.

(9) An applicant shall not provide information beyond the minimum amount necessary to determine eligibility and enrollment through the KHBE.

Section 3. Eligibility Standards for Advanced Payments of the Premium Tax Credit. (1) A tax filer shall be eligible for APTC if:

(a) The tax filer is expected to have a household income greater than or equal to 100 percent of the FPL but not more than 400 percent of the FPL for the benefit year for which coverage is requested; and

(b) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year:

1. Meets the requirements for eligibility for enrollment in a QHP through the KHBE as specified in Section 2 of this administrative regulation; and

2. Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-2(a)(2) and (c).

(2) A tax filer who is a non-citizen and lawfully present and ineligible for Medicaid for reason of immigration status shall be eligible for APTC if:

(a) The tax filer meets the requirement in subsection (1)(b) of this section;

(b) The tax filer is expected to have a household income of less than 100 percent of the FPL for the benefit year for which coverage is requested; and

(c) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year is:

1. A non-citizen who is lawfully present; and

2. Not eligible for Medicaid for reason of immigration status.

(3) A tax filer shall attest that one (1) or more applicants for whom the tax filer attests that a personal exemption deduction for the benefit year shall be claimed is enrolled in a QHP that is not a catastrophic plan.

(4) A tax filer shall not be eligible for APTC if HHS notifies the KHBE that APTCs were made on behalf of the tax filer or tax filer's spouse for a year in accordance with 45 C.F.R. 155.305(f)(4).

(5) An APTC amount shall be:

(a) Calculated in accordance with 26 C.F.R. 1.36B-3; and

(b) Allocated between QHPs and stand-alone dental policies in accordance with 45 C.F.R. 155.340(e).

(6) An applicant for APTC may accept less than the full amount of APTC for which the applicant is determined eligible.

(7) An APTC shall be authorized by the KHBE on behalf of a tax filer only if the KHBE obtains necessary attestations from the tax filer that:

(a) The tax filer shall file an income tax return for the benefit year in accordance with 26 U.S.C. 6011 and 6012;

(b) If the tax filer is married, a joint tax return shall be filed for the benefit year;

(c) No other taxpayer shall be able to claim the tax filer as a dependent for the benefit year; and

(d) The tax filer shall claim a personal exemption deduction on the tax filer's return for the applicants identified as members of the tax filer's family, including the tax filer and the spouse of the tax filer, in accordance with 45 C.F.R. 155.305(f)(4).

(8) An application filer who is not an applicant shall provide the Social Security number of a tax filer only if the applicant attests that the tax filer:

(a) Has a Social Security number; and

(b) Filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(9) The effective date for APTC shall be:

(a) For an initial eligibility determination, in accordance with the dates specified in Section 6 (1), (2), (3) and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates specified in 45 C.F.R. 155.330(f) and 155.335(i), as applicable.

(10) An employer shall be notified of an employee's eligibility for APTC in accordance with 45 C.F.R. 155.310(h).

Section 4. Eligibility Standards for Cost-sharing Reductions. (1) An applicant shall be eligible for cost-sharing reductions if the applicant:

(a) Meets the eligibility requirements for enrollment in a QHP as set forth in Section 2 of this administrative regulation;

(b) Meets the requirements for APTC as set forth in Section 3 of this administrative regulation;

(c) Is expected to have a household income that does not exceed 250 percent of the FPL for the benefit year for which coverage is requested; and

(d) Except for an enrollee who is an Indian, enrolls in a silver-level QHP through the KHBE.

(2) An eligibility determination for cost-sharing reductions shall be based on the following categories:

(a) 1. An individual who is expected to have a household income greater than or equal to 100 percent of the FPL and less than or equal to 150 percent of the FPL for the benefit year for which coverage is requested; or

2. An individual who is eligible for APTC as set forth in Section 3(2) of this administrative regulation, a household income less than 100 percent of the FPL;

(b) An individual who is expected to have a household income greater than 150 percent of the FPL and less than or equal to 200 percent of the FPL for the benefit year for which coverage is requested; and

(c) An individual who is expected to have a household income greater than 200 percent of the FPL and less than or equal to 250 percent of the FPL for the benefit year for which coverage is requested.

(3)(a) If two (2) or more individuals enrolled in the individual market under a single policy would be eligible for different cost sharing amounts if enrolled in separate policies, the individuals under the single policy shall be deemed by the KHBE to be collectively eligible only for the last category listed in paragraph (b) of this subsection for which all the individuals covered by the policy would be eligible.

(b) The categories of eligibility shall be an individual:

1. Not eligible for changes to cost sharing;

2. Described in 45 C.F.R. 155.350(b);

3. Described in subsection (2)(c) of this section;

4. Described in subsection (2)(b) of this section;

5. Described in subsection (2)(a) of this section; and

6. Described in 45 C.F.R. 155.350(a).

(4) The effective date for cost-sharing reductions shall be:

(a) For an initial eligibility determination, in accordance with the dates specified in Section 6(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates specified in 45 C.F.R. 155.330(f) and 45 C.F.R. 155.335(i), as applicable.

(5) An employer shall be notified of an employee's eligibility for cost-sharing reductions in accordance with 45 C.F.R. 155.310(h).

Section 5. Verification processes. (1) Verification of eligibility for an applicant seeking enrollment in a QHP shall be performed in accordance with:

(a) 45 C.F.R. 155.315; and

(b) Kentucky QHP/APTC Eligibility Verification Plan as incorporated by reference in this administrative regulation.

(2) Verification of eligibility for an applicant or tax filer who requests an eligibility determination for an insurance affordability program shall be in accordance with:

(a) 45 C.F.R. 155.320; and

(b) Kentucky QHP/APTC Eligibility Verification Plan as incorporated by reference in this administrative regulation.

Section 6. QHP Enrollment Periods and Effective Dates of Coverage. (1) A qualified individual shall enroll in a QHP or an enrollee shall change from one (1) QHP to another QHP during the initial open enrollment period.

(2) A qualified individual or enrollee who selects a QHP during the initial open enrollment period shall have an effective date of coverage of:

(a) January 1, 2014, if the QHP selection is received on or before December 15, 2013;

(b) The first day of the following month, if the QHP selection is received between the first and fifteenth day of the month for any month between January, 2014, and March 31, 2014; or

(c) The first day of the second following month, if the QHP selection is received between the sixteenth and last day of the month for any month between December, 2013, and March 31, 2014.

(3)(a) For a benefit year beginning on or after January 1, 2015, a qualified individual shall be able to enroll in a QHP or an enrollee shall be able to change from one (1) QHP to another QHP during an annual open enrollment period that:

1. Begins October 15 of the preceding calendar year; and

2. Extends through December 7 of the preceding calendar year.

(b) A qualified individual or enrollee who selects a QHP during an annual open enrollment period shall have an effective date of coverage of January 1 of the following benefit year.

(4)(a) A qualified individual shall enroll in a QHP or an enrollee shall change from one (1) QHP to another QHP during a special enrollment period as specified in Section 7 of this administrative regulation.

(b) A qualified individual or an enrollee who selects a QHP during a special enrollment period shall have an effective date of coverage as set forth in Section 7 of this administrative regulation.

(5)(a) An initial enrollment in a QHP shall not be effective until the first month's premium is received by the QHP issuer.

(b) The first month's premium shall be received by a QHP issuer no later than seven (7) days after an effective date of coverage as set forth in subsection (1)(b) of this section.

Section 7. Special Enrollment Periods. (1) Except as specified in subsection (3) of this section, a qualified individual or enrollee shall have sixty (60) days from the date of a qualifying event as set forth in subsection (2) of this section to select a QHP.

(2) A qualified individual may enroll in a QHP or an enrollee or a dependent of an enrollee may change QHPs during a special enrollment period if:

(a) The qualified individual or a dependent of the qualified individual loses minimum essential coverage;

(b) The qualified individual gains a dependent or becomes a

dependent through marriage, birth, adoption, or placement for adoption;

(c) The qualified individual who was not previously a citizen, national, or lawfully present gains status as a citizen, national, or lawfully present;

(d) The qualified individual or dependent of the qualified individual enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or agent of the OKHBE or HHS;

(e) The enrollee or dependent of the enrollee demonstrates to the KHBE that the QHP in which the enrollee or the dependent of the enrollee is enrolled substantially violated a provision of its contract in relation to the enrollee;

(f) The enrollee is determined newly eligible or newly ineligible for APTC or has a change in eligibility for CSR;

(g) The qualified individual or a dependent of the qualified individual who is enrolled in qualifying coverage in an employer-sponsored plan is determined newly eligible for APTC in part on a finding that the individual will no longer be eligible for qualifying coverage in the employer-sponsored plan in the next sixty (60) days and is allowed to terminate existing coverage;

(h) The qualified individual or enrollee or a dependent of the qualified individual or the enrollee gains access to new QHPs as a result of a change in residence;

(i) The qualified individual is an Indian who may enroll in a QHP or change from one (1) QHP to another QHP one (1) time per month; or

(j) The qualified individual or a dependent of the qualified individual demonstrates to the OKHBE that the individual meets other exceptional circumstances.

(3) The qualified individual or dependent of the qualified individual described in subsection (2)(g) of this section may access this special enrollment period sixty (60) days prior to the end of the individual's qualifying coverage in an eligible employer-sponsored plan.

(4) The date of the triggering event for the loss of minimum essential coverage shall be:

(a) In the case of a decertification of a QHP as set forth in 900 KAR 10:010, the date of the notice of decertification; or

(b) For all other cases, the date the qualified individual or dependent of the qualified individual loses eligibility for minimum essential coverage.

(5) Loss of minimum essential coverage shall include those circumstances described in 26 C.F.R. 54.9801-6(a)(3)(i) through (iii).

(6) Loss of minimum essential coverage shall not include termination or loss due to:

(a) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage; or

(b) A situation allowing for a rescission as specified in 45 C.F.R. 147.128.

(7) Except as specified in subsection (8) of this section, a qualified individual or enrollee who selects a QHP during a special enrollment period shall have an effective date of coverage of:

(a) The first day of the following month for a selection made between the first and the fifteenth day of any month; or

(b) The first day of the second following month for a selection made between the sixteenth and last day of any month.

(8) A qualified individual or enrollee who selects a QHP:

(a) For a birth, adoption, or placement for an adoption, shall have an effective date of coverage of the date of the birth, adoption, or placement for adoption; or

(b) For a marriage or loss of minimum essential coverage, shall have an effective date of coverage of the first day of the month following the marriage or loss of minimum essential coverage.

(9) An individual described in subsection (2)(g) of this section:

(a) May access a special enrollment period sixty (60) days prior to the end of the individual's qualifying coverage in the employer-sponsored plan; and

(b) Who accesses a special enrollment as set forth in paragraph (a) of this subsection shall not be eligible for APTCs until the end of the individual's qualifying coverage through the eligible employer-sponsored plan.

Section 8. Eligibility Redetermination During a Benefit Year. (1) Eligibility shall be redetermined for an enrollee during a benefit year if the KHBE receives and verifies:

- (a) New information reported by an enrollee; or
- (b) Updated information obtained in accordance with 45 C.F.R. 155.315(b)(1) and 45 C.F.R. 155.320(b) that identifies a:

- 1. Death; or
- 2. For an enrollee who is receiving APTCs or CSRs, a change in eligibility for a public insurance program.

(2) Except as specified in subsection (3) of this section, an enrollee or an application filer, on behalf of an enrollee, shall report within thirty (30) days:

- (a) A change related to an eligibility standard in Section 2, 3, 4, 10, or 11 of this administrative regulation; and
- (b) Via a method described in Section 2(5) of this administrative regulation.

(3) An enrollee who did not request an eligibility determination for an insurance affordability program shall not report a change related to income.

(4) If new information provided by an enrollee in accordance with subsection (1)(a) of this section is verified:

(a) Eligibility shall be redetermined in accordance with the standards in Section 2, 3, 4, 10, or 11 of this administrative regulation;

(b) The enrollee shall be notified of the redetermination in accordance with the requirements in 45 C.F.R. 155.310(g); and

(c) If applicable, the enrollee's employer shall be notified in accordance with the requirement specified in 45 C.F.R. 155.310(h).

(5) If updated information obtained in accordance with subsection (1)(b) of this section regarding death or related to eligibility not regarding income, family size, or family composition is identified, an enrollee shall:

- (a) Be notified by the KHBE of:
 - 1. The updated information; and
 - 2. The projected enrollee's eligibility determination after consideration of the information; and
- (b) Have thirty (30) days from the date of the notice in paragraph (a) of this subsection to notify the KHBE if the information is inaccurate.

(6) If an enrollee responds to the notice in subsection (4)(a) of this section, contesting the updated information in the notice, the KHBE shall proceed in accordance with 45 C.F.R. 155.315(f).

(7) If an enrollee does not respond to the notice in subsection (4)(a) of this section within the thirty (30) day timeframe specified in subsection (4)(b) of this section, the KHBE shall:

- (a) Redetermine eligibility in accordance with the standard in Section 2, 3, 4, 10, or 11 of this administrative regulation; and
- (b) Notify the enrollee regarding the determination in accordance with the requirements specified in 45 C.F.R. 155.310(g).

(8) With the exception of information regarding death, if updated information regarding income, family size, or family composition is identified, an enrollee shall:

- (a) Be notified by the KHBE of:
 - 1. The updated information regarding income, family size, and family composition obtained in accordance with subsection (1)(b) of this section; and
 - 2. The projected eligibility determination after consideration of the information; and
- (b) Have thirty (30) days from the date of the notice to:
 - 1. Confirm the updated information; or
 - 2. Provide additional information.

(9) If the enrollee responds to the notice in subsection (8)(a) of this section by confirming the updated information, the KHBE shall:

- (a) Redetermine the enrollee's eligibility in accordance with Section 2, 3, 4, 9, or 10 of this administrative regulation; and
- (b) Notify the enrollee regarding the determination in accordance with the requirements specified in 45 C.F.R. 155.310(g).

(10) If the enrollee does not respond to the notice in subsection (8)(a) of this section within the thirty (30) day timeframe specified in subsection (8)(b) of the section, the KHBE shall maintain the enrollee's existing eligibility determination without considering the updated information in subsection (8)(a) of this section.

(11) If the enrollee responds with more updated information, the KHBE shall verify the updated information in accordance with

45 C.F.R. 155.315 and 155.320.

(12) The effective date of a change resulting from a redetermination pursuant to this section shall be in accordance with 45 C.F.R. 155.330(f).

(13) The amount of an APTC or eligibility for a cost-sharing reduction as a result of an eligibility redetermination in accordance with this section shall be recalculated in accordance with 45 C.F.R. 155.330(g).

Section 9. Annual Eligibility Redetermination. (1) A qualified individual shall:

- (a) Have an annual redetermination of eligibility; and
- (b) Be sent a notice of the annual redetermination that includes:

- 1. The data obtained under subsection (2) of this section;
- 2. The data used in the qualified individual's most recent eligibility determination; and

3. The projected eligibility determination for the following year, after considering the information in subparagraph 1. of this paragraph.

(2)(a) A qualified individual requesting an eligibility determination for an insurance affordability program shall authorize the release of updated tax return information, data regarding Social Security benefits, and data regarding MAGI-based incomes as described in 45 C.F.R. 155.320(c)(1) for use in the qualified individual's eligibility redetermination.

(b) Eligibility shall not be redetermined for a qualified individual requesting an eligibility determination for an insurance affordability program who does not authorize the release of updated tax return information.

(3) A qualified individual may authorize the release of tax return information for a period of no more than five (5) years based on a single authorization, provided the authorization permits the qualified individual to:

- (a) 1. Decline to authorize the release of updated tax return information; or
- 2. Authorize the release of updated tax return information for fewer than five (5) years; and

(b) Discontinue, change, or renew the authorization at any time.

(4) A qualified individual, an application filer, or an authorized representative, on behalf of the enrollee, shall:

(a) Report any changes with respect to the information listed in the notice described in subsection (1)(b) of this section:

- 1. Within thirty (30) days from the date of the notice; and
- 2. Via a method listed in Section 2(5) of this administrative regulation; and

(b) Sign and return the notice described in subsection (1)(b) of this section within thirty (30) days of the date of the notice.

(5) Any information reported by a qualified individual under subsection (4) of this section shall be verified as set forth in Section 5 of this administrative regulation.

(6) For a qualified individual who fails to sign and return the notice described in subsection (1)(b) of this section within the thirty (30) day period specified in subsection (4) of this section, eligibility shall be redetermined as set forth in subsection (7)(a) of this section.

(7)(a) After the thirty (30) day period specified in subsection (4) of this section:

1. Eligibility of a qualified individual shall be redetermined in accordance with the standards in Section 2, 3, 4, 10, or 11 of this administrative regulation using the information provided in the notice, as supplemented with any information reported by the qualified individual verified in accordance with Section 5 of this administrative regulation;

2. The qualified individual shall be notified in accordance with the requirements in 45 C.F.R. 155.310(g); and

3. If applicable, the qualified individual's employer shall be notified in accordance with 45 C.F.R. 155.310(h).

(b) If a qualified individual reports a change with respect to the information provided in the notice specified in subsection (1)(b) of this section that has not been verified by the KHBE as of the end of the thirty (30) day period specified in subsection (4) of this section, eligibility shall be redetermined after verification in accordance with

Section 5 of this administrative regulation.

(8) The effective date of a redetermination in accordance with this section shall be the later of:

(a) The first day of the coverage year following the year in which the notice in subsection (1)(b) of this section is issued to the qualified individual; or

(b) In accordance with 45 C.F.R. 155.330(f).

(9) If an enrollee remains eligible for coverage in a QHP upon annual redetermination, the enrollee shall remain in the QHP selected the previous year unless the enrollee terminates coverage from the QHP in accordance with Section 13 of this administrative regulation.

(10) Eligibility shall not be redetermined if a qualified individual was redetermined eligible in accordance with this section during the prior year, and the qualified individual was not enrolled in a QHP at the time of the redetermination and has not enrolled in a QHP since the redetermination.

Section 10. Eligibility to Enroll in a QHP that is a Catastrophic Plan. (1) In addition to the requirements in Section 2 of this administrative regulation, to enroll in a QHP that is a catastrophic plan, an applicant shall:

(a) Not have attained the age of thirty (30) before the beginning of the plan year; or

(b) Have a certificate of exemption from the shared responsibility payment issued by the KHBE or HHS for a plan year in accordance with:

1. 26 U.S.C. 5000A(e)(1); or

2. 26 U.S.C. 5000A(e)(5).

(2) Verification related to eligibility for enrollment in a QHP that is a catastrophic plan shall be in accordance with 45 C.F.R. 155.315(j).

Section 11. Special Eligibility Standards and Processes for Indians. (1) An applicant who is an Indian shall be eligible for the special cost-sharing described in section 1402(d)(2) of the ACA if the applicant:

(a) Meets the requirements specified in 45 C.F.R. 155.305(a) and (f);

(b) Is expected to have a household income that does not exceed 300 percent of the FPL for the benefit year for which coverage is requested; and

(c) Enrolls in a QHP through the KHBE.

(2) An applicant who is an Indian shall have an eligibility determination for the special cost-sharing described in section 1402(d)(2) of the ACA without requesting an eligibility determination for an insurance affordability program.

Section 12. Eligibility Determination and Notification Standards.

(1) Eligibility shall be determined in accordance with 45 C.F.R. 155.310(e).

(2) Notifications regarding eligibility determinations shall be made in accordance with 45 C.F.R. 155.310(g).

Section 13. Termination of Coverage. (1) An enrollee, including an enrollee who has obtained other minimum essential coverage, may terminate coverage in a QHP by submitting a request:

(a) Via the KHBE Web site at www.kynect.ky.gov;

(b) By telephone by contacting the KHBE contact center at 1-800-459-6328;

(c) To the QHP issuer;

(d) By mail; or

(e) In person.

(2) At the time of QHP selection, an enrollee in a QHP may choose to remain in a QHP if the enrollee:

(a) Has been identified as eligible for other minimum essential coverage through the data matching described in 45 C.F.R. 155.330(d); and

(b) Does not request termination in accordance with subsection (1) of this section.

(3) The last day of coverage of an enrollee who terminates coverage in accordance with subsection (1) of this section shall be:

(a) The termination date requested by the enrollee if the enrollee provides reasonable notice in accordance with subsection (7)

of this section;

(b) Fourteen (14) days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice in accordance with subsection (7) of this section;

(c) A date determined by the issuer of an enrollee's QHP if the issuer is able to terminate coverage in fewer than fourteen (14) days and the enrollee requests an earlier termination effective date; or

(d) If the enrollee is newly eligible for Medicaid or KCHIP, the day before coverage in Medicaid or KCHIP begins.

(4) An enrollee's health coverage shall be terminated by an issuer if:

(a) The enrollee is no longer eligible for coverage in a QHP through the KHBE;

(b)1. The enrollee has failed to pay a premium; and

2.a. A three (3) month grace period required for an individual receiving an APTC has been exhausted as described in 45 C.F.R. 156.270(g); or

b. A thirty (30) day grace period required by KRS 304.17A-243 for an individual not receiving an APTC has been exhausted;

(c) The enrollee's coverage is rescinded in accordance with 45 C.F.R. 147.128 or KRS 304.14-110;

(d) The enrollee is enrolled in a QHP that:

1. Has been decertified pursuant to 900 KAR 10:010; or

2. Has withdrawn from participation in the KHBE; or

(e) The enrollee changes from one (1) QHP to another during an open enrollment period or special enrollment period in accordance with Section 6 or 7 of this administrative regulation.

(5) The last day of coverage of an enrollee shall be:

(a) If terminated in accordance with subsection (4)(a) of this section, the last day of the month following the month in which the notice described in subsection (7) of this section is sent by KHBE, unless the enrollee requests an earlier termination date in accordance with subsection (3) of this section;

(b) If terminated in accordance with subsection (4)(b)2.a. of this section, the last day of the first month of the three (3) month grace period; or

(c) If terminated in accordance with subsection (4)(b)2.b. of this section, in accordance with KRS 304.17A-245.

(6) For an enrollee who is terminated in accordance with subsection (4)(e) of this section, the last day of coverage in an enrollee's prior QHP shall be the day before the effective date of coverage in the enrollee's new QHP.

(7) Reasonable notice shall be fourteen (14) calendar days from the requested date of termination of coverage.

Section 14. Authorized Representative. (1) An individual or employee may designate an individual or organization as an authorized representative:

(a) 1. At the time of application; or

2. At another time chosen by the individual or employee;

(b) Through a method described in 45 C.F.R. 155.405(c)(2);

(c) In writing with a signature or other legally binding format; and

(d) Through a method described in Section 2(5) of this administrative regulation.

(2) An authorized representative shall comply with state and federal laws regarding:

(a) Conflict of interest; and

(b) Confidentiality of information.

(3) An applicant may authorize a representative to:

(a) Sign an application on behalf of the applicant;

(b) Submit an update or respond to a redetermination of eligibility for the applicant in accordance with Section 8 or 9 of this administrative regulation;

(c) Receive a copy of a notice or communication from the KHBE;

(d) Make an appeal request on behalf of an appellant; and

(e) Act on behalf of the individual or employee in a matter with the KHBE.

(4) An authorized representative shall be valid until:

(a) An applicant or employee:

1. Changes the authorization; or

2. Notifies the KHBE and the authorized representative,

through a method described in 45 C.F.R. 155.405(c), that the authorized representative is no longer authorized to act on behalf of the individual or employee; or

(b) The authorized representative informs the KHBE and the individual or employee that the authorized representative is no longer acting as the authorized representative.

Section 15. Appeals. (1) An applicant, a qualified individual, or an enrollee shall have the right to appeal an adverse determination.

(2) An applicant shall have the right to appeal an exemption of the shared responsibility payment.

(3) An applicant, qualified individual, or enrollee shall have the right to appeal an eligibility determination for Medicaid or KCHIP in accordance with 907 KAR 1:560.

(4) An employer shall have the right to appeal a determination of an employee's eligibility for APTC or CSR.

Section 16. Incorporation by Reference. (1) "Kentucky QHP/APTC Eligibility Verification Plan", June 2013, is incorporated by reference.

(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 12, 2013

FILED WITH LRC: August 22, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2013, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until October 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market 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.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so the Kentucky Health Benefit may timely determine eligibility and facilitate enrollment in qualified health plans. Eligibility determination and enrollment in qualified health plans is necessary for the provision of health care services provided in the Commonwealth through the Exchange. Additionally, individuals must enroll through the Exchange for the purchase of health insurance to receive advanced payments of the premium tax credit and cost sharing deductions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is neces-

sary so that individuals are aware of the eligibility and enrollment requirements to participate in the Kentucky Health Benefit Exchange.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for enrollment and eligibility on the Kentucky Health Benefit Exchange.

2. If 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 300,000 individuals that may apply for health insurance in a qualified health 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 make an application for a qualified health plan in the individual market offered on the Exchange. An application may be submitted via the KHBE website, by telephone, by mail, or in person.

(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 an individual or small employer that wishes to make an application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual as individuals that enroll in a qualified health plan through the Exchange may be able to receive advanced payments of the premium tax credit and cost sharing deductions for the purchase of health insurance.

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 eligibility and enrollment in a qualified health plan in the individual market 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.

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 establish eligibility and enrollment criteria for individuals wishing to enroll in qualified health plans offered on the Exchange.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111[250.081(1)(c)8]

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)8 requires the director to establish charges for tags purchased. To prescribe types of seed tags and prices of each different tag type which is available for purchase from the director. This administrative regulation satisfies that statutory mandate by establishing those charges.

Section 1. Tags may be obtained from the Division of Regulatory Services, College of Agriculture, University of Kentucky. Charges shall be as indicated below:

Bag Weight	Charge (dollars)
1 pound to 25 pounds	0.08
Greater than 25 pounds to 100 pounds	0.12

[Form]	[Kind of Seed]	[Maximum Bag Weight]	[Charge (dollars)]
[A]	[Alfalfa, clovers and grasses, except mixtures]	[25 pound]	[0.08]
[A]	[“]	[50 pound]	[0.16]
[A]	[“]	[75 pound]	[0.20]
[A]	[“]	[100 pounds]	[0.24]
[B]	[All other seed except mixtures]	[25 pound]	[0.04]
[B]	[“]	[50 pound]	[0.08]
[B]	[“]	[75 pound]	[0.12]
[B]	[“]	[100 pounds]	[0.16]
[C]	[Mixtures]	[25 pound]	[0.08]
[C]	[“]	[50 pound]	[0.16]
[C]	[“]	[75 pound]	[0.20]
[C]	[“]	[100 pounds]	[0.24]

Section 2. If tags are purchased for containers weighing over 100 pounds or for seed in bulk, the number of tags purchased shall be identical to the number which would have been purchased if the seed had been in 100-pound containers.

Section 3. The following information shall be provided to the Division of Regulatory Services in order to purchase tags:

- (1) Lot;
- (2) Seedsman;
- (3) Address;
- (4) Kind;
- (5) Variety;
- (6) Pure Seed;
- (7) Inert Matter;
- (8) Crop Seed;
- (9) Weed Seed;
- (10) Germination;
- (11) Hard Seed;
- (12) Date of Test;
- (13) Weight; and
- (14) Origin.

Tags are of two (2) types: unprinted and printed. Unprinted tags are completely blank, whereas printed tags contain the words "Lot," "Seedsman," "Address," "Kind," "Variety," "Pure

Seed," "Inert Matter," "Crop Seed," "Weed Seed," "Germination," "Hard Seed," "Date of Test," and "Where Grown" with blank underlined spaces for entry by the tag purchaser of information which applies to the seed being labeled].

DR. NANCY M. COX, Director

APPROVED BY AGENCY: June 12, 2013

FILED WITH LRC: June 13, 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.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2013)

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-64-01e], "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-65-01d], "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 Section 1 of this administrative regulation shall:

(a)[the provisions of this subsection shall] Submit quarterly reports on:

1. Form RS-65-02c, until January 1, 2014; or
2. Form RS-63-01, beginning January 1, 2014; and

(b)[and] Pay a labeling and inspection fee determined on the basis of quantity of seed sold and on the fee schedule established in Section 3 of this administrative regulation[herein].

(2) Quarters shall be from[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.

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Section 3. **Labeling and Inspection Fee. (1) Until January 1, 2014, the labeling and inspection fee for agricultural seed permit holders shall be:**

(a) For packages weighing one (1) pound and up to and including twenty-five (25) pounds:

1. Alfalfa, clovers, and grasses (including mixtures): eight (8) cents per package; and

2. All other seed: four (4) cents per package;

(b) For packages in excess of twenty-five (25) pounds in weight but not exceeding fifty (50) pounds:

1. Alfalfa, clovers, and grasses (including mixtures): sixteen (16) cents per package; and

2. All other seed: eight (8) cents per package;

(c) For packages in excess of fifty (50) pounds in weight but not exceeding seventy-five (75) pounds:

1. Alfalfa, clovers, and grasses (including mixtures): twenty (20) cents per package; and

2. All other seed: twelve (12) cents per package;

(d) For packages in excess of seventy-five (75) pounds in weight but not exceeding 100 pounds:

1. Alfalfa, clovers, and grasses (including mixtures): twenty-four (24) cents per package; and

2. All other seed: sixteen (16) cents per package;

(e) For packages in excess of 100 pounds and seed distributed in bulk:

1. Alfalfa, clovers, and grasses (including mixtures): twenty-four (24) cents per 100 pounds; and

2. All other seed: sixteen (16) cents per 100 pounds.

(2) Beginning January 1, 2014, the labeling and inspection fee for agricultural seed permit holders shall be:

(a)[(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; [.]

(b)[(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.

1. [(a)] A unit of corn shall be [is] 80,000 seeds.

2. [(b)] A unit of soybeans shall be [is] 140,000 seeds; and (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; [.]

(c)[(3)] [(5)] For packages in excess of 100 pounds and seed distributed in bulk:

1. [(a)] Alfalfa, clovers, and grasses (including mixtures): Twenty-four (24) cents per 100 pounds; or [.]

2. [(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 **Sold in Kentucky**", RS-68-02, 6/13 [(RS-65-04e)];

(c) "Seed Quarterly Report", RS-65-02c; and

(d)[(e)] "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: June 12, 2013

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

CONTACT PERSON: Stephen McMurtry, 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.

AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111 [250.081(1)(c)9]

STATUTORY AUTHORITY: KRS **250.051(2), (3), (4), 250.081(1)(c)9 [250.081]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.051(2) and (3) and 250.081(1)(c)9 require [250.081 requires] the director to prescribe the procedures whereby agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners register with the director [Division of Regulatory Services]. This administrative regulation satisfies that statutory mandate by creating a framework for registration.

Section 1. **Definition. "Agricultural seed dealer" means a person who distributes [Agricultural seed dealers (persons who distribute)]** agricultural seed in containers of forty (40) pounds or more at retail.

Section 2. Agricultural seed dealers [.] shall register using Form RS-68-03 (6/13) [RS-65-03a], [.] [Agricultural Seed Dealer Registration. In accordance with KRS 250.051(4), [.] a twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section **3[2]**. Noncertified custom seed conditioners shall register using Form RS-68-04 (6/13) [RS-65-03e], [.] [Noncertified Custom Seed Conditioner Registration. In accordance with KRS 250.051(4), [.] a twenty-five (25) dollar registration fee shall accompany the submitted application form.

Section **4[3]**. Registration of certified seed growers and certified seed conditioners shall be accomplished by an exchange of records between the Kentucky Seed Improvement Association and the Division of Regulatory Services.

Section **5[4]**. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form RS-68-03, 6/13 [RS-65-03a], "Agricultural Seed Dealer Registration [.]"; and

(b) Form RS-68-04, 6/13 [RS-65-03e], "Noncertified Custom Seed Conditioner Registration."

(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: June 12, 2013

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CONTACT PERSON: Stephen McMurtry, Director of Fertilizer and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone

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(859) 257-2785, fax (859) 257-7351.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2013)

12 KAR 1:150. Stop sale orders.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111 [250.081(1)(c)5]

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(2)(d) authorizes the director to issue and enforce a stop sale order for seed in violation of KRS 250.021 to 250.111 or 12 KAR Chapter 1. This administrative regulation establishes procedures to obtain the release of a stop sale order[250.081 requires the director to provide a means of taking administrative action in the form of a "Stop Sale Order" on seed found by analysis, test, examination, or representation to be in violation of the Kentucky Seed Law. This administrative regulation satisfies that statutory mandate].

Section 1. A stop sale order shall be released if:

(1) The deficiencies for which the stop sale order was issued have been corrected; and

(2) The person who was issued the stop sale order makes a request:

(a) In writing; or

(b) By phone and follows it with a written request[A written or verbal (followed by a written) stop sale order may be issued on any lot of seed found by analysis, test or examination, or upon examination of the label or other graphic or printed representations, or any lot which the director has reasonable cause to believe is in violation of the Kentucky Seed Law and administrative regulations pertaining thereto. Seed under a stop sale order shall not be sold, exposed or offered for sale and shall not be moved from the point where the stop sale order was issued until requirements of the Kentucky Seed Law and administrative regulations have been met and a release has been issued by the director.]

Section 2. Conditions for release shall be:

(1) Correction of the deficiencies for which the stop sale order was issued; and

(2) A request in writing or by phone (followed by written request) by the person to whom the stop sale order was issued.[Section 3. Incorporation by Reference:

(1) The following material is incorporated by reference: "Notice of violation and stop sale" (RS-30-5c).

(2) This document may be inspected, obtained, or copied at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, 8 a.m. to 4:30 p.m., Monday through Friday.]

DR. NANCY M. COX, Director

APPROVED BY AGENCY: June 12, 2013

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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.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 250.021 to 250.111[250.081(1)(c)6]

STATUTORY AUTHORITY: KRS 250.081(1)(c)6[250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)6 requires the director of the Agricultural Experiment

Station to promulgate administrative regulations establishing charges for tests of samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory for testing. This administrative regulation establishes[To establish] a schedule of charges for service tests, analysis, and examination of seed samples in the Kentucky Agricultural Experiment Station Seed Laboratory.

Section 1. Except as provided by KRS 250.091 which authorizes one (1) free test per year, the [following] service charges established in this section shall be assessed for samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory.

(1) Until January 1, 2014, the charges established in this subsection shall apply.

(a) Basic charge list:

<u>Kind of Seed</u>	<u>Complete Test</u>	<u>Purity and Noxious Weed Test</u>	<u>Germination Only</u>
<u>Alfalfa</u>	<u>\$14.00</u>	<u>\$ 7.00</u>	<u>\$ 8.00</u>
<u>Bentgrass</u>	<u>16.00</u>	<u>12.00</u>	<u>8.00</u>
<u>Bermudagrass</u>	<u>16.00</u>	<u>12.00</u>	<u>8.00</u>
<u>Bluegrass</u>	<u>16.00</u>	<u>12.00</u>	<u>10.00</u>
<u>Bromegrass</u>	<u>16.00</u>	<u>12.00</u>	<u>8.00</u>
<u>Cereals</u>	<u>11.00</u>	<u>5.00</u>	<u>7.00</u>
<u>Clovers</u>	<u>14.00</u>	<u>7.00</u>	<u>8.00</u>
<u>Corn</u>	<u>14.00</u>	<u>7.00</u>	<u>8.00</u>
<u>Crownvetch</u>	<u>14.00</u>	<u>7.00</u>	<u>8.00</u>
<u>Fescue</u>	<u>15.00</u>	<u>8.00</u>	<u>8.00</u>
<u>Lespedeza</u>	<u>14.00</u>	<u>8.00</u>	<u>7.00</u>
<u>Lovegrass</u>	<u>16.00</u>	<u>12.00</u>	<u>8.00</u>
<u>Millet</u>	<u>11.00</u>	<u>5.00</u>	<u>7.00</u>
<u>Orchardgrass</u>	<u>18.00</u>	<u>11.00</u>	<u>8.00</u>
<u>Redtop</u>	<u>16.00</u>	<u>12.00</u>	<u>8.00</u>
<u>Ryegrass</u>	<u>18.00</u>	<u>6.00</u>	<u>8.00</u>
<u>Sorghum-Sudangrass</u>	<u>11.00</u>	<u>5.00</u>	<u>7.00</u>
<u>Soybean</u>	<u>12.00</u>	<u>6.00</u>	<u>7.00</u>
<u>Sudangrass</u>	<u>11.00</u>	<u>5.00</u>	<u>7.00</u>
<u>Timothy</u>	<u>14.00</u>	<u>7.00</u>	<u>8.00</u>
<u>Tobacco</u>	<u>16.00</u>	<u>12.00</u>	<u>8.00</u>
<u>Vegetables</u>	<u>14.00</u>	<u>10.00</u>	<u>7.00</u>
<u>Vetch</u>	<u>11.00</u>	<u>5.00</u>	<u>7.00</u>

(b) Nonresidents shall be assessed an additional charge of two (2) dollars per sample.

(c) A complete test shall include a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.

(d) A purity and noxious weed test shall include a purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(e) In ryegrass samples, a complete test shall include a fluorescence test which distinguishes perennial ryegrass seed and annual ryegrass seed.

(f) Mixtures, difficult, or dirty samples may be charged an additional eight (8) dollars per hour for extra separation time. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(g) Rush service may be provided upon request at an additional charge of fifteen (15) dollars per sample.

(h) The schedule of charges for special tests shall be:

1. Noxious weed seed examination for Kentucky only: eight (8) dollars;

2. Noxious weed seed examination for any other or for all states: ten (10) dollars;

3. Moisture test: four (4) dollars;

4. Seed count per pound: four (4) dollars;

5. Soybean hypocotyl color test: twelve (12) dollars;

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- 6. Vigor test (accelerated aging): nine (9) dollars;**
7. Tetrazolium test: twelve (12) dollars;
8. Phenol test of wheat: twelve (12) dollars;
9. Peroxidase test of soybeans: twelve (12) dollars;
10. Seed or plant tall fescue endophyte:
a. One (1) to fifty (50) specimens of same seed lot or uniquely identified group of plants: thirty-five (35) dollars;
b. Fifty-one (51) to 100 specimens of same seed lot or uniquely identified group of plants: sixty (60) dollars; and
c. 101 to 150 specimens of same seed lot or uniquely identified group of plants: eighty-five (85) dollars; and

11. Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, KRS 250.021 to 250.111 and 12 KAR Chapter 1, shall be assessed eight (8) dollars per hour for analytical time.

(i) Charges for kinds not listed in this subsection shall be in accord with charges made for other kinds of seed of similar size.

(2) Beginning January 1, 2014, the charges established in this subsection shall apply.

(a) Basic charge list:—

Kind of Seed	Complete Test	Purity and Noxious Weed Seed Test	Germination Only
Group 1 Corn and soybeans	\$18.00	\$9.00	\$11.00
Group 2 Small grains	\$14.00	\$7.00	\$9.00
Group 3 Tobacco	\$21.00	\$16.00	\$11.00
Group 4 Clovers, alfalfa, and lespedezas	\$18.00	\$9.00	\$11.00
Group 5 Lawn and forage grasses	\$20.00	\$14.00	\$12.00
Group 6 Native grasses, flowers, and forbs	\$40.00	\$30.00	\$30.00
Group 7 Vegetables	\$18.00	\$13.00	\$12.00
Group 8 Ornamentals (trees, shrubs, and flowers) and herbs	\$30.00	\$18.00	\$20.00

[Kind of Seed]	Complete Test	Purity and Noxious Weed Test	Germination Only
Alfalfa	\$14.00	\$ 7.00	\$ 8.00
Bentgrass	16.00	12.00	8.00
Bermudagrass	16.00	12.00	8.00
Bluegrass	16.00	12.00	10.00
Bromegrass	16.00	12.00	8.00
Cereals	11.00	5.00	7.00
Clovers	14.00	7.00	8.00
Corn	14.00	7.00	8.00
Crownvetch	14.00	7.00	8.00
Fescue	15.00	8.00	8.00
Lespedeza	14.00	8.00	7.00
Lovegrass	16.00	12.00	8.00
Millet	11.00	5.00	7.00
Orchardgrass	18.00	11.00	8.00

Redtop	16.00	12.00	8.00
Ryegrass	18.00	6.00	8.00
Sorghum-Sudangrass	11.00	5.00	7.00
Soybean	12.00	6.00	7.00
Sudangrass	11.00	5.00	7.00
Timothy	14.00	7.00	8.00
Tobacco	16.00	12.00	8.00
Vegetables	14.00	10.00	7.00
Vetch	11.00	5.00	7.00

(b)(2) Nonresidents shall[will] be assessed an additional charge of fifteen (15)[two-(2)] dollars per sample. **[A][Any] [Kentucky citizen may submit one (1) seed sample per year for a complete test free of charge if][provided] [the sample is accompanied by the following][a] [signed statement: "I certify that I have not previously submitted a sample for free test during the current calendar year."]**

(c)(3) A complete test shall include[includes] a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.

(d)(4) A purity and noxious weed test shall include[includes] a purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(e)(5) In ryegrass samples, a complete test shall be assessed a charge of twenty-five (25) dollars and shall include[includes] a fluorescence test which distinguishes perennial ryegrass seed and annual ryegrass seed.

(f)(6) Mixtures, difficult, or dirty samples may be charged an additional forty (40)[eight-(8)] dollars per hour for extra separation time. [Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.]

(g)(7) Mixtures submitted for germination testing shall[may] be charged a fifteen (15) dollar separation fee. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(h)(8) Rush service may be provided upon request at an additional charge of twenty-five (25)[fifteen-(15)] dollars per sample.

(i)(9) Samples of coated, encrusted, pelleted, film-coated, or treated seed shall[may] be charged an additional ten (10) dollars for hand washing and disposal of toxic substances.

(j) The[(10)](8) schedule of charges for special tests shall be:

1. [(a)] Noxious weed seed examinations:

a. [(1)] Kentucky only: ten (10) dollars;

b. [(2)] Other states: fifteen (15) dollars per state; and

c. [(3)] All states: fifty (50) dollars;

2. [(b)] Moisture test: eight (8) dollars;

3. [(c)] Seed count per pound: ten (10) dollars;

4. [(d)] Varietal identification:

a. [(1)] Soybean hypocotyl color test: fifteen (15) dollars;

b. [(2)] Phenol test of wheat: eighteen (18) dollars; and

c. [(3)] Peroxidase test of soybean: eighteen (18) dollars;

5. [(e)] Vigor tests:

a. [(1)] Accelerated aging: eighteen (18) dollars;

b. [(2)] Cold test: eighteen (18) dollars; and

c. [(3)] Conductivity: eighteen (18) dollars;

6. [(f)] Tetrazolium test:

a. [(1)] Groups 1 and 2: eighteen (18) dollars;

b. [(2)] Groups 4, 5, and 7: thirty (30) dollars; and

c. [(3)] Groups 3, 6, and 8: forty (40) dollars;

7. [(g)] Seed or plant tall fescue endophyte. One (1) to 100 specimens: \$100;

8. [(h)] Biotechnology trait identification. Herbicide bioassay: twenty-five (25) dollars; and

9. [(i)] Examination for Kentucky only: eight (8) dollars.

(b) Noxious weed seed examination for any other or for all states: ten (10) dollars.

(c) Moisture test: four (4) dollars.

(d) Seed count per pound: four (4) dollars.

(e) Soybean hypocotyl color test: twelve (12) dollars.

(f) Vigor test (accelerated aging): nine (9) dollars.

(g) Tetrazolium test: twelve (12) dollars.

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(h) Phenol test of wheat: twelve (12) dollars.
 (i) Peroxidase test of soybeans: twelve (12) dollars.
 (j) Seed or plant tall fescue endophyte:
 1. One (1) to fifty (50) specimens of same seed lot or uniquely identified group of plants: thirty-five (35) dollars.
 2. Fifty-one (51) to 100 specimens of same seed lot or uniquely identified group of plants: sixty (60) dollars.
 3. 101 to 150 specimens of same seed lot or uniquely identified group of plants: eighty-five (85) dollars.
 (k) Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, KRS 250.021 to 250.111 and 12 KAR Chapter 1, shall/may be assessed forty (40) [eight (8)] dollars per hour for analytical time.
(k) Testing performed in compliance with International Seed Testing Association (ISTA) rules shall be charged/(14) ISTA rules: fifteen (15) dollars in addition to test fees.
(l) Testing performed in compliance with Canadian Methods and Procedures (M & P) for Testing Seed shall be charged/(12) Canadian M & P: eighteen (18) dollars in addition to test fees.
(m)/(13)/(9) Charges for kinds not listed in this subsection/section [above] shall be in accord with charges made for other kinds of seed of similar size.

DR. NANCY M. COX, Director

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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.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2013)

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

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)9]

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)9 requires the director to prescribe administrative regulations governing topics that are necessary to secure the efficient enforcement of KRS 250.021 to 250.111. This administrative regulation establishes germination standards for vegetable seed/250.081 requires the director to prescribe standards for vegetable seed germination. This administrative regulation satisfies that statutory mandate. If germination is equal to or above the standard, only the year for which the seed was packed must be shown. If germination is below the standard, the exact germination percentage must be shown.

Section 1. Germination standards for vegetable and herb seed listed in this section shall be as follows/The following standards for the germination of the types/[kinds]/[of vegetable and herb seed listed below are hereby adopted]:

Kind	Percent
Anise	50
Artichoke	60
Asparagus	70
Asparagus Bean	75
Basil, Sweet	70
Bean, Garden	70
Bean, Lima	70
Bean, Runner	75
Beet	65
Broadbean	75
Broccoli	75
Brussel Sprouts	70
Burdock, Great	60
Cabbage	75

Cabbage, Tronchuda	70
Cantaloupe (See Muskmelon)	
Caraway	55
Cardoon	60
Carrot	55
Cauliflower	75
Celeraic	55
Celery	55
Chard, Swiss	65
Chervil, Salad	65
Chicory	65
Chinese Cabbage	75
Chives	50
Citron	65
Collards	80
Coriander	70
Corn, Pop	75
Corn, Sweet	75
Cornsalad	70
Cowpea	75
Cress, Garden	75
Cress, Upland	60
Cress, Water	40
Cucumber	80
Dandelion	60
Dill	60
Eggplant	60
Endive	70
Fennel, Florence	60
Fennel, Sweet	50
Kale	75
Kale, Chinese	75
Kale, Siberian	75
Kohlrabi	75
Leek	60
Lettuce	80
[Oregano	60]
Marjoram, Sweet	50
<u>Muskmelon</u>	<u>75</u>
Mustard	75
Mustard, Spinach	75
Okra	50
Onion	70
Onion, Welsh	70
Oregano	60
Pak-Choi	75
Parsley	60
Parsnip	60
Pea	80
Peanut	60
Pepper	55
Pumpkin	75
Radish	75
Rhubarb	60
Roquette	60
Rosemary	30
Rutabaga	75
Sage	60
Salsify	75
Savory, Summer	55
Sorrel	65
Soybean	75
Spinach	60
Spinach, New Zealand	40
Squash	75
Thyme	50
Tomato	75
Tomato, Husk	50
Turnip	80
Watermelon	70

Section 2. The germination standard for all other vegetable and herb seed for which standards have not been established in Section 1 of this administrative regulation shall be fifty (50) percent.

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DR. NANCY M. COX, Director

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OFFICE OF KENTUCKY SECRETARY OF STATE
(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS Chapter 355.9[Article-9]

STATUTORY AUTHORITY: KRS 355.9-526(1)

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

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

(2) "Address" means either:

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

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

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

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

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

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

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

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

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

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

(8) "Organization" is defined by KRS 355.1-204(28).

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

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

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

(12)[- and

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

(40)] "UCC" means the Uniform Commercial Code as adopted

in this state.

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

(14)[(44)] "UCC record" means:

(a) An initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement, or an information[a correction] statement;[.] and

(b) **A record of these statements[includes a record thereof]** maintained by the filing office, without being limited[shall not be deemed to refer exclusively] to paper or paper-based writings.

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

ALISON LUNDERGAN GRIMES, Secretary of State

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OFFICE OF KENTUCKY SECRETARY OF STATE
(As Amended at ARRS, September 11, 2013)

30 KAR 5:020. General provisions.

RELATES TO: KRS Chapter 355.9[Article-9]

STATUTORY AUTHORITY: KRS 355.9-526(1)

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

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

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

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

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

(b)[(2)] Courier delivery by a person other than a remitter, at the filing office's street address. **[.]** The file time for a UCC record delivered by this method shall be:

1. Regardless of, notwithstanding the time of delivery, at the earlier of the time:

a. The UCC record is first examined by a filing officer for processing,[the next close of business following the time of delivery] **[(f)]** even though the UCC record **has[may]** not[**yet have**] been accepted for filing and may be subsequently rejected;[**)]** or

b. The next close of business following the time of delivery; **or[-]**

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

(c)[(3)] Postal service delivery, to the filing office's mailing address. **[.]** The file time for a UCC record delivered by this method shall be:

1. The next close of business following the time of delivery, **[(f)]**even though the UCC record **has[may]** not[**yet have**] been accepted for filing and may be subsequently rejected; **or[-]**

2. **For** a UCC record delivered after regular business hours or on a day the filing office is not open for business, **[shall have a**

filing time of the close of business on the next business day [the filing office is open for business].

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

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

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

(e) Through direct on-line and Web page data entry. The following requirements shall apply:

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

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

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

(a) Organization and individual names; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Checks. Personal checks, cashier's checks, and money orders made payable to the Kentucky State Treasurer may[~~shall~~] be accepted for payment, unless the check is not honored[~~if the drawer, or the issuer if it is a cashier's check or money order, is deemed creditworthy by the filing office in its discre-~~

tion];[if they are drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.]

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

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

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

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

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

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

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

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

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

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

(a) Paper; or

(b) JPG files via the web.

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

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

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

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

1. CD-ROM; or

2. FTP file transfer.

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State, UCC Branch, 700 Capital Avenue, State Capitol, Suite 152[363C Versailles Road], Frankfort, Kentucky 40601, Monday through Friday,

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8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State

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CONTACT PERSON: Noel Caldwell, 700 Capital Avenue,
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OFFICE OF KENTUCKY SECRETARY OF STATE (As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS Chapter 355.9-515, 355.9-516, 355.9-520
STATUTORY AUTHORITY: KRS 355.9-526(1)

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

Section 1. Role of Filing Officer. The duties and responsibilities of the filing officer with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record pursuant to the UCC, KRS Chapter 355, and 30 KAR Chapter 5, the filing officer shall not:

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

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

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

Section 2. Time for filing a continuation statement[Timeliness of Continuation]. (1) First day permitted.

(a) A continuation statement may first be filed:

1. Six (6) months preceding the month in which the financing statement would lapse; and

2.a. On the date that corresponds with the date the financing statement would lapse; or

b. If there is no corresponding date, on the last day of the sixth month preceding the month in which the financing statement would lapse.

(b)[The first day on which a continuation statement may be filed shall be the date corresponding to the date upon which the related financing statement would lapse, six (6) months preceding the month in which the financing statement would lapse. If there is no corresponding date, the first day][date][on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse.] The foregoing rule shall be subject to the ability of the filing office to take delivery of the continuation statement as tendered and pursuant to 30 KAR 5:020.

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

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

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

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

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

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

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

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

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

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

ALISON LUNDERGAN GRIMES, Secretary of State

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OFFICE OF KENTUCKY SECRETARY OF STATE (As Amended at ARRS, September 11, 2013)

30 KAR 5:040. UCC Information Management System.

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

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

Section 1. General[Provisions]. The filing officer shall use[uses] an information management system to store, index, and

retrieve information relating to financing statements. The information management system shall include~~[includes]~~ an index of the names of debtors included on financing statements that are active records.~~[The requirements in this administrative regulation describe the UCC Information Management System]~~The Information Management System shall:

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

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

- (1) Identification numbers.
 - (a) Each initial financing statement shall be identified by its file number. Identification of the initial financing statement~~[, which]~~ shall be stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC Information Management System. A record shall be created in the Information Management System for each initial financing statement, and all information comprising the record shall be maintained in the system. The record shall be identified by the same information assigned to the initial financing statement.
 - (b) A UCC record other than an initial financing statement shall be identified by a unique file number assigned by the filing officer. In the UCC Information Management System, records of all UCC records other than initial financing statements shall be linked to the record of their related initial financing statement.
- (2) Type of record. The type of UCC record from which data is transferred shall be identified in the UCC Information Management System from information supplied by the remitter.
- (3) Filing date and filing time. The filing date and filing time of UCC records shall be stored in the UCC Information Management System. Calculation of the lapse date of an initial financing statement shall be based upon the filing date and in accordance with KRS 355.9-515.
- (4) Identification of parties. The names and addresses of debtors and secured parties shall be transferred from UCC records to the UCC Information Management System~~[using one (1) or more data entry or transmittal techniques]~~.
- (5) Page count. The total number of pages in a UCC record shall be~~is]~~ maintained in the UCC Information Management System~~[Status of financing statement. In the Information Management System, each financing statement shall list a status of active or inactive]~~.
- (6) Lapse indicator. An indicator shall be maintained by which the Information Management System identifies whether or not a financing statement will lapse and, if it does, when it will lapse.
- (7) Indexes of names. The filing office shall maintain~~[maintains]~~ in the UCC Information Management System a searchable index of organization debtor names~~;~~ and a searchable index of individual debtor names.
- (8) Status of financing statement. In the UCC Information Management System, each financing statement shall list a status of active or inactive.

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

- (1) Individual name fields. Individual debtor names~~[The names of individuals]~~ shall be stored in files that include only the individual debtor names~~[of individuals]~~, and not organization debtor names~~[the names of organizations]~~. Separate data entry fields shall be established for surnames (last or family names), first personal names (given), and additional names and initials~~[first (given), middle (given), and last names (surnames or family names)]~~ of individuals. [A filer shall place] The name of a debtor with a single

name (e.g., Cher) shall be treated as a surname and shall be entered in the individual surname ~~[in the last name]~~ field. The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the date in accordance with the filer's designations~~]~~shall:

- (a) Not assume responsibility for the accurate designation of the components of a name; and
- (b) Accurately enter the data in accordance with the filer's designation~~]~~.

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

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

(4) Truncation ~~off-]~~~~[of]~~ individual names. Personal name fields in the UCC Information Management System shall be fixed in length. Although filers shall continue to provide full names on their UCC records, a name that exceeds the fixed length shall be entered as presented to the filing officer, up to the maximum length of the data entry field~~]~~fields]. The lengths of data entry name fields shall be as follows:

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

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

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

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

Section 5. Collateral Being Administered by a Decedent's Personal Representative. The debtor name to be provided on a financing statement if/when the collateral is being administered by a decedent's personal representative shall be the name of the relevant decedent. In order for the UCC Information Management System to function in accordance with the usual expectations of filers and searchers, the filer shall provide the debtor name as an indi-

vidual debtor name. However, the filing office shall enter data submitted by a filer in the fields designated by the filer exactly as it appears in the fields[Estates. An estate shall be treated as if the decedent were the debtor under Section 3 of this administrative regulation].

Section 6. Collateral Held in a Trust. (1) The debtor name to be provided ~~if/when~~ the collateral is held in a trust that is not a registered organization shall be:

(a) The name of the trust as set forth in its organic record, if the trust has a name in its organic record; or

(b)/or.] If the trust is not so named, the name of the trust's settlor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding the filing of an amendment that deletes a debtor or a secured party from a financing statement, ~~a/no~~ debtor or secured party of record ~~shall not be/is~~ deleted from the UCC Information Management System.

(c) A deleted secured party shall be treated by the filing office

as a secured party of record as the filing office cannot verify the effectiveness of an amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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the status of the financing statement shall remain active.]

Section 11. Termination. ~~[(1) Status of parties.]~~ The filing of a termination statement shall have no ~~effect[affect]~~ upon the status of any party to the financing statement or upon the status of the financing statement. ~~[(2) Status of financing statement. A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active for the time period established in Section 7(3) of this administrative regulation.]~~

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

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

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

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

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

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

Section 16[44]. XML Documents. The XML format as adopted by the International Association of Corporation Administrators shall be used for electronic transmission of UCC records, except correction statements. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office.

Section 17[45]. Direct On-line (Non-XML) Data Entry Procedures. A UCC record, except correction statements, may be filed electronically by accessing the Secretary of State's Web site.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Addendum", Secretary of State, Uniform Commercial Code Branch, 04/20/11; and

(b) "Financing Form", 04/20/11["Addendum," Secretary of State, Uniform Commercial Code Branch, 07-01-2013, is incorporated by reference].

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

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

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

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

OFFICE OF KENTUCKY SECRETARY OF STATE (As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 355.9-526

STATUTORY AUTHORITY: KRS 355.9-526(1)

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

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

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

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

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

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

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

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

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

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

Section 5. Redaction of Certain Information. The filing officer shall redact certain information from the information it provides to searchers and bulk data purchasers in accordance with applicable

privacy and identity theft protection laws. ~~This[Such]~~ information shall not be included in UCC records and shall be redacted in accordance with ~~these[such]~~ laws.

ALISON LUNDERGAN GRIMES, Secretary of State
APPROVED BY AGENCY: June 27, 2013
FILED WITH LRC: June 28, 2013 at 3 p.m.
CONTACT PERSON: Noel Caldwell, 700 Capital Avenue,
State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502)
782-7804, fax (502) 564-5687.

**OFFICE OF KENTUCKY SECRETARY OF STATE
(As Amended at ARRS, September 11, 2013)**

30 KAR 5:060. Search requests and reports.

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525
STATUTORY AUTHORITY: KRS 355.9-526(1)

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

Section 1. General Requirements. The filing officer shall maintain for public inspection a searchable index of active records in the UCC Information Management System. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement. ~~Regardless of the retrieval method, the following shall be retrieved:~~

~~(1) The initial financing statement; and~~

~~(2) Each active record related to the initial financing statement, and each active record related to an initial financing statement shall be retrieved with the initial financing statement using either retrieval method]~~for all UCC records. The index shall provide for the retrieval of:

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

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

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

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

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

(3) Fee. The ~~five (5) dollar[appropriate]~~ fee shall be tendered[enclosed] if the request is in writing.

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

that certificate date and time and shall not include the current financing statement].

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

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

(a) Include a particular debtor address;

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

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

(d) Include a particular secured party name.

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

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

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

(2) Standard search logic. The ~~requirements established in this subsection shall[rules]~~ describe the filing office's standard search logic and ~~shall~~ apply to all searches ~~unless[except for those where]~~ the search request specifies that a nonstandard search logic be used.[;]

(a) There shall ~~not be a[be no]~~ limit to the number of matches that may be returned in response to the search criteria.[;]

(b) A[No] distinction shall ~~not~~ be made between upper and lower case letters.[;]

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

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

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

(f) All spaces shall be disregarded.[;]

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

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

(i) After using the requirements outlined in paragraphs (a) through (h) of this subsection to modify the name being searched, the search shall retrieve from the UCC Information Management System all unexpired records, or, if requested by the searcher, all

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active records, that pertain to financing statements with debtor names that, after being modified as provided in Section 5 of this administrative regulation, exactly match the modified name being searched. Rules Applied to Standardized Search Requests. Standardized search results shall be produced by the application of standardized search logic, without application of human judgment, to the name presented to the filing officer. The following rules shall apply to standardized searches:

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

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

(3) Punctuation marks and accents shall be disregarded.

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

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

(6) All spaces shall be disregarded.

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

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

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

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

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

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

Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that will alter search results, the filing office shall provide public notice of the[such] change.

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

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

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

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

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

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

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

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

(f) Scope of search;

(g) Search logic used;

(h) Search logic disclaimer language;

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

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

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

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

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

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

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

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

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

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

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

2. [Initial financing statement filing date and time.] The date and time ~~the initial financing statement[is]~~ was filed;

3. ~~The[Lapse date. Provide]~~ lapse date;

4. ~~[Debtor name.] The debtor name[name(s)] that ~~ap-~~ appears[appear(s)] of record;~~

5. ~~[Debtor address.] The debtor address[address(s)] that ~~appears[appear(s)] of record;~~~~

6. ~~[Secured party name.] The secured party name[name(s)] that ~~appears[appear(s)] of record;~~~~

7. ~~[Secured party address.] The secured party ~~ad-~~ dress[address(es)] that ~~appears[appear(s)] of record;~~~~

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

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

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

11. ~~[Information statement filing date and time.] The date and time a correction statement, if any, was filed; and~~

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

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: June 27, 2013

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

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, September 11, 2013)

103 KAR 2:005. Life expectancy table.

RELATES TO: KRS 140.100

STATUTORY AUTHORITY: KRS 131.130(1)[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 140.100(2) requires the application of the appropriate United States life mortality tables when ascertaining the value of[a] future, contingent, or limited estates[estate, income or interest] which includes life estates and annuities. [The purpose of] This administrative regulation establishes[is to establish] the appropriate United States life mortality table as required by KRS 140.100(2).

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Section 1. The United States Decennial Life Tables[for the period 1979-84] published by the United States Department of Health and Human Services, National Center for Health Statistics, shall be utilized when computing the value of a beneficiary's life estate, annuity, remainder interest, or any other interest in the estate which is based on the life expectancy of the beneficiary or some other person.

Section 2. **For inheritance tax purposes, the value of future, contingent, or limited estates shall be computed using** Table 1, Life Table for the Total Population: United States, 1999-2001[1979-84], as published in[Volume 4, Number 4,]United States Decennial Life Tables for 1991-2001, United States Life Tables, Vol. 57, No. 1 (Aug. 5, 2008)[1979-84], ~~shall be the appropriate table from within the various tables printed and published in the decennial life tables when computing the value of future, contingent, or limited estates]~~computed an interest as specified in Section 4 of this administrative regulation][for inheritance tax purposes].

Section 3. Incorporation by Reference. (1) "Table 1, Life Table for the Total Population: United States, 1999 - 2001, as published in United States Decennial Life Tables for 1991-2001, United States Life Tables, Vol. 57, No. 1", Aug. 5, 2008, is incorporated by reference.](1) Pursuant to Section 2 of this administrative regulation, the following table represents the average number of years remaining at the beginning of the age listed:

Age	Average Remaining Lifetime
0	73.88
1	73.82
2	72.89
3	71.93
4	70.97
5	70.00
6	69.02
7	68.05
8	67.07
9	66.08
10	65.10
11	64.11
12	63.12
13	62.14
14	61.16
15	60.19
16	59.24
17	58.28
18	57.34
19	56.40
20	55.46
21	54.53
22	53.60
23	52.67
24	51.74
25	50.81
26	49.87
27	48.94
28	48.00
29	47.06
30	46.12
31	45.18
32	44.24
33	43.30
34	42.36
35	41.43
36	40.49
37	39.56
38	38.63
39	37.71
40	36.79
41	35.87

42	34.96
43	34.06
44	33.16
45	32.27
46	31.39
47	30.51
48	29.65
49	28.79
50	27.94
51	27.10
52	26.28
53	25.46
54	24.65
55	23.85
56	23.06
57	22.29
58	21.52
59	20.76
60	20.02
61	19.29
62	18.58
63	17.88
64	17.19
65	16.51
66	15.85
67	15.20
68	14.56
69	13.93
70	13.32
71	12.72
72	12.14
73	11.58
74	11.02
75	10.48
76	9.95
77	9.44
78	8.93
79	8.45
80	7.98
81	7.53
82	7.11
83	6.70
84	6.32
85	5.96
86	5.61
87	5.29
88	4.99
89	4.70
90	4.43
91	4.17
92	3.93
93	3.71
94	3.51
95	3.34
96	3.19
97	3.05
98	2.93
99	2.82
100	2.73
101	2.64
102	2.57
103	2.50
104	2.44
105	2.38
106	2.33
107	2.29

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108	2.24
109	2.20]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 14, 2013 at 1 p.m.

Contact Person: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 131.130, 141.205

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.205 disallows intangible expenses, intangible interest expenses and management fees when those expenses and fees are directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related ~~members~~~~[member of an affiliated group]~~ or with a foreign corporation, unless certain criteria are met. This administrative regulation establishes the requirements for when these expenses and fees are allowed or disallowed.

Section 1. Definitions. (1) "Actual comparables" means transactions between the recipient and unrelated parties ~~that are identical~~~~[involving the same intangible property]~~ to the subject transaction.

(2) "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States, and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation or the withholding of tax on interest, dividends, and royalties, ~~in order to prevent~~~~for the prevention of~~ double taxation of the respective nations' residents, ~~and to promote~~~~[and]~~ the sharing of information.

(3) "Measured by, in whole or in part, net income" means that the receipt of the payment by the recipient is reported and included in income for purposes of a tax on net income or in the franchise for purposes of the franchise tax.

(4) "Reported and included in income for purposes of a tax on net income or in the franchise," means:

(a) For a tax on net income, reported and included in the net income apportioned or allocated to the taxing jurisdiction; or

(b) For a franchise tax, reported and included in the franchise apportioned or allocated to the taxing jurisdiction.

(5) "Subject transaction" means the transaction giving rise to the intangible expense, intangible interest expense, or management fee.

Section 2. Disclosure; General. As part of the required disclosure, the ~~entity~~~~[corporation]~~ shall provide a description of the nature of the payment made to the recipient. This description shall contain:

(1) For intangible expenses or intangible interest expenses:

(a) A narrative regarding the subject transaction;

(b) The extent of the rights being transferred, ~~if~~~~for~~ example, if a patent is being licensed;

~~1.~~~~[.]~~ Whether that license is exclusive or non-exclusive; ~~if~~~~and~~ ~~2.~~ Whether the transferee has any rights to sublicense ~~if~~;
(c) How the amount of the payment is calculated; and
(d) If there is a document that sets forth the terms of the subject transaction, a copy of that document; and

(2) For management fees:

(a) A narrative of the services being performed for the ~~entity~~~~[corporation]~~ by the recipient;

(b) How the amount of the payment is calculated; and

(c) If there is a document that sets forth the terms of the transaction, a copy of that document.

Section 3. Disclosure; Arm's Length Transaction. ~~An entity~~~~[A corporation]~~ may be required to establish that the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction.

(1) If there are actual comparables, the actual comparables shall be used.

(2) If there are no actual comparables, the two (2) primary factors to take into account ~~if~~~~when~~ determining whether the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction shall be:

(a) The degree of comparability between the subject transaction and the proposed comparable transactions; and

(b) The quality of the data and assumptions used in the analysis.

Section 4. Disclosure; Intangible Expense ~~[and]~~ Intangible Interest Expense, ~~or Management Fee~~. With respect to ~~an~~ intangible expense ~~[and]~~ intangible interest expense, ~~or management fee~~, the ~~entity~~~~[corporation]~~ shall make additional disclosures if it cannot utilize any of the other methods to establish that it is entitled to the deduction. The ~~entity~~~~[corporation]~~ shall show that the payment made to the recipient ~~reported and included in income for purposes of a tax on net income or franchise~~ was subject to, ~~in~~ its state ~~or country~~ of commercial domicile, a net income tax, or a franchise tax, measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States.

Section 5. Corporation or Pass-Through Entity. A corporation or pass-through entity that during the taxable year directly or indirectly paid, accrued, or incurred intangible expenses, intangible interest expenses, or management fees to a related member or foreign corporation shall attach to its tax return filed with the department:

(1) Schedule RPC (Form number 41A720RPC), incorporated by reference in 103 KAR 3:040; and

(2) Any additional disclosures required by Sections 2, 3, and 4 of this administrative regulation.

Section 6. The disclosures related to management fees and the provisions of Section 5 of this administrative regulation shall apply to taxable years beginning on or after January 1, 2014.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 15, 2013

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

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, September 11, 2013)

103 KAR 41:120. Retention of records.

RELATES TO: KRS 138.135(4), 138.195

STATUTORY AUTHORITY: KRS 131.130(1)[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS

131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. This administrative regulation prescribes rules for the retention of records required to be maintained by cigarette dealers licensed under KRS 138.195 and all other persons required to maintain records under the provisions of KRS 138.135(4) and 138.195.

Section 1. (1) Every licensee or other person required by KRS 138.13(4) and 138.195 to preserve books, records, invoices, and documents shall keep copies of those books, records, invoices, and documents on the immediate premises of each place of business for a period of four (4) years.

(2) This requirement shall be effective for books, records, invoices, and documents created, made, or received on or after:

(a) July 1, 2013, for licensed distributors, retail distributors, and retailers of tobacco products, in accordance with KRS 138.135; and

(b) August 1, 2013, for manufacturers and importers of cigarettes, in accordance with KRS 138.195.

(3) [effective for books, records, invoices, and documents created, made, or received on or after July 1, 2013.] These books, records, invoices, and documents [Copies of all documents, prepared or received by any person licensed under KRS 138.195, relative to the receipt and distribution of, or trafficking in, stamped or unstamped cigarettes shall be preserved by the licensee on the immediate premises of his place of business for a period of two (2) years. The records of all licensees] shall be available upon demand during this period of time for inspection by agents of the Department of Revenue.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 14, 2013 at 1 p.m.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, September 11, 2013)

103 KAR 41:200. Manufacturer's[Manufacturers] Report.

RELATES TO: KRS 138.135

STATUTORY AUTHORITY: KRS 131.130(1), [and] (3)

NECESSITY, FUNCTION AND CONFORMITY: KRS

131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. This administrative regulation establishes[explains] the reporting requirements of tobacco products manufacturers in accordance with[as provided in] KRS 138.135.

Section 1. Definitions. (1) "Manufacturer" is defined in KRS 138.130(2).

(2) "Tobacco products" is defined in KRS 138.130(16).

Section 2. Each manufacturer selling or shipping tobacco products to distributors, retailers, or any other persons located in

this state shall file a completed Manufacturer's Report of Tobacco Products Shipments, Form 73A424, with the Department of Revenue, at the address and in the manner specified in this form on or before the 20th day of each month. This report shall contain the following information concerning the manufacturer's operations during the preceding calendar month:

(1) The names and addresses of customers as required in KRS 138.135(1)(b)1;

(2) The detailed breakdown of quantities of tobacco products shipped as required in KRS 138.135(1)(b)2; and

(3) The other detail or information required by the Manufacturer's Report of Tobacco Products Shipments, Form 73A424.

Section 3. Incorporation by Reference. (1) Form 73A424, "Manufacturer's Report of Tobacco Products Shipments", July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 14, 2013 at 1 p.m.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 311.550, 311.595(9), 311.597

STATUTORY AUTHORITY: KRS 311.565(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of licensees. KRS 311.595(9) and 311.597 authorize disciplinary action against licensees for specified offenses. This administrative regulation establishes the requirements governing the use of amphetamine and amphetamine-like anorectic controlled substances.

Section 1. Definitions. (1) "Board" is defined in KRS 311.550(1).

(2) "Body mass index" means the weight of the patient in kilograms divided by the height in meters, squared.

(3) "Schedule II amphetamine or amphetamine-like controlled substance" means:

(a) Amphetamine, its salts, optical isomers, and salts of optical isomers; or

(b) [Phenmetrazine and its salts; or

(c)] Methylphenidate.

(4) "Schedule III or IV amphetamine-like controlled substance" means a drug classified as a stimulant pursuant to:

(a) 902 KAR 55:025, Section 2; or

(b) 902 KAR 55:030 Section 1.

Section 2. Prior to prescribing, ordering, dispensing, administering, selling, supplying, or giving a Schedule II, III or IV amphetamine or amphetamine-like controlled substance, a physician shall take into account the:

(1) Drug's potential for abuse;

(2) Possibility that a drug may lead to dependence;

(3) Possibility a patient will obtain the drug for a nontherapeutic use;

(4) Possibility a patient will distribute it to others; and

(5) Potential illicit market for the drug.

Section 3. Schedule II Amphetamine or Amphetamine-like

Controlled Substances. (1) The patient's record shall denote the diagnosis that justifies treatment with a Schedule II amphetamine or amphetamine-like controlled substance.

(2) A Schedule II amphetamine or amphetamine-like controlled substance shall be used to treat only:

- (a) Narcolepsy;
- (b) Attention deficit/hyperactive disorder;
- (c) Resistant depressive disorder in combination with other antidepressant medications, or if alternative antidepressants and other therapeutic modalities are contraindicated;
- (d) Drug-induced brain dysfunction; or
- (e) A diagnosis for which the clinical use of the Schedule II amphetamine or amphetamine-like controlled substance is investigational and the investigative protocol has been submitted, reviewed, and approved by the board prior to the clinical use of the drug.

(3) A Schedule II amphetamine or amphetamine-like controlled substance shall not be utilized to treat obesity.

Section 4. Treatment of Obesity with a Schedule III or IV Amphetamine-like Controlled Substance. (1) Prior to prescribing, administering, dispensing, ordering, selling, supplying, or giving a Schedule III or IV amphetamine-like controlled substance to treat obesity in a patient sixteen (16) years of age or older, the physician shall:

- (a) Establish a physician/patient relationship;
- (b) Determine that the patient is[an] obese or overweight with medical risk factors and[adult who] is a proper candidate for weight reduction treatment;

(c) Determine[Consider] and record the extent of prior anorectics or other controlled substances used by the patient. The prescribing physician shall obtain and review a KASPER report for the twelve (12) month period immediately preceding the patient encounter, before prescribing or dispensing controlled substances to the patient;

- (d) Determine that the patient has either:

1. A body mass index of[of the patient is] twenty-seven (27) or more, unless the body mass index is twenty-five (25) to twenty-seven (27) and the patient has a co-morbidity such as a cardiovascular disease, diabetes mellitus, dyslipidemia, hypertension, or sleep apnea;

2. Body fat greater than or equal to thirty (30) percent in females or greater than or equal to twenty-five (25) percent in males;

3. Current body weight greater than or equal to 120 percent of a well documented, long-standing, healthy[health] weight that the patient maintained after age eighteen (18);

4. A waist-hip ratio or waist circumference at a level indicating that the individual is known to be at increased cardiovascular or co-morbidity risk because of abdominal visceral fat; or

5. Presence of a co-morbid condition or conditions aggravated by the patient's excessive adiposity; and

(e) Provide the patient with carefully prescribed diet, together with counseling on exercise, behavior modification, and other appropriate supportive and collateral therapies.

- (2) During treatment for obesity, a physician shall:

(a) Maintain a physician/patient relationship throughout the treatment process;

(b) Maintain an adequate patient record in accordance with subsection (4) of this section; and

(c) Justify in the patient record the use of any Schedule III or IV amphetamine-like controlled substance beyond three (3) months. Before the physician continues the use of a substance beyond three (3) months, the physician shall obtain and review a current KASPER report.

(3) A physician shall terminate the use of Schedule III or IV amphetamine-like controlled substances if:

(a) The[A] patient does not demonstrate weight loss and does not attempt to comply with exercise and dietary changes;

(b) The[A] body mass index of the[a] patient without a co-morbid condition is less than twenty-seven (27) and the percentage off[percent] body fat is normal at less[greater] than thirty (30) percent in females or less[greater] than twenty-five (25) percent in males;[or]

(c) The body mass index of the[a] patient with a co-morbid condition is less than twenty-five (25) and the percentage off[percent] body fat is normal at less[greater] than thirty (30) percent in females or less[greater] than twenty-five (25) percent in males;

(d) The patient has regained the weight lost, using sympathomimetics as part of a complete program and reuse of the medication does not produce loss of the weight gain to help maintain a minimum of five (5) percent weight loss; or

(e) The patient has obtained a Schedule III or[and] IV amphetamine-like controlled substance[substances] from another physician without the prescriber's knowledge and consent.

(4) The board shall consider the following factors in reviewing the adequacy of a patient record:

- (a) Medical history, including:
 - 1. Illnesses, with particular emphasis on cardiovascular diseases;
 - 2. Surgery;
 - 3. Lifestyle;
 - 4. Medications, including controlled substances;
 - 5. Eating habits;
 - 6. Exercise;
 - 7. Weight gain or[and] loss;
 - 8. Prior efforts at weight control or[and] reduction;
 - 9. Prior treatment compliance;
 - 10. Menstruation or[and] pregnancy; and
 - 11. Psychiatric history with particular reference to depression, paranoia, psychosis, or[and] chemical dependency;

- (b) Social history;
- (c) Family history;
- (d) Complete physical examination;
- (e) Evaluation of laboratory tests including:

- 1. CBC;
- 2. Fasting blood sugar;
- 3. Thyroid panel or TSH;
- 4. Lipid profile;
- 5. Serum potassium;
- 6. Liver function test; and
- 7. Renal function test;

(f) An informed consent signed by the patient that cites the limitations and risk of anorectic treatment including potential dependency or[and] psychiatric illness;

(g)1. A signed agreement that the patient has voluntarily agreed to:

- a. Have one (1) prescribing physician for controlled substances;
- b. Use one (1) pharmacy to fill prescriptions for controlled substances;
- c. Not have early refills on the prescriptions for controlled substances; and
- d. Provide full disclosure of other medications taken; or
- 2. Documentation that:

- a. The physician requested the patient sign an agreement meeting the requirements of subparagraph 1 of this paragraph;
- b. The patient declined to sign the agreement; and
- c. Indicates the physician's clinical reasons for prescribing, or continuing to prescribe, a Schedule III or IV amphetamine-like controlled substance to the patient, in light of the patient's refusal to sign the agreement; and

- (h) A record of each office visit, including:
 - 1. The patient's weight;
 - 2. The patient's blood pressure;
 - 3. The patient's pulse;
 - 4. The presence or absence of medication side effects or complications;
 - 5. The doses of medications prescribed;
 - 6. The patient's body mass index; and
 - 7. Evaluation of the patient's compliance with the total treatment regimen.

Section 5. Waiver. For a legitimate medical purpose, a physician may apply in writing for a written waiver of any requirement in this administrative regulation. The board may issue a waiver with terms and conditions it deems appropriate.

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Section 6. Failure to comply with the requirements of this administrative regulation shall constitute dishonorable, unethical, or unprofessional conduct by a physician which is apt to deceive, defraud, or harm the public under KRS 311.595(9) and 311.597.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: June 3, 2013

FILED WITH LRC: June 12, 2013 at 1 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 324.010, 324.020, 324.395

STATUTORY AUTHORITY: KRS 324.282, 324.395(4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 requires[authorizes] the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. KRS 324.395(4) allows licensees the option of obtaining errors and omissions insurance independently, and KRS 324.395(5) requires the commission to determine the terms and conditions of errors and omissions insurance coverage. This administrative regulation sets forth procedures and standards for obtaining insurance independently.

Section 1. (1) An insurance company providing real estate errors and omissions insurance for real estate licensees shall provide a signed certification to the insured licensee which shall confirm that the obligations of the insurance company meet[meets] the minimum requirements set forth in this administrative regulation.

(2) A licensee who chooses to be insured by other than the group insurance policy obtained by the commission shall file the private carrier certification of coverage with the[his or her] license renewal application in accordance with KRS 324.395(6). This certification shall be available on the commission's Web site, www.krec.ky.gov, and shall be included in the yearly renewal package mailed to all principal brokers.

Section 2. The insurance for which the certification has been executed shall not be terminated, cancelled, lapsed, or nonrenewed unless the insurance company has provided the commission with prior written notice.

Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that: (1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.

(2) The limit of liability shall not be[be no] less than \$100,000 for any one (1) claim, excluding the cost of investigation and defense, nor less than \$1,000,000 annual aggregate limit of liability, excluding[including] the cost of investigation and defense. A principal broker who decides to purchase independent errors and omissions "firm coverage" insurance shall have the following aggregate amounts:

(a) One (1) to[-] forty (40) licensees shall carry a \$1,000,000 annual aggregate; or

(b) Forty-one (41) or more[+] licensees shall carry a \$2,000,000 annual aggregate.

(3) The maximum deductibles, which may be separate deductibles, shall not exceed \$2,500 for judgment or settlement and \$1,000 for the cost of investigation and defense.

(4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987, unless the claim had been made against the licensee before the present insurance policy's inception or is insured by a previous insurance

policy.

Section 4. Except as provided in Section 5 of this administrative regulation, coverage shall[may] not exclude claims brought against the insured arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.020[324.010].

Section 5. Coverage may exclude claims brought against the insured, regardless of whether the professional service involves an activity for which a license is required by the Commonwealth of Kentucky:

(1) Arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;

(2) Arising as a result of the insolvency of the insured;

(3) Brought about or contributed to by any inability or failure to pay or collect premium, escrow, or tax money;

(4) Brought about by any employee, or former employee arising out of the contract of employment with the insured and alleging breach thereof;

(5) Arising out of any injury or damage which the insured either expected or intended;

(6) Brought about by[For] bodily injury, sickness, disease, or death of any person or physical injury to, or destruction of, or loss of use of tangible property;

(7) Arising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or publications or utterances in violation of an individual's right of privacy, or malicious prosecution;

(8) Arising out of services performed by the insured which are subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, as amended;

(9) Arising out of any violation of the Securities Act of 1933, 15 U.S.C. 77a, as amended or the Securities Exchange Act of 1934, 15 U.S.C. 78a, as amended or any state blue sky or securities law, or similar state or federal statutes;

(10) Arising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;

(11) Brought against a real estate property manager for failure to effect or maintain adequate levels or types of insurance;

(12) Arising out of unlawful discrimination;

(13) Arising out of liability assumed by the insured under any indemnity, hold harmless, or similar provisions or agreements, except this exclusion shall not apply to liability the insured would have in the absence of these[such] agreements;

(14) (a) Arising:

1. Out of the insured's business; and

2.[brought] By or on behalf of an investor, shareholder, or partner in any corporation, limited or general partnership, real estate trust, or venture in which the insured has [i] or had [i] a participating interest, directly or indirectly, in the profits or losses; [thereof] or

(b) In connection with the insured's activities as an underwriter, sponsor, partner, joint or coventurer, or member in any real estate partnership, venture, or syndicate;

(15) Arising out of, relating to, or based upon the dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, or other materials, irritants, contaminants, or pollutants. Pollutants shall include any solid, liquid, gaseous, thermal, biological, or radioactive substance, material, matter, toxin, irritant or contaminant, including radon, asbestos, chemicals and waste. Waste shall include materials to be recycled, reconditioned, or reclaimed; [-]

(16) Excluded[That are excluded] by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #IL 00 21 11 85;

(17) (a) Arising from the sale or property management of property developed, constructed, or owned by:

1. The insured;

2.[- or by] Any firm or corporation in which the insured has a financial interest; [i] or

~~3. [by]~~ Any firm coming under the same financial control as the insured;

~~1. [b], except that~~ This exclusion shall not apply and coverage ~~shall be [is]~~ extended to claims arising from the sale of real property, ~~if [provided]~~ all three (3) of the following conditions are met:

~~1. [(a)]~~ The property was acquired by the insured under a guaranteed sale listing contract;

~~2. [and (b)]~~ The title to the property was only temporarily held by the insured during the transit period, ~~if [not]~~ to exceed one (1) year, ~~if [not]~~ from acquisition to resale; and

~~3. [(c)]~~ The property is listed for sale during the entire transit period; or

(18) Arising out of the interests, operations, or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager, or property developer. An insured shall not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items.

LINDA CECIL, Chairperson

APPROVED BY AGENCY: July 12, 2013

FILED WITH LRC: July 15, 2013 at 10 a.m.

CONTACT PERSON: Angela Evans, KREC Acting General Counsel, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(As Amended at ARRS, September 11, 2013)**

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 establishes [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.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(As Amended at ARRS, September 11, 2013)**

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, incorporated by reference in 201 KAR 45:110(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 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.

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GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (As Amended at ARRS, September 11, 2013)

201 KAR 45:110. Supervision and work experience.

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Accumulation of Work Experience. An apprentice diabetes educator shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of application for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

Section 2. Supervision. (1) (a) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours per month 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.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (As Amended at ARRS, September 11, 2013)

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 established[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 established[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 established[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 established[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 established[as set forth] in 201 KAR 45:130; and

(c) The renewal fee established[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 established[provided] in KRS 309.334[309.XXX]. [No] Work experience accumulated shall not 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.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(As Amended at ARRS, September 11, 2013)**

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 ~~shall not 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 to 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 pursuant to KRS Chapter 13B within thirty (30) calendar days of notification of the denial.

(b) The request will be reviewed by the board at its next regularly scheduled meeting.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: 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.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(As Amended at ARRS, September 11, 2013)**

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. **Definitions.** (1) **"Board" is defined by KRS 309.325(1).**

(2) **"Charge" means a specific allegation contained in any document issued by the board alleging a violation of a specified provision of KRS 309.325 through 309.339.**

(3) **"Complaint" means a written complaint alleging a violation of KRS 309.325 through 309.339.**

(4) **"Complainant" means a person who files a complaint pursuant to this administrative regulation.**

(5) **"Formal complaint" means a formal administrative pleading authorized by the board that establishes a charge against a licensee or applicant and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.**

Section 2. 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.

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Section ~~3.[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 ~~4.[3.]~~ Initial Review. (1)(a) After the receipt of the complaint and the expiration of the period for the individual response, the board shall consider the individual's response, complainant's reply to the response, and any relevant material available.

(b) The names of the individuals and other identifying 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 ~~5.[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 ~~license[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 ~~6.[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 ~~7.[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.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (As Amended at ARRS, September 11, 2013)

201 KAR 45:160 Scope of practice.

RELATES TO: KRS 309.331, 309.339

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; or

(h) Developing personal strategies to promote health and behavior change;

(6) Develop an individualized education and support plan focused on behavior change, which shall/will be documented in an education or health~~[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 if/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;

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- (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.

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

301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area [establishing the procedures for taking fish and the areas from where fish may be taken]. This administrative regulation establishes the areas where commercial fishing is allowed [permitted].

Section 1. Rivers and Creeks. (1) The rivers and creeks established in paragraphs (a) through (g) of this subsection [following rivers and creeks] shall be open to commercial fishing pursuant to 301 KAR 1:146 and 1:155. ~~Commercial Fishing Waters. (1) The following streams and rivers shall be open to commercial fishing.~~

(a) Barren River from its junction with Green River upstream to Greencastle, Kentucky;

(b) ~~Big Sandy River from its junction with the Ohio River upstream to the junction of the Levisa and Tug Forks;~~

(c) ~~Levisa Fork from its junction with the Big Sandy River upstream to 200 yards below the mouth of Paint Creek in Johnson County;~~

(d) ~~Cumberland River from its junction with the Ohio River upstream to the Highway 62 bridge;~~

(c) ~~[(e)] Eagle Creek from its junction with the Kentucky River upstream to the Highway 22 bridge in Grant County;~~

(d) ~~[(f)] Green River from its junction with the Ohio River upstream to 200 yards below Lock and Dam 6;~~

(e) ~~[(g)] Highland Creek from its junction with the Ohio River upstream to the Rock Ford Bridge in Union County;~~

(f) ~~[(h)] Kentucky River from its junction with the Ohio River upstream to the junction of the North and Middle Forks of Kentucky River;~~

(g) ~~[(i)] North Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Walker's Creek;~~

(h) ~~[(j)] South Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Cow Creek;~~

(i) ~~[(k)] Licking River from its junction with the Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;~~

(j) ~~[(l)] Mississippi River from the mouth of the Ohio River downstream to the Tennessee line;~~

(k) ~~[(m)] Ohio River from its junction with the Mississippi River upstream to the West Virginia state line except those segments of the river that extend below the following locks and dams where slot baskets are the only piece of commercial gear allowed, except for the first 200 yards below the dam pursuant to [as prescribed by] KRS 150.445:~~

1. Lock and Dam 53 downstream to a line perpendicular with

the end of the longest lock wall including the circular cell portion;[-]

2. Lock and Dam 52 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion;[-]

3. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

4. J.T. Myers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;[-]

5. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

6. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

7. McAlpine Dam downstream to the K&I railroad bridge;[-]

8. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

9. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; and[-]

10. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall;[-]

~~[(j) [(h)]]~~ Pond River from its junction with the Green River upstream to the Highway 62 bridge;

~~[(m) [(e)]]~~ Panther Creek from its junction with the Green River upstream to the head of the creek;

~~[(n) [(f)]]~~ Rough River from its junction with the Green River upstream to the Highway 69 bridge at Dundee, Kentucky;

~~[(o) [(g)]]~~ Tennessee River from its junction with the Ohio River upstream to River Mile 17.8;

~~[(p) [(+)]~~ Tradewater River from its junction with the Ohio River upstream to the Highway 365 bridge; and

~~[(q) [(s)]]~~ Salt River from its junction with the Ohio River upstream to the northwestern boundary of Ft. Knox.

(2) Lakes. The following lakes shall be [are] open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream except as specified in subsection (3) of this section ~~[(3)]~~[-]

(a) Barkley;

(b) Herrington; and

(c) Kentucky; ~~(d) Nolin;~~

~~1. Shall be open to commercial fishing through February 28, 2011.~~

~~2. Only those persons reporting commercial harvest from Nolin River Lake from March 1, 2000 through February 28, 2006, shall be permitted to commercially fish Nolin River Lake.~~

~~(e) Rough River;~~

~~1. Shall be open to commercial fishing through February 28, 2011.~~

~~2. Only those persons reporting commercial harvest from Rough River Lake from March 1, 2000 through February 28, 2006, shall be permitted to commercially fish Rough River Lake.~~

~~(3) Exceptions.~~

~~(a) Cumberland Lake shall be closed to commercial fishing above the confluence of Koger Creek on the Big South Fork Tributary.~~

~~(b) Permanent overflow lakes adjacent to the Mississippi and Ohio Rivers that may be accessed from either river by a boat during high flow conditions shall be open to statewide commercial fishing during these high flow events, except as prohibited on department wildlife management areas pursuant to 301 KAR 4:020 and 301 KAR 4:050 [in 301 KAR 4:050 and 301 KAR 4:020].~~

~~(c) Permanent overflow lakes along the Mississippi and Ohio rivers when access from either river by a boat is not possible;~~

~~1. A no-charge commercial Asian carp removal permit shall be obtained, following landowner and Fisheries Division approval, to remove any rough fish, except catfish and paddlefish.~~

~~2. Only licensed commercial fisherman shall be eligible for the permit.~~

~~3. Permit holders shall follow all gear restrictions listed in 301 KAR 1:146 and requirements described in 301 KAR 1:155.~~

~~4. The permit shall be valid for a period of ninety (90) days from the date of issuance.~~

~~Section 2. Incorporated by Reference. (1) List of commercial fisherman reporting harvest of fish from Nolin River and Rough~~

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River lakes from March 1, 2000 through February 28, 2006, 2006 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: July 10, 2013

FILED WITH LRC: July 12, 2013 at 4 p.m.

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.

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

301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these[such] requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing["Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace] it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) ~~["Daylight hours" are defined by KRS 150.010(6).~~

(6) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

~~(6) [(7)]~~ "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

~~(7) [(8)]~~ "Processed fish" means a fish that has been gutted and head removed.

~~(8) [(9)] ["Recreational fishing" means the act of taking or attempting to take for personal use, and not for sale, any freshwater fish species by traditional fishing methods, including a line that is held in the hand or is attached to a rod that is held in the hand or closely attended, and to which one (1) or more hooks are attached.~~

~~(9) [(10)]~~ "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

~~(9) [(10)] [(14)]~~ "Single hook" means a hook with no more than one (1) point.

~~(10) [(14)] [(12)]~~ "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

~~(11) [(12)] [(13)]~~ "Slot limit" means a size range of a fish species that shall be released by an angler [minimum and maximum size limit that requires a fish of that size range to be released].

~~(12) [(13)] [(14)]~~ "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Size Limits, Daily Creel Limits, and Possession Limits. (1) A person fishing in public or private waters shall observe the following daily creel limits and size limits, except as established[specified] in Section 3 of this administrative regulation or ~~by~~ 301 KAR 1:180.

(a) Black bass[:]; daily creel limit, six (6).

1. Largemouth bass and smallmouth bass[:]; size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass[:]; no size limit.

(b) Rock bass[:]; daily creel limit, fifteen (15).

(c) Sauger, walleye, and their hybrids[:]; daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge[:]; daily creel limit, one (1); size limit, thirty (30) inches.

(e) Chain pickerel[:]; daily creel limit, five (5); no size limit.

(f) White bass and hybrid striped bass ~~[singly or in combination:]~~ daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass[:]; daily creel limit, five (5); size limit, fifteen (15) inches.

(h) Crappie[:]; daily creel limit, thirty (30); no size limit.

(i) Rainbow trout and brown trout daily creel limit, singly or in combination ~~[: daily limit]~~, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish[:]; daily creel limit, twenty (20); no size limit.

(k) Yellow bass[:]; daily creel limit, thirty (30); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as established[specified] in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release lake sturgeon.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or ~~and~~

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler ~~[Fishing tournament organizers and their representatives, excluding tournament anglers]~~, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While/When transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler ~~[Fishing tournament organizers and their representatives, excluding tournament anglers]~~, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established[specified] in subsection (7) of this section for subsequent disposal by one (1) of the following methods:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated ~~[Given]~~ to a charity for the purposes of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) ~~[While]~~ Fishing;

(b) On the shoreline; or

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(c) [While] On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2)(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the following items to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year round.

Section 3. Exceptions~~to Statewide Administrative Regulations~~. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the ~~following~~ exceptions established in subsections (1) through (75) of this section:

(1) AJ Jolly Lake. A person shall release all flathead catfish.

(2) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook.

(3) Barkley Lake.

(a) Largemouth bass and smallmouth bass[:] size limit, fifteen (15) inches.

(b) Crappie[:] size limit, ten (10) inches; daily creel limit, twenty (20).

(c) Sauger[:] size limit, fourteen (14) inches.

(4) Barren River Lake.

(a) Crappie[:] size limit, nine (9) inches.

(b) Largemouth and smallmouth bass[:] size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge.

(5) Beaver Lake, Anderson County.

(a) Largemouth bass[:] size limit, fifteen (15) inches.

(b) Channel catfish[:] size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait.

(7) Beshears Lake, Caldwell County. Channel catfish[:] size limit, twelve (12) inches.

(8) Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Channel catfish[:] size limit, twelve (12) inches.

(9) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait.

(10) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass[:] size limit, fifteen (15) inches.

(b) Muskellunge[:] size limit, thirty-six (36) inches.

(c) Crappie size limit, nine (9) inches.

(11) Bullock Pen Lake, Grant County. Channel catfish[:] size limit, twelve (12) inches.

(12) Carnico Lake, Nicholas County. Largemouth bass[:] size limit, fifteen (15) inches.

(13) Carpenter Lake, Daviess County. A person shall not pos-

sess shad or use shad as bait.

(14) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass[:] size limit, fifteen (15) inches.

(b) Crappie[:] size limit, nine (9) inches.

(15) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass~~[:]~~

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches[no size limit].

(c) A person shall not possess shad or use shad as bait.

(16) Cave Run Lake.

(a) Largemouth bass~~[:]~~ There shall be a slot limit~~—a person shall release fish~~ between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass[:] size limit, eighteen (18) inches.

(c) Muskellunge[:] size limit, thirty-six (36) inches.

(17) Cedar Creek Lake, Lincoln County.

(a) Largemouth bass[:] size limit, twenty (20) inches; daily creel limit, one (1).

(b) Channel catfish[:]size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

(18) Chimney Top Creek, Wolfe County. Brown trout[:] size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.

(19) Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Channel catfish[:] size limit, twelve (12) inches.

(20) Cumberland Lake shall extend up:

(a) The Cumberland River to Cumberland Falls;

(b) The Big South Fork to Devils Jump;

(c) The Rockcastle River to The Narrows; and

(d) The Laurel River to Laurel River Dam:

1. Largemouth bass[:] size limit, fifteen (15) inches.

2. Smallmouth bass[:] size limit, eighteen (18) inches.

3. Striped bass[:] size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie[:] size limit, ten (10) inches.

(21) Cumberland River downstream from Barkley Lake Dam. Sauger[:] size limit, fourteen (14) inches.

(22) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.

(a) Brown trout[:] size limit, twenty (20) inches; daily creel limit~~[(no cull)]~~ one (1), with no culling.

(b) Brook trout[:] size limit, fifteen (15) inches; daily creel limit one (1), with no culling.

(c) Rainbow trout~~[:]~~ There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit with no culling~~slot limit —a person shall release fish between fifteen (15) and twenty (20) inches. Daily creel limit with no cull]~~, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(23) Dale Hollow Lake.

(a) Smallmouth bass~~[:]~~ There shall be a slot limit~~—a person shall release fish~~ between sixteen (16) and twenty-one (21) inches. The daily creel ~~limits~~limit shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and any walleye hybrid~~its hybrids~~[:] daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger[:] daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout~~[:]~~ no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass[:] size limit, fifteen (15) inches.

(f) Black bass[:] aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

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(g) Crappie[: size limit, ten (10) inches; daily creel limit, fifteen (15).

(24) Dewey Lake.

(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(25) Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish~~[not fish except]~~ with artificial bait.

(26) Doe Run Lake, Kenton County.

(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish[: daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait.

(27) Dog Fork, Wolfe County. A person shall:

(a) Only fish~~[Not fish except]~~ with an artificial bait with a single hook; and

(b) Release brook trout.

(28) Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass~~[:]~~ There shall be a slot limit~~[a person shall release fish]~~ between twelve (12) and sixteen (16) inches. The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches.

(29) Elmer Davis Lake, Owen County.

(a) Largemouth bass~~[:]~~ There shall be a slot limit~~[a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

(b) Channel catfish[: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

(30) Fishtrap Lake.

(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.

(b) Crappie[: size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(31) Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(32) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish~~[:]~~ daily limit, five (5); size limit, fifteen (15) inches.

(33)~~[(32)]~~ General Butler State Park Lake, Carroll County.

(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish[: daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait.

(34)~~[(33)]~~ Grayson Lake. Largemouth bass and smallmouth bass~~[:]~~ size limit, fifteen (15) inches.

(35)~~[(34)]~~ Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad as bait.

(b) Bluegill and sunfish[: daily and possession limit, fifteen (15) fish.

(36)~~[(35)]~~ Green River Lake.

(a) Crappie[: size limit, nine (9) inches.

(b) Muskellunge[: size limit, thirty-six (36) inches.

(37)~~[(36)]~~ Guist Creek Lake, Shelby County. Channel catfish[: size limit twelve (12) inches.

(38)~~[(37)]~~ Jerrico Lake, Henry County.

(a) Largemouth bass[: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait.

(39)~~[(38)]~~ Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches.

(b) Crappie[: size limit, ten (10) inches; daily limit, twenty (20).

(c) Sauger[: size limit, fourteen (14) inches.

(40)~~[(39)]~~ Kincaid Lake, Pendleton County. Channel catfish[: size limit, twelve (12) inches.

(41)~~[(40)]~~ Lake Blythe, Christian County. Largemouth bass~~[:]~~ There shall be a slot limit~~[a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

(42)~~[(41)]~~ Lake Malone, Muhlenburg and Logan County.

(a) Largemouth bass~~[:]~~ There shall be a slot limit~~[a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

(b) Channel catfish[: size limit, twelve (12) inches.

(43)~~[(42)]~~ Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait.

(44)~~[(43)]~~ Lake Pollywog, Grant County. A person shall not possess shad or use shad as bait.

(45)~~[(44)]~~ Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches; daily creel limit three (3).

(b) Channel and blue catfish[: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

(46)~~[(45)]~~ Lake Shelby, Shelby County.

(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish[: daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait.

(47)~~[(46)]~~ Laurel River Lake.

(a) Largemouth bass[: size limit, fifteen (15) inches.

(b) Smallmouth bass[: size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie~~[:]~~ size limit, nine (9) inches; daily creel limit, fifteen (15).

(48)~~[(47)]~~ Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass~~[:]~~ There shall be a slot limit~~[a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

(49)~~[(48)]~~ Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish[: daily limit, four (4).

(50)~~[(49)]~~ Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish[: daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait.

(51)~~[(50)]~~ Marion County Lake.

(a) Largemouth bass[: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait.

(52)~~[(51)]~~ McNeely Lake, Jefferson County.

(a) Channel and blue catfish[: size limit, twelve (12) inches.

(b) A person shall not possess shad or use shad as bait.

(53)~~[(52)]~~ Mill Creek Lake, Powell County.

(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait.

(54)~~[(53)]~~ New Haven Optimist Lake, Nelson County.

(a) Largemouth bass[: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish[: daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait.

(55)~~[(54)]~~ Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass[: size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie[: size limit, nine (9) inches.

(56)~~[(55)]~~ Ohio River.

(a) Walleye, sauger, and any hybrid thereof~~[their hybrids:]~~ no size limit; daily creel limit, ten (10), singly or in combination.

(b) White bass, striped bass, and any hybrid thereof~~[their hybrids:]~~ daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(57)~~[(56)]~~ Otter Creek, Meade County.

(a) Smallmouth and largemouth bass~~[:]~~ There shall be a slot limit~~[a person shall release fish]~~ between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches.

(58)~~[(57)]~~ Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout[: size limit, sixteen

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(16) inches; daily creel limit, one (1); artificial bait only.

~~(59) Paintsville Lake.~~

(a) Largemouth bass ~~There shall be a slot limit [a person shall release fish]~~ between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

~~(60) Parched Corn Creek, Wolfe County. A person shall:~~

(a) ~~Only fish [Not fish except]~~ with an artificial bait with a single hook; and

(b) Release brook trout.

~~(61) Pennyryle Lake, Christian County. Largemouth bass. There shall be a slot limit [a person shall release fish] between twelve (12) and fifteen (15) inches.~~

~~(62) Pikeville City Lake, Pike County. A person shall [Catch and] release largemouth bass [fishing (no harvest)].~~

~~(63) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:~~

(a) ~~Only fish [Not fish except]~~ with an artificial bait with a single hook; and

(b) Release brook trout.

~~(64) Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches.~~

~~(65) Rough River Lake.~~

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

~~(66) Shanty Hollow Lake, Warren County.~~

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

~~(67) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:~~

(a) ~~Only fish [Not fish except]~~ with an artificial bait with a single hook; and

(b) Release brook trout.

~~(68) Sportsman's Lakes, Franklin County. A person shall not possess or use shad as bait.~~

~~(69) Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait.~~

~~(70) Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches.~~

~~(71) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.~~

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15).

~~(72) Tennessee River downstream from Kentucky Lake Dam. Sauger size limit, fourteen (14) inches.~~

~~(73) Trammel Creek, Allen County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).~~

~~(74) Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches.~~

~~(75) Yatesville Lake: Largemouth bass and smallmouth bass size limit, fifteen (15) inches.~~

Section 4.5 Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water listed in subsection 3 of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all caught trout.

(3) The ~~following~~ streams established in paragraphs (a) through (m) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone

County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell

County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(j) Middle Fork of Red River in Natural Bridge State Park in Powell County;

(k) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and

(l) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and

(m) Trammel Creek in Allen County.

~~(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from [The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be] October 1 through May 31.~~

Section 5.6 Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for [Event sponsors shall post signs informing anglers of the special limits] a minimum of twenty-four (24) hours before the event.

Section 6.7 Creel and Size Limits for Special Lakes and Ponds. (1) The ~~following~~ requirements established in paragraphs (a) through (d) of this subsection shall apply to all bodies of water listed in subsection (2) of this section:

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(b) Channel catfish daily creel limit, four (4);

(c) Sunfish or bream daily creel limit, fifteen (15); and

(d) Rainbow trout daily creel limit, five (5).

(2) Special lakes and ponds:

(a) Alexandria Community Park Lake, Campbell County;

(b) Anderson County Community Park Lake, Anderson County;

(c) ~~(b)~~ Bloomfield Park Lake, Nelson County;

(d) ~~(e)~~ Bob Noble Park Lake, Nelson County;

(e) ~~(d)~~ Brickyard Pond, Knox County;

(f) ~~(e)~~ Camp Ernst, Boone County;

(g) ~~(f)~~ Carlson Lake, Meade County in Fort Knox;

(h) ~~(g)~~ Cherokee Park Lake, Jefferson County;

(i) ~~(h)~~ Dickerson Lake, Meade County in Fort Knox;

(j) ~~(i)~~ Easy Walker Park Pond, Montgomery County;

(k) ~~(j)~~ Fisherman's Park lakes, Jefferson County;

(l) ~~(k)~~ Kingdom Come State Park Lake, Harlan County;

(m) Jacobsen Park Lake, Fayette County;

(n) James D. Beville Park Lake, Grayson County;

(o) ~~(l)~~ Lake Mingo, Jessamine County;

(p) ~~(m)~~ Lake Pollywog, Grant County;

(q) ~~(n)~~ Lower Sportsman's Lake, Franklin County;

(r) ~~(o)~~ Lusby Lake, Scott County;

(s) ~~(p)~~ Madisonville City Park lakes, Hopkins County;

(t) ~~(q)~~ Martin County Lake, Martin County;

(u) ~~(r)~~ Middleton Mills Long Pond, Kenton County;

(v) ~~(s)~~ Middleton Mills Shelterhouse Pond, Kenton County;

(w) ~~(t)~~ Mike Miller Park Lake, Marshall County;

(x) ~~(u)~~ Miles Park lakes, Jefferson County;

(y) ~~(v)~~ Millennium Park Pond, Boyle County;

(z) ~~(w)~~ Panther Creek Park Lake, Daviess County;

(aa) ~~(x)~~ Prisoners Lake, Kenton County;

(bb) ~~(y)~~ Scott County Park Lake, Scott County;

(cc) ~~(z)~~ Southgate Lake, Campbell County;

(dd) ~~(aa)~~ Stein Community Park Lake, Campbell County;

(ee) ~~(bb)~~ Three Springs Lake, Warren County;

(ff) ~~(cc)~~ Tom Wallace Park Lake, Jefferson County;

~~(ff)(dd)~~ Upper Sportsman's Lake, Franklin County;
~~(gg)(ee)~~ Watterson Park Lake, Jefferson County;
~~(hh)(ff)~~ Waverly Park Lake, Jefferson County;
~~(ii)(gg)~~ Waymond Morris Park Lake, Daviess County;
~~(jj)(hh)~~ Whitehall Park Lake, Madison County; and
~~(kk)(ii)~~ Yellow Creek Park Lake, Daviess County.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: July 10, 2013

FILED WITH LRC: July 12, 2013 at 4 p.m.

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.

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

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area~~[hunting seasons, bag limits, and the methods of taking wildlife]~~. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "At-large north" means any portion of the elk zone not included in a limited entry area and that lies north of US Hwy 15.

(4) "At-large south" means any portion of the elk zone not included in a limited entry area and that lies south of US Hwy 15.

(5) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife, but does/shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(6) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

(7) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(8) "Elk" means *Cervus elaphus nelsoni*.

(9) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(10) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration

zone and enters an agreement with the department to allow public access and hunting for at least five (5) years.

(11) "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

(12) "Out-of-zone" means all counties not included in the restoration zone.

(13) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(14) "Spike" means an elk having one (1) or two (2) antler points on each side.

(15) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued disposal permit to an elk prior to moving the carcass; and

(2) Not remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ten (10) either-sex elk permits that shall be valid for use during all elk seasons:

(a) Anywhere in the at-large north or at-large south portions of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section 5(3) of this administrative regulation.

(6) A youth applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunts as established in subsection (12) of this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) No more than ten (10) percent of all drawn applicants in each quota hunt pool shall be nonresidents.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be four (4) separate regular elk quota hunts consisting of:

(a) Antlered archery and crossbow;

(b) Antlered firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not apply for more than two (2) of the four (4) quota hunts established in subsection (12) of this section;

(c) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools;

(d) Only be selected by a random electronic drawing; and

(e) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an antlered elk quota hunt shall be ineligible to be drawn for any antlered elk quota hunt for the

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following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

(3) A landowner cooperator permit shall be transferable, but shall only be used on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) Prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

Section 5. Hunter Requirements. (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) A drawn hunter may apply to hunt in up to three (3) areas in any combination of limited entry and at-large areas by completing the application process on the department's Web site.

(4) A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned by the department to either the:

- (a) At-large north portion of the elk zone; or
- (b) At-large south portion of the elk zone.

(5) A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(6) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(7) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(8) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(9) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate

control of the person's firearm.

(10) An adult accompanying a person under sixteen (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(11) A hunter may use any deer hunting method authorized by 301 KAR 2:172.

(12) A person shall not use any of the following items to take an elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than .270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

(13) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(14) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts and shall hunt in accordance with the seasons and limits established in Section 6 of this administrative regulation.

(15) A person who is drawn for an archery or crossbow permit or has a landowner or special commission permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:

(a) Is a youth;

(b) Is sixty-five (65) years or older; or

(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through the third Monday in January; and

(b) A crossbow to take an antlered elk:

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31.

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the third Saturday in October through the third Monday in January; and

(b) A crossbow to take an antlerless elk:

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31.

(4) A person drawn for an antlered firearms permit shall use a modern gun or muzzleloader to take an antlered elk during one (1) of the following two (2) seven (7) day periods randomly assigned by the department from the:

(a) ~~From the~~ First Saturday in October for seven (7) consecutive days; or

(b) ~~From the~~ Second Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use a modern gun or muzzleloader to take an antlerless elk during one (1) of the following two (2) seven (7) periods randomly assigned by the department from the:

(a) ~~From the~~ Second Saturday in December for seven (7) consecutive days; or

(b) ~~From the~~ Third Saturday in December for seven (7) consecutive days.

Section 7. LEA boundaries. (1) Caney LEA – Starting at the Intersection of State Hwy 550 and Kentucky 1697, the boundary

proceeds north on State Hwy 550 through Mousie and Betty to the intersection with State Hwy 7 near Lackey. The boundary then goes south on State Hwy 7, past Dema to intersection with State Hwy 899. The boundary then goes south on State Hwy 899, through Pippa Passes to intersection with Kentucky 1697 at Alice Lloyd College. The boundary then goes west on Kentucky 1697 to intersection with State Hwy 550 in Garner, completing the boundary.

(2) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quick-sand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(3) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.

Section 8. Post-season Quota Hunt on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

(a) ~~[Who]~~ Were not drawn for the previous elk quota hunts; and

(b) ~~[Who]~~ Are residents of counties included, wholly or in part, within an EMU boundary [the elk restoration zone].

(3) A drawn applicant shall comply with the requirements in Section 5 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be:

(a) Knott County EMU - Starting at the intersection of KY Route 777 and KY Route 550 near Porter Junction, the boundary proceeds east along KY Route 777 to the intersection with KY Route 680. The boundary then proceeds east along KY Route 680 to the intersection with KY Route 122 at Minnie. The boundary proceeds south along KY Route 122 to the intersection with KY Route 1498 near Bevinville. The boundary then continues south on KY Route 1498 to the intersection with KY Route 7. The boundary then proceeds south on KY Route 7 to the intersection with KY Route 1410. The boundary then proceeds west on KY Route 1410 to the intersection with KY Route 160. The boundary then proceeds north on KY Route 160 to the intersection with KY Route 550 in Hindman. The boundary then proceeds north on KY Route 550 to the intersection with KY Route 7, with which KY Route 550 merges and both continue north, to the intersection with KY Route 777 near Porter Junction, thus completing the boundary [State Hwy 550 and State Hwy 7 near Lackey, the boundary proceeds south along State Hwy 7 to the intersection with State Hwy 582 then southeast on State Hwy 582 to the intersection of State Hwy 582 and 160. The boundary then proceeds north on State Hwy 160 to the intersection with State Hwy 550 at Hindman, turning northeast on State Hwy 550 to the intersection with State Hwy 7, thus completing the boundary].

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of

State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 9. Tagging and Checking Requirements. (1) Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(a) Record on a hunter's log the following information:

1. The species harvested;
2. The sex of the animal;
3. Date of harvest; and
4. County of harvest; and

(b) Check the harvested elk by:

1. Calling (800) 245-4263 and providing the requested information; or

2. Completing the online check-in process at fw.ky.gov.

(2) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

- (a) Confirmation number;
- (b) Name; and
- (c) Telephone number.

(3) A person shall not provide false information in:

- (a) Completing the hunter's log;
- (b) Checking an elk; or
- (c) Creating a carcass tag.

Section 10. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), Hunter Access Areas, state forests, the Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone pursuant to the conditions of the permit received.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone are subject to the requirements established in Section 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 6 of this administrative regulation.

(b) A firearm shall not be used to hunt elk.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 11. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall not use any of the following to take elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty (20) gauge;

(e) Any arrow without a broadhead point; or

(f) A handgun:

1. With a barrel length of less than six (6) inches;

2. With a bore diameter of less than .270 caliber; and

3. That produces less than 550 foot-pounds of energy at 100 yards.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pur-

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suant to Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 13. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, or special commission permit may defer use of the permit to the following year if:

- (1) There is a death of the permit holder's:
 - (a) Spouse;
 - (b) Child; or
 - (c) Legal guardian, if the permit holder is under eighteen (18) years old; and
- (2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:
 - (a) A marriage certificate;
 - (b) A birth certificate; or
 - (c) An affidavit of paternity or maternity.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: July 10, 2013

FILED WITH LRC: July 12, 2013 at 4 p.m.

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.

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

301 KAR 2:300. Black bear seasons and requirements[bears].

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take[to regulate any method of taking], and to make these[such] requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations. This administrative regulation establishes bear hunting and chasing seasons;it bear hunting areas;it legal methods of take[taking]it and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Bear" means the species *Ursus americanus*.

(7) "Bear chase area" means a designated area within the Bear Zone where hunters may use dogs to chase bears.

(8) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(9) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to

take one (1) black bear of either sex.

(10) "Bear zone" means the following Kentucky counties: Bell, Clay, Floyd, Harlan, Knott, Knox, Laurel, Leslie, Letcher, Martin, McCreary, Perry,[and] Pike, Pulaski, Wayne, and Whitley.

(11) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(12) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14) "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull from the trigger.

(15) "Junior bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

(16) "License year" means the period from March 1 through the following last day of February.

(17) "Modern gun" means a rifle, handgun, or shotgun [which is]loaded from the rear of the barrel.

(18) "Muzzle-loading firearm[gun]" means a rifle, shotgun, or handgun[which is] loaded from the discharging end of the barrel or discharging end of the receiver.

(19) "Shotshell" means ammunition discharged from a shotgun.

(20) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) A person shall[:

~~(a) Only use dogs to chase bears during:~~

~~1. A bear chase season; or~~

~~2. The bear quota hunt with dogs season.~~

~~(b) first obtain the appropriate bear chase permit from the department before chasing bears.;~~

(2) A bear chase permit or junior bear chase permit shall[may] only be purchased by a resident of Kentucky.

(3) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid bear chase permit while using dogs to chase bears.

(4) Bear chase permits may be purchased on the department's Web site at fw.ky.gov from[:

~~(a) The effective date of this regulation through August 31 in 2012; and~~

~~(b) July 1 through August 31[in subsequent years].~~

(5) A person shall not:

(a) Kill or intentionally injure a bear during a chase-only season;

(b) Chase a bear except during daylight hours while[when] a chase season is open;

(c) Chase a bear from a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

(6) Individual hunt groups shall include no more than five (5) people and eight (8) dogs, except:

(a) A hunt party may total seven (7) people if two (2) additional youths accompany the party;

(b) The two (2) additional youths do not have to be drawn as part of a quota hunt party; and

(c) The two (2) additional youths shall not be allowed to harvest a bear.

(7) Any dog transported in a motorized vehicle by members of a hunt group shall be considered a member of that hunt group.

(8) The department shall supply a bear chase survey to each person purchasing a bear chase permit.

(9) A person who purchases a bear chase permit shall submit to the department a completed bear chase survey by the last day of January following each bear season.

(10) A person who fails to submit a bear chase survey shall be ineligible to purchase a bear chase permit for the following year's chase seasons.

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(11) A person shall only use a dog to chase a bear in the following designated areas:

- (a) Eastern bear chase area;
- (b) Central bear chase area; and
- (c) Western bear chase area.

Section 4. Chasing Bears with Dogs.~~[Chase-Only Season Dates.-(4)]~~ A person shall not use a dog to chase a bear except during the following seasons:

(1) The chase-only season, which shall be from August 1 through August 31; and

(2) The bear quota hunt with dogs season pursuant to Section 8 of this administrative regulation~~[(a) The early chase-only season shall be from:~~

~~1. The effective date of this regulation through August 31 in 2012; and~~

~~2. August 1 through August 31 for all subsequent years;~~

~~(b) The late chase-only season shall be from the Monday following the bear quota hunt with dogs season established in Section 8 of this administrative regulation for five (5) consecutive days.~~

~~(2) The bear quota hunt season pursuant to Section 8 of this administrative regulation shall be open as a chase-only season if the annual bear harvest quota specified in Section 9(1) of this administrative regulation is met during the regular bear hunt season].~~

Section 5. Bear Permit Requirements. (1) Only a resident of Kentucky shall be allowed to purchase a bear permit.

(2) Unless exempted by KRS 150.170, a person hunting a bear shall possess proof of purchase of a valid Kentucky hunting license and valid bear permit while hunting.

Section 6. Hunter Restrictions. (1) A person shall not:

- (a) Harvest a bear except during daylight hours;
- (b) Use dogs during the regular bear hunting season, except leashed tracking dogs may be used to recover wounded bears;

(c) Hunt bear on a baited area:

- 1. While bait is present; or
- 2. For thirty (30) days after the bait has been removed;

(d) Harvest:

- 1. A female bear that has a cub; or
- 2. A bear that weighs less than seventy-five (75) pounds;
- (e) Harvest a bear that is swimming;~~and]~~

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den; or

(h) Disturb a bear in a den for the purpose of taking the bear ~~if the bear~~when it exits the den[dens].

~~(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.[(3) A person shall use dogs to chase bears with the intent to harvest only during the quota hunt with dogs season.]~~

Section 7. Weapon Restrictions. (1) A person shall not use the following to take a bear:

(a) A device capable of taking a bear other than a firearm, crossbow, or archery equipment;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty (20) gauge;

(e) Rimfire ammunition;

(f) A fully-automatic firearm~~[fully-automatic weapon];~~

(g) A firearm with a magazine capacity greater than ten (10) rounds;

(h) Steel-jacketed ammunition;

(i) Tracer bullet ammunition;

(j) A shotshell containing more than one (1) projectile;

(k) A broadhead smaller than seven-eighths (7/8) inch wide;

(l) A barbed broadhead;

(m) A crossbow without a working safety device;

(n) A chemically treated arrow; or

(o) An arrow with a chemical attachment.

(2) A bear shall not be taken with a handgun that does

not[person shall not take a bear with a handgun that].

(a) ~~[Does not]~~Have a barrel length of at least six (6) inches;

(b) ~~[Does not]~~Have a bore diameter of at least 0.270 inches;

or

(c) ~~[Does not]~~Fire a bullet that produces at least 550 ft/lbs of energy at 100 yards.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the bear zone during the following seasons:

(a) The archery – crossbow~~[archery/crossbow]~~ season, which shall be for nine (9) consecutive days beginning on the Saturday before Thanksgiving;

(b) The regular bear season, which shall be for three (3) consecutive days beginning on the second Saturday in December; and

~~(c)[(b)]~~ The quota hunt with dogs season, which shall be for five (5) consecutive days beginning on the Monday following the regular bear season.

~~(2)[A person shall only hunt bears in the bear zone during the regular bear season:~~

~~(3) A person shall only use dogs to hunt bears in the bear chase areas during the quota hunt with dogs season.~~

~~(4) A person shall not take more than one (1) bear in a license year.~~

~~(3)[(5)] A hunt party drawn for the quota hunt with dogs season shall not take more than one (1) bear in a license year.~~

Section 9. Bear Season Closure. (1) The archery - cross-bow~~[archery/crossbow]~~~~[Any open hunting]~~ season for bears shall close after daylight hours on the day [when] the following ~~[annual]~~ quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(2) The regular bear season shall close after daylight hours on the day [when] the following quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(3) The bear quota hunt with dogs season shall close after daylight hours on the day [when] the quota of five (5) bears has been reached.

(4) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the annual quota has been reached.

Section 10. Quota Hunt with Dogs Requirements. (1) A person shall apply for the quota hunt on the department's Web site at fw.ky.gov from September 1 through September 30.

(2) An applicant shall possess a bear chase permit before applying.

(3) A person shall not:

(a) Apply more than one (1) time;

(b) Apply as a party of more than five (5) people; or

(c) Be eligible to take a bear~~[participate]~~ unless drawn by the department in the bear quota hunt lottery.

(4) A person shall only harvest a bear~~[If the annual bear quota specified in Section 9(1) of this administrative regulation is not met during the regular bear season, the following shall apply:~~

~~(a) A person or party drawn for the quota hunt shall be allowed to use dogs to hunt for bears;~~

~~(b) A bear shall only be harvested] with the use of unleashed dogs.~~

(5)[;-(c)] A person or each member of a hunt party selected for the quota hunt shall possess a bear permit in order to kill a bear.

(6) The quota hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit~~[(d) The season shall close after daylight hours on the day when the annual quota has been reached pursuant to Section 9(1) of this administrative regulation].~~

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply

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to a person hunting:

- (a) Waterfowl; or
- (b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

- (a) May display a small section of another color; and
- (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12 Bear Reserves[Sanctuaries]. (1) The following areas within the Bear Zone shall be closed to bear hunting:

- (a) Cumberland Gap National Historical Park;
- (b) Hensley-Pine Mountain Wildlife Management Area:[and]
- (c) Big South Fork National River and Recreation Area; and
- (d) The area surrounding Hensley-Pine Mountain Wildlife Management Area: starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds northeast along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds west along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 463 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.

(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area referenced in subsection (1)(d)[(e)] of this section.

Section 13. Harvest Recording and Check-in Requirements.

(1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

- (a) Species taken;
- (b) Date taken;
- (c) County where taken; and
- (d) Sex of the bear.

(2) A person who has harvested a bear during the regular bear season shall:

- (a) Retain a completed hunter's log;
- (b) Check a harvested bear at a department-operated check station immediately after leaving the field;
- (c) Telecheck the bear before leaving the check station by:
 - 1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and
 - 2. Recording the confirmation number on the hunter's log; and
 - (d) Attach to the carcass a department issued tag prior to leaving the check station.

(3) A person who has harvested a bear during the archery – crossbow[archery/crossbow] season or the bear quota hunt with dogs season shall:

- (a) Retain a completed hunter's log;
- (b) Telecheck the bear by 8 p.m. Eastern Standard Time[midnight] the day the bear was harvested[before upon leaving the field] by:
 - 1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and
 - 2. Recording the confirmation number on the hunter's log;
 - (c) Arrange for department personnel to inspect the bear by:
 - 1. Calling the department at 800-858-1549 or 800-252-5378 within twenty-four (24) hours of harvest; and
 - 2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex; and
 - (d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

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

- (a) "Eastern Bear Chase Area" map, 2013[East and Central

Bear Chase Areas" map, 2012] edition;[and]

- (b) "Central Bear Chase Area" map, 2013 edition; and
- (c) "Western Bear Chase Area" map, 2013[West Bear Chase Area" map, 2012] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: June 7, 2013

FILED WITH LRC: July 12, 2013 at 4 p.m.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Technical and Administrative Support
(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 146.550-146.570, 446.010(18)

STATUTORY AUTHORITY: KRS 146.550-146.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. ***KRS 146.560(2)(h)*** also requires the board to promulgate administrative regulations on land acquisition. This administrative regulation defines terms used in 418 KAR Chapter 1.

Section 1. Definitions. (1) "Access land" means land necessary for reasonable and planned ingress and egress from the project site.

(2) "Acquisition" means the procurement of land and includes options, appraisals, maps, surveys, title opinions, title insurance and environmental audits, and inspections[- and remediation].

(3) "Areas important to migratory birds" means those areas important to the reproduction and survival of migratory birds, including:

- (a) Large tracts of contiguous forest;
- (b) Wooded greenspace areas;
- (c) Shallow open water habitats with expansive areas of shoreline;
- (d) Wetlands or wetland complexes including marshes, deep water sloughs, and swamps;
- (e) Natural grasslands; and
- (f) Riparian corridors.

(4) "Board" means the Kentucky Heritage Land Conservation Fund Board.

(5) "Buffer land" means land that will aid in protecting the project site from harm[it] or will prevent degradation of the visitor experience at the project site.

(6) "Chair" means the chairperson of the board.

(7) "Dollar for dollar" means that for every Kentucky Heritage Land Conservation Fund dollar granted by the board, the applicant spends[shall spend] an equal amount, and that the applicant places[shall place] all matching funds in one (1) lump sum into escrow at the board's direction.

(8) "Fund" means the Kentucky Heritage Land Conservation Fund.

(9)[(8)] "Grant" means an award of money from the Kentucky Heritage Land Conservation Fund pursuant to KRS 146.570(4)(f).

(10)[(9)] "Greenspace" means undeveloped land in or around urban areas, including forests or other natural vegetation, stream-side corridors, natural areas, and abandoned rights-of-way.

(11)[(40)] "Local governments" means county governments,

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municipalities, school districts, and special districts, or a combination thereof.

(12)[(11)] "Management" means the stewardship necessary to fulfill the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses site development costs and reasonable operating costs, consultant and contractor fees, facility development, supplies, materials, site-specific equipment, and staff costs.

(13)[(12)] "Natural area" means an[any] area of land or water, or of both land and water, which:

(a) Retains or has reestablished in the judgment of the board its natural character;

(b) Has natural flora or fauna; or

(c) Has biological, ecological, geological, scenic, or archaeological features of scientific, aesthetic, cultural, or educational interest to the public.

(14)[(13)] "Natural functions" means the interrelationships among the living and nonliving components of ecosystems and includes:

(a) Energy fixation and conversions;

(b) Ecosystem productivity and biomass accumulation;

(c) Nutrient cycling;

(d) Storage, transport, release, and retention of water and other nutrients;

(e) Food web relationships and dynamics;

(f) Weathering, development, and stabilization of substrates; and

(g) Absorption and neutralization of pollutants.

(15)[(14)] "Natural state" means the condition of an area that[any area which] retains, has substantially reestablished, or is in the process of reestablishing, an indigenous ecosystem.

(16)[(15)] "Outdoor recreation" means activity on a subject property that does not cause harm to the property or its natural state, or hinder the heritage land conservation purposes of KRS 146.550 through 146.570.

(17) "Private, nonprofit land trust organization" or "LTO" means a group with Internal Revenue Code 501(c)(3) status qualified to hold land and easements for land conservation purposes.

(18)[(16)] "RMP" means resource management plan.

(19)[(17)] "State agency" means any department, program cabinet, institution, board, commission, office, or agency of the Commonwealth of Kentucky.

(20)[(18)] "State colleges and universities" means accredited colleges and universities located in the Commonwealth of Kentucky.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 12, 2013

FILED WITH LRC: June 13, 2013 at 10 a.m.

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**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Technical and Administrative Support
(As Amended at ARRS, September 11, 2013)**

418 KAR 1:040. Grant applications.

RELATES TO: KRS 146.550-146.570, 382.800-382.860

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the procedures for review and approval of grants funded to state agencies, local governments, and state colleges and universities pursuant to KRS 146.570(4)(a)-(f).

Section 1. Application. (1) A state agency, local government,[and] state college or university, or LTO seeking a grant pur-

suant to KRS 146.570(4)(f) shall submit to the board a completed grant application package.

(2) The application package shall include:

(a) A cover letter;

(b) The Kentucky Heritage Land Conservation Fund Board Grant Application Form, HL-1A;

(c) Location map;

(d) Site or project description;

(e) Preliminary Resource Management Plan, HL-1C, using the Preliminary Resource Management Plan Instructions, HL-1B;

(f) Copy of the portion of a 1:24,000 topographical map showing the approximate project boundaries; and

(g) Project costs worksheet.

(3) Money expended by an applicant in connection with a denied application for funds, a grant, or project under this section shall not be reimbursed to the applicant.

(4) An applicant shall not supply false or misleading information to the board and shall provide to the board verification that all information in the grant application is true and accurate.

(5) Grant applicants may submit joint applications. The preliminary RMP for a joint application shall specify which entity will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

Section 2. Review of Application. (1) After reviewing the report received from the Projects Review Committee pursuant to 418 KAR 1:020, Section 6(2)(a), each board member shall review the application package and evaluate it based on the following criteria:

(a) If[Whether] the fund contains adequate money to fund the proposed project;

(b) If[Whether] the proposed project meets one (1) or more of the priorities for acquisition listed in KRS 146.560(2)(a) through (d);

(c) If[Whether] the proposed acquisition is one (1) of the areas referred to in KRS 146.565;

(d) The completeness and accuracy of the application package;

(e) If[Whether] the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(f) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(g) The significance of the natural and educational resources on the project site;

(h) The prevalence of this type of project and project site in public systems; and

(i) The threat of loss or degradation of the project site if not protected.

(2) The board:

(a) Shall approve or deny a grant application by the vote of a majority of those present at a meeting at which there is a quorum; and

(b) May~~[- 4.]~~ amend or attach conditions to the approval of a grant application~~[- and 2. Conduct a series of votes to narrow a list of grant applications if the total cost of the applications exceeds the available funds].~~

(3) Consideration of a grant application may be carried over from meeting to meeting and the board may decline to approve a grant application at a given meeting.

(4) The board may, itself or through an agent, verify the accuracy of the information in a grant application and make further investigation of the merits of a proposed acquisition~~[as the board deems appropriate].~~

(5) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a grant application and, if denied, the reasons for denial.

Section 3. Agreements. Funds shall not be disbursed until the applicant has entered into a written memorandum of agreement with the board that[which] requires the applicant to comply with:

(1) The requirements of KRS 146.550 through 146.570;

(2) 418 KAR Chapter 1;

(3) The application;

(4) A conservation easement that[which] pertains to the project site; and

(5) The latest RMP approved by the board.

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

- (a) "Kentucky Heritage Land Conservation Fund Board Grant Application Form", HL-1A, June 2013[July 2012];
- (b) "Preliminary Resource Management Plan Instructions", HL-1B, July 2012; and
- (c) "Preliminary Resource Management Plan Template", HL-1C, July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage Land Conservation Fund, 375 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 12, 2013

FILED WITH LRC: June 13, 2013 at 10 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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Technical and Administrative Support
(As Amended at ARRS, September 11, 2013)

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 Agreement has been signed by the grant applicant and the board and all procedures in 418 KAR 1:040 and in the application have been followed.

Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years of board approval of the acquisition. If the requirements of an agreed upon MOA required by 418 KAR 1:040, Section 3, have been met, then an extension may[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

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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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver License
(As Amended at ARRS, September 11, 2013)

601 KAR 13:025. Point system.

RELATES TO: KRS Chapter 13B, 177.300, 177.330, 186.450(4), (5), (6), 186.480, 186.570, 186.572, 186.620(1), 189.224, 189.285, 189.300, 189.340, 189.350, 189.380, 189.390, 189.420, 189.440, 189.470[186.450(6), 186.570, 186.572], 189.990(5)

STATUTORY AUTHORITY: KRS 186.400(1), 186.570(1)(d), 189.292, 189.294

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.400(1) authorizes the Transportation Cabinet to promulgate administrative regulations for the enforcement of motor vehicle laws and driver licensing. KRS 189.292 and 189.294 authorize the cabinet to promulgate administrative regulations related to the use of a personal communication device while operating a moving motor vehicle. KRS 186.570(1)(d) authorizes the cabinet to deny or suspend an operator's license if a person is a habitually reckless or negligent driver or has committed a serious violation of the motor vehicle laws. This administrative regulation establishes[is necessary to establish] an equitable driver license point system for [the punishment of] a driver who violates a traffic law. This administrative regulation also establishes those offenses for which a license shall be suspended rather than points accumulated.

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Section 1. Definitions. (1) "Conviction" means an adjudication of guilt, forfeiture of bail, a plea of guilty, a plea of nolo contendere, an Alford plea, or the payment of a fine or court cost, with or without a court appearance.

(2) "Probation" means[that] a pending driving privilege suspension period that is held in abeyance[if:

(1) The person attends an approved driver improvement clinic; and

(2) His driving privilege has not been withdrawn in any other jurisdiction].

(3) "Suspension" means a temporary denial, interruption, withdrawal, or revocation of a driver's license. **The terms suspension, withdrawal, and revocation are used interchangeably within this administrative regulation.**

Section 2. Application of Penalty Points. (1) A schedule of penalty points shall be applied to determine if a person is a habitually reckless or negligent driver **as referenced in KRS 186.570(1)(d).** [The following penalties may be imposed on the driving privilege:

(a) Denial;

(b) Withdrawal;

(c) Suspension; or

(d) Revocation of a driving license.]

(2) Penalty[(a)] points shall be assessed or a driving privilege suspended for conviction of a[any of the following relating to the] **motor vehicle[traffic] law[laws]** of any state for which penalty points are assigned **pursuant to[under]** Section 4 of this administrative regulation, except[:

1. Conviction;

2. Forfeiture of bail; or

3. Payment of a fine, with or without a court appearance.

(b)] a speeding violation in another state shall not be assessed[considered by the cabinet for assessment of] penalty points.

[(3) Information regarding a conviction may be secured from an official source or record available to public or cabinet inspection.

(4) A complete record of a driving privilege suspension and point system assessment shall be maintained in the Transportation Cabinet for a period of:

(a) Five (5) years for a noncommercial vehicle operator; and

(b) Ten (10) years for a commercial vehicle operator.]

Section 3. Serious Violations. (1) Conviction for one (1) of the **[following]** serious violations, **referenced in paragraphs (a) through (c) of this subsection,** of the motor vehicle laws may, **in accordance with Sections 7 or 9 of this administrative regulation,** [be] cause [for] suspension **or probation** of the driving privilege **for the period of time indicated** [for the period of time indicated]:

(a) [(1)] Racing - ninety (90) days;

(b) [(2)] Speeding twenty-six (26) MPH or more over limit - ninety (90) days; or

(c) [(3)] Attempting to elude law enforcement officer by use of motor vehicle - ninety (90) days.

(2) A person convicted of a violation referenced in subsection (1) of this section shall appear for an informal hearing at the **[established]** time and place **established** pursuant to Section 9 of this administrative regulation.

Section 4. Penalty Points. Conviction for [any] one (1) of the **[following]** moving traffic offenses, **referenced in subsections (1) through (24) of this section,** except for a speeding violation in another state, shall be cause for assessment of the penalty points indicated:

(1) Speeding fifteen (15) MPH or less over the limit - three (3) penalty points, [3—] [except as **established[provided]** in KRS 186.572[]];

(2) Speeding sixteen (16) MPH or more, but less than twenty-six (26) MPH, over the limit - six (6) penalty points[6];

(3) Failure to stop for church or school bus, **as established in KRS 189.990(5)** - six (6) penalty points[6];

(4) Improper passing - five (5) penalty points[5];

(5) Reckless driving - four (4) penalty points[4];

(6) Driving on the wrong side of road - four (4) penalty points[4];

(7) Following too closely - four (4) penalty points[4];

(8) Failure to yield to an emergency vehicle - four (4) penalty points[4];

(9) Changing drivers in a moving vehicle - four (4) penalty points[4];

(10) Vehicle not under control - four (4) penalty points[4];

(11) Failure to stop violation (electric signal, railroad crossing, stop sign) - three (3) penalty points[3];

(12) Failure to yield - three (3) penalty points[3];

(13) Driving the wrong way on one-way street - three (3) penalty points[3];

(14) Driving too fast for conditions - three (3) penalty points[3];

(15) Driving too slow for conditions - three (3) penalty points[3];

(16) Improper start - three (3) penalty points[3];

(17) Improper driving - three (3) penalty points[3];

(18) Careless driving - three (3) penalty points[3];

(19) Failure to yield left lane - three (3) penalty points[3];

(20) Improper lane usage - three (3) penalty points[3];

(21) Failure to illuminate headlights - three (3) penalty points[3];

(22) Failure to dim headlights - three (3) penalty points[3];

(23) Texting while driving - **three (3)/3** penalty points[any other moving hazardous violation - 3]; or

(24) A [Commission of a moving hazardous violation which involves an accident - 6; or

(25)] combination of two (2) or more **violations of motor vehicle laws[moving traffic offenses]** [hazardous violations] in one (1) occurrence - six (6) penalty points[6].

Section 5. Warning Letter. (1)(a) If a person of eighteen (18) [or more] years of age or older accumulates six (6) or more penalty points within a two (2) year period, the Transportation Cabinet shall[may] send a letter to the address shown on the[his] driving history record advising the person[that shall advise him] of the number of penalty points on his or her driving history record.

(b) The letter shall inform the person of the penalties that[which] may be imposed if he or she accumulates twelve (12) or more penalty points within two (2) years.

(2)(a) If a person under the age of [less than] eighteen (18) years accumulates four (4) or more penalty points within a two (2) year period, the Transportation Cabinet shall[may] send a letter to the address shown on the[his] driving history record advising[that shall advise him] of the number of penalty points on his or her driving history record.

(b) The letter shall inform the person of the penalties that[which] may be imposed if seven (7) or more penalty [he accumulates more than six (6)] points are accumulated prior to his or her 18th birthday.

Section 6. Suspension. (1) The cabinet may, **in accordance with Sections 7 or 9 of this administrative regulation,** [(a)] suspend **or probate** the driving privilege of a person:

(a) [(1)] Eighteen (18) years of age or older [above] who accumulates twelve (12) or more penalty points within a period of two (2) years; or

(b) Under the age of [2. Less than] eighteen (18) years [of age] who accumulates seven (7) [six (6)] or more penalty points within a period of two (2) years.

(2) The cabinet may, **in accordance with Section 9 of this administrative regulation,** suspend the driving privilege of a person [(b)] for a period of:

(a) No less than ninety (90) days but no more than [1-] six (6) months for the first accumulation;

(b) [2.] One (1) year for the second accumulation; and

(c) [3-] Two (2) years for **an additional or any** [a] subsequent accumulation within a two (2) year period.

(3) [(2)] If the penalty for conviction of a first offense is suspension of the driving privilege for six (6) or fewer months:

(a) A suspension for a subsequent conviction of a similar offense shall be for a period of at least one (1) year; and

(b) A suspension for a third or greater conviction of a similar offense shall be for a period of two (2) or more years.

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Section 7.] If the cabinet suspends the driving privilege of a person during the period that a prior suspension is in effect, the subsequent suspension period shall run consecutive to the prior.

Section 7. Probation[Section 8]. (1) If a person possesses a valid operator license or intermediate license not suspended in any state or jurisdiction and appears at an informal hearing at the ~~established~~ time and place established pursuant to KRS 186.570 and Section 9 of this administrative regulation, a driver improvement hearing officer may place the ~~driver as referenced in paragraphs (a) through (c) of this subsection~~ following on probation in lieu of suspension if the person is The following may be placed on probation instead of having his driving privilege withdrawn]:

(a) ~~A person~~ Of eighteen (18) years of age or older [more years] who accumulates twelve (12) penalty points or more within a period of two (2) years;

(b) ~~A person~~ Under the age of eighteen (18) years who accumulates seven (7) or more [than six (6)] points; or

(c) ~~A person~~ Convicted of a violation of a motor vehicle law, an offense that could result in a suspension of his or her driving privilege as established in Section 3 [under the provisions] of this administrative regulation [may be placed on probation in lieu of suspension].

(2) The probation period used in lieu of suspension shall be double the length of the applicable suspension period [would have been].

(3) A person on probation shall have his or her driving privilege suspended, pursuant to [in accordance with] Section 6 of this administrative regulation if he or she:

(a) Receives an additional ~~moving traffic~~ conviction of a motor vehicle law, with or without court appearance; or

(b) Fails to enroll and successfully complete the driver improvement clinic.

(4) A person [is] placed on probation [may] shall not be eligible [for this consideration] again for probation prior to a two (2) year period from the expiration of the probationary period [may] regardless if served].

(5)(a) The cabinet may, in accordance with Section 9 of this administrative regulation, waive the remainder of a driving privilege suspension if where the suspended person becomes eligible for probation [if a person's driving privilege is suspended under the provisions of this administrative regulation and he becomes eligible for probation, the cabinet may waive the remainder of a driving privilege suspension period].

(b) If waived, the driver shall be placed on probation for double the amount of time remaining on the suspension period.

Section 8. Conviction Report. (1) The cabinet shall not consider [9. (1) A person who holds a valid operator's license from another jurisdiction and establishes residence in Kentucky may apply and be considered for an operator's license.

(2) The person's driving privilege shall not be suspended or revoked at the time of his application.

Section 10. If a conviction report [is] used [by the Transportation Cabinet] to impose a driving privilege suspension or probation [may] it

(1) Shall not be used for the imposition of an unrelated suspension or probation [may].

(2) The cabinet may consider a conviction report used to impose a driving privilege suspension or probation [May be used] to show that the person's driving privilege has previously been suspended.

Section 9. Informal Hearing[14]. (1) Pursuant to KRS 186.570(4)(3), an informal hearing shall be available to a person who received notice of the cabinet's intent to suspend his or her driving privilege.

(b) Pursuant to KRS 186.570(1) through (4), a person convicted of a violation referenced in Sections 3 or 6(1) a person may request an informal hearing [upon receiving notice of the cabinet's intent to suspend his driving privilege].

(b) A person convicted of a violation referenced in Section

3] of this administrative regulation shall appear for an informal hearing at the ~~established~~ time and place designated by the cabinet.

(2) To be eligible for probation, [(a)] the person shall appear for the informal hearing at the ~~established~~ time and place designated by the cabinet.

(3) [(b)] The informal hearing shall be conducted by a driver improvement hearing officer who is an appointed representative of the Transportation Cabinet.

(4) [(c)] The testimony given at the informal hearing shall be recorded and retained by the cabinet for a period of at least sixty (60) days after the deadline for requesting an administrative hearing.

(5) [(3)](a) The driver improvement hearing officer shall determine if [whether] the cabinet may suspend/withdraw a person's driving privilege based on the:

1. Evidence presented;
2. Testimony; and
3. [The person] Driving history record.

(b) If the driver improvement hearing officer determines that the cabinet may suspend/withdraw the person's driving privilege, he shall [may] order a:

1. License suspension; or
2. Probationary period.

(6) [(4)] If probation is granted, the terms shall be carefully explained to the person. The person shall indicate an [his] understanding and acceptance of the [those] terms by signing a Probation Request, TC Form 94-51 ["Probation Request Form", TC 94-51, as effective January 1993].

(7) [(5)] If probation is not granted [the person], the driver improvement hearing officer shall prepare the order suspending the person's driving privilege at the close of the informal hearing. The effective date of the suspension shall be included in the order. [The driver improvement officer shall hand the order to the person prior to his departure.]

Section 10. Formal Administrative Hearing. (1) [(6)(a)] Within twenty (20) days, a party [person] aggrieved by the order [decision] in an informal hearing may in writing request a formal [an] administrative hearing.

(2) A request for an administrative hearing shall state the reason or reasons the aggrieved party believes [(b) The request shall state the reason he believes] the cabinet's action was erroneous.

(3) A [(c) The] request for an administrative hearing shall be submitted to the Transportation Cabinet Building, Office of Legal Services, 200 Mero Street, Office of General Counsel, 501 High Street], Frankfort, Kentucky 40622.

Section 11 [13]. Incorporation by Reference. (1) "Probation Request", TC form 94-15, July 2013 [Transportation Cabinet Probation Request Form, TC 94-51, effective January 1993], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Division of Driver Licensing, 200 Mero [It may be inspected, copied, or obtained at Transportation Cabinet, 1003 State Office Building, 501 High] Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

RICK TAYLOR, Acting Commissioner

MIKE HANCOCK, Secretary

D. ANN DANIELO, Office of Legal Services

APPROVED BY AGENCY: July 15, 2013

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

CONTACT PERSON: D. Ann DanieLO, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, September 11, 2013)

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(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1)(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools. ~~KRS 156.070(2), 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) unless the student has participated at the high school level prior to the 2014 - 2015 school year;

(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 which provides~~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 requirements of KRS 156.070(2)(f2. and KRS 160.380(4)and (6)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 middle school level that may be supplemented by the school, school district, conference, or association~~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 no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives~~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 improvements to and participation in middle school interscholastic activities, as well as any 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, not less than annually, to the commis-

sioner 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 **and listed** on the KHSAA Web site:

(a) **Annual** 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 **educational materials and** 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 at the middle school level 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 which shall not, such limit not to exceed the practice time adopted for play at the high school level;~~

~~(d) A limitation on the number of school based scrimmages and regular season, school based contests in each sport or sport activity, which shall not include post season contests and shall not 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 regular competitive season in each sport or sport activity, not including any post season activities, which shall not invitational activity following the season, such limit not to exceed the length 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, including combined elementary or middle school teams, 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; and~~

~~(11) Nothing in this administrative regulation shall prohibit a school or school district from choosing to join a conference or association that has developed rules for any particular sport or sport activity to satisfy the requirements of this administrative regulation.~~

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", 9/2013[6/2013][5/2012];

(c) "KHSAA Due Process Procedure", 6/2013[5/2012];

(d) "KHSAA Board of Control and Officials Division Policies", 9/2013[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", 6/2009;

(k) "KHSAA Form GE1- Membership Renewal", 6/2013[5/2012];

(h)(4) "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", 9/2013[6/2013][3/2012];

(l)(p) "KHSAA Form GE7- Non Domestic Exchange Eligibility", 9/2013;

(m) "KHSAA Form GE8 - Non Domestic Non Exchange Eligibility", 9/2013[6/2013][3/2012];

(n)(m)(q) "KHSAA Form GE14- Contract for Athletic Contests", 4/2009;

(o)(n)(r) "KHSAA Form GE16- Statutory Waiver of Bylaw 3", 3/2012;

(p)(e)(s) "KHSAA Form GE18- Survey for Sports Offerings", 3/2012;

(t) "KHSAA Form GE19- Title IX Procedures Verification", 5/2011;

(q)(p)(u) "KHSAA Form GE20- Heat Index Record", 4/2009;

(r)(q)(v) "KHSAA Form GE26- Financial Aid Report", 5/2011;

(s)(r)(w) "KHSAA Form GE35- Waiver - 20 Day Notice", 5/2011;

(t)(s)(x) "KHSAA Form GE36- Add. Info for Appeal", 5/2011;

(u)(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;

(v)(u)(aa) "KHSAA Form GE52- District Tournament Financial Report", 5/2011;

(w)(v)(bb) "KHSAA Form GE53- Region Tournament Financial Report", 3/2012;

(x)(w)(cc) "KHSAA Form GE69- Waiver - 15 Day Exceptions", 5/2011;

(y)(x)(dd) "KHSAA Form SO103- Soccer Section/SubSection Financial Report", 5/2011;

(z)(y)(ee) "KHSAA Form T1- Title IX Accom. Of Interests &

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Abilities", 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 Comparison 1 + Booster Club", 5/2011;

(ii) "KHSAA Form T36- Title IX Actual Expenditures Comparison 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 Student Survey", 5/2011;

(oo) "KHSAA Form T63- Title IX Interscholastic Athletics Survey", 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;

(aa)(z)(vv) "KHSAA Form WR111- Wrestling Skin Condition & Unconscious", 5/2011; and

(bb)(aa)(ww) "KHSAA Form WR126- Wrestling Weight Certif. Program Assessor", 3/2012; and

(cc) "KHSAA Form MS1 - Physician & Parental Permission", 9/2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

TERRY 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 Commissioner and General Counsel, Office of Guiding Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

EDUCATION AND WORKFORCE DEVELOPMENT CENTER

Kentucky Board of Education

Department of Education

(As Amended at ARRS, September 11, 2013)

704 KAR 3:303. Required core academic standards.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.6453

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451. and KRS 158.6453 requires the revision of academic content standards.

KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the Kentucky core academic standards, which contains the general courses of study and academic content standards for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Core Academic Standards.

Section 2. Incorporation by Reference. (1) The "Kentucky Core Academic Standards", September[June] 2013[2010], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Program Standards[Curriculum Development], Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

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

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson, Kentucky Board of Education

APPROVED BY AGENCY: June 13, 2013

FILED WITH LRC: June 14, 2013 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502)564-9321.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Workforce Investment

Office of Employment and Training

(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380
STATUTORY AUTHORITY: KRS 151B.020, 341.115(1), 341.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone, and mail claims, and the requirement for random audits.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he is[shall be] eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete the Initial Claim Application, Form 401, by using:

(a) An internet claim registration through the Web site provided by the agency for that purpose at

<https://uiclaims.des.ky.gov/ebenefit/>;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall ~~[be responsible for]~~:

(a) ~~Provide~~**[Providing]** picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) ~~Present~~**[Presenting]** all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

(5) An unemployed worker whose unemployment insurance benefit check has been lost or stolen shall file a UI-480, Lost or Stolen Check Statement, **[in order]** to initiate the process to issue a new check.

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis by one (1) of the methods and within the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

(b) Except as provided in paragraph (c) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period.

(c) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that purpose at <https://uiclaims.des.ky.gov/ebenefit/>, with the claim completed before 7 p.m. Eastern Time on the Friday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed

between the hours of 10 a.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the Unemployment Insurance Division that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the Unemployment Insurance Division's personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. The secretary shall conduct random audits of claims. Each random audit shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

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Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) ~~[The]~~ Initial claim application, "Form 401", ~~[revised]~~ 8/10;
- (b) UI-480, "Lost or Stolen Check Statement", 06/13;
- (c) ~~[The]~~ "Continued Claim Form", ~~[revised]~~ 10/95; and
- (d) ~~[e)]~~ "Mass Electronic Filing Cell Data and Formatting Guide", ~~[revised]~~ 03/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 East Main Street, 2 CD, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: July 15, 2013

FILED WITH LRC: July 15, 2013 at 10 a.m.

CONTACT PERSON: Buddy Hoskinson, Executive Director; Office of Employment and Training; 275 East Main, 2C; Frankfort, Kentucky 40602, phone (502) 564-5331; fax (502) 564-7452.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (As Amended at ARRS, September 11, 2013)

804 KAR 4:400. ABC basic application form incorporated by reference.

RELATES TO: KRS 164.772, 241.060(1), 243.380, 243.390

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390, [EQ-2008-507]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the ~~board~~[~~office~~] to promulgate an administrative regulation to establish the license application form. ~~[Executive Order 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol Beverage Control.]~~ This administrative regulation prescribes the basic form to be used to apply for an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete, have notarized, and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage Licenses, with the exception of an applicant for:

- (1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state producer/supplier of malt beverage license[An agent's, solicitor's, out-of-state brewer, out-of-state microbrewer, or beer importer license];
- (2) A[special] temporary license; or
- (3) An extended hours, supplemental bar, special Sunday, or sampling license; or
- (4) A secondary malt beverage license[A transporter's license].

Section 2. In addition to the Basic Application for Alcoholic Beverage Licenses ~~required~~[~~require~~] by Section 1 of this administrative regulation, an applicant[~~applying for an alcoholic beverage license~~] shall complete and submit to the Department of Alcoholic Beverage Control the special application[~~schedule or~~] form required by 804 KAR 4:410[~~for the specific license type for which the applicant is applying~~].

Section 3. Incorporation by Reference. (1) "[~~The~~]Basic Application ~~for~~[~~for~~] Alcoholic Beverage Licenses", ~~September/June~~ 2013[January 2009], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's[~~authority's~~] Web site, <http://www.abc.ky.gov/>.

FREDERICK A. HIGDON, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 24, 2013

FILED WITH LRC: June 25, 2013 at 9 a.m.

CONTACT PERSON: Trey Hieneman, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (As Amended at ARRS, September 11, 2013)

804 KAR 4:410. Special applications[~~ABC schedules~~] and registration forms incorporated by reference.

RELATES TO: KRS 241.060(1)

STATUTORY AUTHORITY: KRS 241.060, 243.380, 243.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS

241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms[~~the schedules and forms to be used to apply for specific license types~~].

Section 1. Special application forms[~~In addition to the "ABC Basic" application form incorporated by reference in 804 KAR 4:400,~~] An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the ~~Department~~[~~Office~~] of Alcoholic Beverage Control the applicable special application[~~schedule or~~] form for the specific license type for which the application is made[~~he is applying~~]. The special application[~~schedules and~~] forms are listed below:

- (1) Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application[Schedule "A" A Special Agent's, Solicitor's, Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License];
- (2) Special Temporary License Application[Schedule "B" Beer Retail Only License];
- (3) Secondary Malt Beverage License Application Addendum[Schedule "F" Food Related License];
- (4) Supplemental License Application[Schedule "I" Industrial Alcohol and Nonbeverage Alcohol Vendor License];
- (5) Schedule "L" Limited 70% Food Restaurant and Golf Course Voted Wet by Special Election License;
- (6) Schedule "M" Manufacturer and Producer License;
- (7) Schedule "R" Retail License;
- (8) Schedule "S" Storage and Warehouse License;
- (9) Schedule "S/R" Special Retail Sales; Motel, Private Club, Riverboat, and Rail & Airliner License;
- (10) Schedule "T" Transporter License;
- (11) Schedule "Temporary" License;
- (12) Schedule "Transitional" License;
- (13) Schedule "W" Liquor and Wine Wholesaler and Beer Distributor License;
- (14) Schedule "X" Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License;
- (15) "ABC Form 714" Beer Brand Registration; and
- (16) "ABC Form 715" Distilled Spirits and Wine Brand Registration].

Section 2. Registration Forms. An applicable licensee shall complete and submit the following registration forms:

- (1) Microbrewer's Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue;
- (2) ABC Form 714 to be submitted to the Department of Alcoholic Beverage Control; or
- (3) ABC Form 715 to be submitted to the Department of Alcoholic Beverage Control.

Section 3. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

- (a) "Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application", July/June 2013["Schedule A Agent's, Solicitor's Out-of-State Brewer, Out-of-State Microbrewer, and Beer-Importer License", 01/01/07];
- (b) "Special Temporary License Application", September/June 2013["Schedule B Beer Retail Only License", 01/01/07];
- (c) "Secondary Malt Beverage License Application Addendum", June 2013["Schedule F Food Related License", 01/01/07];
- (d) "Supplemental License Application", September/June 2013["Schedule I Industrial Alcohol and Nonbeverage Alcohol Vendor License", 01/01/07];
- (e) "Microbrewer's Retail Gross Receipts Report to Distributor", June 2013;
- (f) "ABC Form 714", June 2013; and
- (g) "ABC Form 715", June 2013["Schedule L Limited 70% Food Restaurants and Golf Courses Voted Wet by Special Elections", 6/26/07;
- (f) "Schedule M Manufacturer and Producer License", 01/01/07;
- (g) "Schedule R Retail License", 01/01/07;
- (h) "Schedule S Storage and Warehouse License", 01/01/07;
- (i) "Schedule S/R Special Retail Sale; Motel, Private Club, Riverboat, and Rail & Airliner License", 01/01/07;
- (j) "Schedule T Transporter License", 01/01/07;
- (k) "Schedule Temporary License", 01/01/07;
- (l) "Schedule Transitional License", 01/01/07;
- (m) "Schedule W Liquor and Wine Wholesaler and Beer Distributor License", 01/01/07;
- (n) "Schedule X Airport, Automobile Race Track, Convention Center, Convention Hotel Complex, Entertainment, Qualified Historic Site Destination Center, Horse Race Track, and License";;
- (o) "ABC Form 714 Beer Brand Registration", 01/01/07; and
- (p) "ABC Form 715 Distilled Spirits and Wine Brand Registration", 01/01/07].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's[office's] Web site, <http://www.abc.ky.gov>.

FREDERICK A. HIGDON, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 24, 2013

FILED WITH LRC: June 25, 2013 at 9 a.m.

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.

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, September 11, 2013)**

807 KAR 5:011. Tariffs.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.170, 278.180, 278.185, 278.190[, 369.102(8)]

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires the commission to promulgate an administrative regulation to establish requirements for each utility to file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

Section 1. Definitions.

- (1) "Commission" is defined by KRS 278.010(15).
- (2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.
- (3) "Electronic signature" is defined by KRS 369.102(8).
- (4) "Nonrecurring charge" means a charge or fee assessed to

a customer[customers] to recover the specific cost of an activity, which:

(a) Is due to a specific request for a [certain-type-of] service activity for which, once the activity is completed, additional charges are not incurred; and

(b) Is limited to recovery of an amount no greater than[only recover] the[specific] cost of the specific service.

(5)[(4)] "Person" is defined by KRS 278.010(2).

(6)[(5)] "Rate" is defined by KRS 278.010(12).

(7)[(6)] "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(8)[(7)] "Signature" means any manual, facsimile, conformed, or electronic signatures[an original signature or an electronic signature] as defined by KRS 369.102(8).

(9)[(8)] "Statutory notice" means notice made in accordance with KRS 278.180.

(10)[(9)] "Tariff" means the schedules of a utility's[schedule of each-of-its] rates, charges, regulations, rules, tolls,[maps;] terms, and conditions of service over which the commission has jurisdiction.

(11) "Tariff filing" means the revised or new tariff sheets and all supporting documents that a utility submits to revise its rate schedules.

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

(13)[(11)] "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.

(14) "Water district" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

(15) "Web site" means an identifiable site on the internet, including social media, which is accessible by the public.

Section 2. General. (1)[Beginning January 1, 2013,] Each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at https://psc.ky.gov/psc_portal/f/.

(2) Each utility shall maintain a complete tariff with the commission.

(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.

(4) A utility shall make available a paper or electronic copy of the utility's current tariff for public inspection in the utility's office or place of business.

(5) A utility that maintains[operates] a[public] Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of the utility's current tariff for each type of service that it provides; or

(b) Place on that[its] Web site a hyperlink to the location on the commission's Web site where the tariff has been posted.

Section 3. Format. (1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:

(a) Printed or typewritten;

(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and

(c) In type no smaller than nine (9) point font, except headers and footers, which shall be in type no smaller than eight (8) point font.

(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1[or reasonable facsimile], shall be used as the tariff's cover page, and shall contain:

(a) The utility's name, mailing address, street address of the utility's principal office if different from the mailing address, and Web site if applicable;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number[:]; (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) A statement of the[each] type of service offered;

(d) A statement of the area served;

(e) The date of issue and date on which the tariff is to become effective;

(f) The signature of the representative of the utility authorized

to issue tariffs; and

(g) The signatory's title or position.

(3) Tariff Form-2. With the exception of the first sheet of the tariff, which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 ~~for reasonable facsimile~~ and shall contain:

(a) The utility's name and territory served;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number[;] (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number[;] (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);

(d) The date of issue and date on which the tariff is to become effective;

(e) The signature of the utility representative authorized to issue tariffs;

(f) The signatory's title or position; and

(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. _____ Dated _____, 20____".

(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix the commission's stamp.

Section 4. Contents of Schedules. (1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village, or district in which rates are applicable.

(a) If a schedule is applicable in a large number of communities, the schedule shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) If a utility indicates the applicability of a schedule by reference to the index sheet, the utility shall use language indicating "Applicable within the corporate limits of the City of _____," or "see Tariff Sheet No. _____ for applicability."

(2) The following information shall be shown in each rate schedule, if applicable, under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classification[~~classes~~] of customers affected[~~, including residential, commercial, and other groups of customers~~];

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the minimum charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount or reference the tariff section containing the amount;

(f) Term: if a tariff provision or a contract will be effective for a limited period, state the term[~~contracts are made for certain periods, give the length of the term~~]; and

(g) Special rules: list special rules or requirements[~~, if applicable~~] that are in effect covering this tariff.

(3) Each rate schedule shall state the type or classification[~~class~~] of service available pursuant to the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. ____"; or

(b) A group of letters, with a[~~the~~] designation indicating[~~indicative of~~] the type or classification[~~class~~] of service for which the rate schedule is available. (Example: Tariff R.S. for residential service rates.)[~~The format for use of a group of letters shall be in the format "Tariff R.S." indicating that the rate schedule states residential service rates.~~]

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements. (1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) With the exception of supporting documents, which may be

submitted in an Excel spreadsheet in .xls format, each document shall be submitted in portable document format ("PDF")[~~and be capable of being viewed~~][viewing] with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements established[~~specified~~] in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) A tariff, tariff sheet, or tariff provision shall not be changed, cancelled, or withdrawn except as established[~~provided~~] by this section and Section 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect by:

(a) [By]Order of the commission; or

(b) [By]Issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public in accordance with Section 8 of this administrative regulation and statutory notice to the commission.

(3) The following symbols shall be placed in the margin to indicate a change[~~Each revised tariff sheet shall contain one (1) of the following symbols in the margin indicating the change made~~]:

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff establishing:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notice[~~Notices~~]. A utility shall provide[~~give~~] notice [~~to the public as required by this section~~] if a charge[~~or~~] fee[~~is changed, revised, or initiated or a~~] condition of service, or[~~a~~] rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the[~~required~~] notice no later than the date the tariff filing is submitted [~~to~~][~~made with~~] the commission.[~~The notice shall not be removed until the filing has become effective.~~]

(b) A utility that maintains a[~~public~~] Web site shall, within five [~~two~~](2) business days of the date the tariff filing is submitted to the commission[~~filing~~], post on its Web sites:

1. A copy of the public notice; and

2. [as well as] A hyperlink to the location[~~its filing~~] on the commission's Web site where the tariff filing is available.

(c) The information required in subsection (1)(a) and (b) of this section[~~notice~~] shall not be removed until the tariff filing has become effective or the commission issues a final decision on the tariff filing.

(2) Customer Notice[~~Manner of notification~~].

(a) If a[~~the~~] utility has twenty (20) or fewer customers or is a sewage utility, it shall mail a written notice[~~in accordance with subsection (3) of this section~~] to each customer no later than the date[~~on which~~] the tariff filing is submitted to the commission.

(b) If a[~~the~~] utility has more than twenty (20) customers and is

not a sewage utility, it shall provide notice by:

1. Including[Include] notice with customer bills mailed no later than[by] the date the tariff filing is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the tariff filing is submitted to the commission;[Publish notice in a trade publication or newsletter going to all customers by the date the filing is submitted; or]

3. Publishing[Publish] notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than[by] the date the tariff filing is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the tariff filing is submitted to the commission.

(c) A utility that provides service in more than one (1) county and is not a sewage utility may use a combination of the notice methods established[listed] in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the tariff filing was initially submitted to the commission;

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content[requirements]. Each notice issued in accordance with this section shall contain[the following information]:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification[class] to which the proposed rates will apply;

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

(d)[(c)] The amount of the average usage and the effect upon the average bill for each customer classification[class] to which the proposed rates[rate change] will apply;

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

(e) A statement that a person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that establishes the grounds for the request including the status and interest of the party;

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

(f)[(g)] A statement that a person may examine this tariff filing[and any related documents] at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the[are available on the Public Service] commission's Web site at <http://psc.ky.gov>;[and]

(g)[(h)] A statement that [written] comments regarding this tariff filing[the proposed rate] may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Com-

mission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of the initial publication or mailing of the notice, the commission may take final action on the tariff filing[by mail or through the Public Service Commission's Web site].

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

(a) If its notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

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

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

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer.

(6) Periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is performed in accordance with provisions of an effective rate schedule, special contract, or administrative regulation does not require notice in accordance with this section.

Section 9. Statutory Notice to the Commission. (1) The proposed rates on a new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:

(a) Proper notice was provided[given] to the public in accordance with Section 8 of this administrative regulation; [and the commission; and]

(b) Statutory notice was provided; and

(c) The commission does not suspend the proposed rates [The tariff is not suspended by an order of the commission] pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission at the time of the filing of the proposed rate[revision]. If[there is] a substantial omission occurs, which is prejudicial to full consideration by the commission or to the public[an intervenor], the statutory notice period to the commission shall not commence[to run and shall not be computed] until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. **[Notwithstanding 807 KAR 5:001,]** A utility may revise a nonrecurring charge pursuant to this section and Sections 6 and 9 of this administrative regulation.

(1) Each request to revise a current nonrecurring charge or to implement a new nonrecurring charge[requested rate revision] shall be accompanied by:

(a) A specific cost justification for the proposed nonrecurring charge, including all supporting documentation necessary to determine the reasonableness of the proposed non-recurring charge[rates];

(b) A copy of the public notice of each requested nonrecurring charge[rate revision] and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed revisions[changes] were not included in the utility's most recent general rate case and why current conditions prevent deferring the proposed revisions[changes] until the next general rate case;

(d) A statement identifying each classification[the group] of potential or existing customers affected by the rate revision;[and]

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an autho-

ized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission; and

(f) If the applicant is a water district **and proposes to increase any of its nonrecurring charges or implement a new nonrecurring charge**, a statement from an authorized **[utility] official of the district** indicating the date the proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers **reside/resides** and the date it presented testimony, or is scheduled to present testimony, to that governing body.

(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3)(a) If the ~~additional~~ revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent period of twelve (12) consecutive calendar months ending within ninety (90) days of submitting the tariff filing~~[month-period]~~, the utility shall, in addition to the information established in subsection (1) of this section, file an absorption test.

(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation method) to a level greater than that allowed in the most recent general rate case.

(c) As part of the absorption test, a general rate increase received during the twelve (12) month period shall be annualized.

(4) Upon a utility~~[utility's]~~ submitting the tariff filing to the commission, the utility shall transmit by electronic mail a~~[an electronic]~~ copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice. (1) A utility shall file an adoption notice on Tariff Form-3 if:

- (a) A change of ownership or control of a utility occurs;
- (b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;
- (c) A utility's name is changed; or
- (d) A receiver or trustee assumes possession and operation of a utility.

(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make as its own the predecessor's~~[former operating utility's]~~ rates, classifications, and requirements on file with the commission and effective at the time of the change of ownership or control.

(3) An adoption notice may be filed and made effective without previous notice.

(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.

(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to place~~[put]~~ into effect in lieu thereof, in the form established in Sections 2 through 4 of this administrative regulation with proper identifying designation.

(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:

(a) A complete reissue of its existing tariff that establishes the rates and requirements:

- 1. Of the predecessor utility then in effect and adopted by the successor utility; or
- 2. The utility proposes to place into effect for the customers served by the predecessor utility; or

(b) New or revised tariff sheets~~[additional pages or revised current pages of its existing tariffs]~~ that establish the rates and requirements:

- 1. Of the predecessor utility then in effect and adopted by the successor utility; or
- 2. The utility proposes to place into effect for the customers served by the predecessor utility.

(7)(a) If a new tariff or a revised sheet of an existing tar-

riff ~~[sheet]~~ states the rates and requirements of the predecessor utility without change, the successor utility shall not be required to provide notice of the filing~~[tariff or revised sheet of an existing tariff may be filed without notice]~~.

(b) If a new tariff or a revised [tariff] sheet of an existing tariff changes or amends ~~[states a change in the effect of]~~ the rates or requirements of the predecessor utility, the successor utility shall provide notice pursuant to KRS 278.180 and Section 8~~[the new tariff or revised sheet of an existing tariff shall be subject to Sections 9 and 10]~~ of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations, and Statutes. (1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.

(2) Each utility shall provide a suitable table or desk in its office or place of business on which it shall make available for public viewing:

(a) A copy of all effective tariffs and supplements establishing its rates, classifications, charges, rules, and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;

(b) A copy of all proposed tariff revisions that the utility has filed and are pending before the commission and all documents filed in a commission proceeding initiated to review the proposed tariff revisions;

(c) A copy of KRS Chapter 278; and

(d) A copy of 807 KAR Chapter 5.

(3) The information required in subsection (2) of this section shall be made available in an electronic or nonelectronic format.

Section 13. Special Contracts. Each utility shall file a copy of each~~[all]~~ special contract~~[contracts entered into governing utility service]~~ that establishes~~[establish]~~ rates, charges, or conditions of service not contained~~[included]~~ in its [general] tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation. Requests for confidential treatment~~[material]~~ shall be made and reviewed~~[treated]~~ in accordance with ~~[the procedures established in]~~ 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown ~~[and upon application to and approval by the commission]~~, the commission shall permit deviations from ~~[the rules in]~~ this administrative regulation ~~[may be permitted]~~.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Tariff Form-1", July 2013~~[2012]~~;

(b) "Tariff Form-2", July 2013~~[2012]~~; and

(c) "Tariff Form-3", Adoption Notice~~[.]~~ July 2013~~[2012]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 12, 2013 at 2 p.m.

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460.

VOLUME 40, NUMBER 4 – OCTOBER 1, 2013

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 278.010, 278.030, 278.040[Chapter 278]
STATUTORY AUTHORITY: KRS 278.030(1), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires[provides] that all rates charged by a[water] utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation establishes[prescribes] the requirements under which a privately-owned water utility implements[may implement] a purchased water adjustment[designed] to recover the cost[actual costs] of water purchased.

Section 1. Definitions. (1) "Application" means:

- (a) A completed Purchased Water Adjustment Form 2;
 - (b) A schedule listing current and proposed rates;
 - (c) A copy of the supplier's notice showing a change in supplier's base rate;
 - (d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation; and
 - (e) If the utility is not a sole proprietorship or partnership, a copy of the resolution or other document of the utility's governing body authorizing the proposed rates.
- (2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.
- (3) "Commission" is defined by KRS 278.010(15).
- (4) "Person" is defined by KRS 278.010(2).
- (5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.
- (6) "Tariff" means the schedules of a utility's rates, charges,

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

- (a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet,[foot] depending upon the unit of measure that the utility bases its customers' bills.
- (b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.
- (c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales} \div 85\%}$$

- (a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet,[foot] depending upon the unit of measure that the utility bases its customers' bills.
- (b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.
- (c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales} \div (100\% - \text{Determined Reasonable Unaccounted for Water Percentage})}$$

regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Unaccounted for water" means the volumetric sum of all water purchased and produced by the utility less the volume of water:

- (a) Sold;
 - (b) Provided to customers without charge as authorized by the utility's tariff; and
 - (c) Used by the utility to conduct the daily operation and maintenance of its treatment, transmission, and distribution systems.
- (8) "Utility" means a privately-owned utility that meets the requirements of KRS 278.010(3)(d).
- (9) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) If unaccounted for water does not exceed fifteen (15) percent, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(2) If unaccounted for water exceeds fifteen (15) percent and no reasonable percentage has been determined, pursuant to 807 KAR 5:006, Section 6, in the utility's last rate case, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(3) If unaccounted for water exceeds fifteen (15) percent and a reasonable percentage has been determined, pursuant to 807 KAR 5:006, Section 6, in the utility's last rate case, the purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

(a) The purchased water adjustment factor shall be expressed in cents per gallons or cubic ~~feet, [foot]~~ depending upon the unit of measure that the utility bases its customers' bills.

(b) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(c) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

Section 4. Submitting the Purchased Water Adjustment ~~Appli-~~ cation. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted in accordance with 807 KAR 5:001, **~~Sections~~[Section]** 7 and 8.

Section 5. Notice. ~~Upon~~[When] filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web site:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission; or

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) **Proof of Notice.** A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of mailing; or

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication.

(4) **Notice Content.** Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

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

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

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application ~~[and any related documents the utility has filed with the Public Service Commission]~~ at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application ~~[and any related documents]~~ at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and

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

Section 6. Orders of the Commission. (1) A utility shall not implement its proposed rates until the commission issues an order authorizing the ~~[water]~~ utility to adjust its rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) **Refund factor.** (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic ~~feet, [foot]~~ depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor ~~upon~~[when] calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 2", Purchased Water Adjustment for Privately-Owned Utilities, July 2013, is incorporated by reference.

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

ject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>. Water Utility Base Rate. The supplier's rate in effect immediately prior to the most recent increase shall be considered the base rate.

Section 2. Application for Change in Base Rate. (1) For purposes of a purchased water adjustment, the supplier's rate as defined in Section 1 of this administrative regulation shall be considered as the base rate for purchased water and any increase or decrease in the base rate shall be considered the changed rate.

(2) In the event there is an increase in the supplier's base rate, and the utility determines that it is necessary to adjust its rates so as to pass the increase on to its customers, the utility shall file with the commission the original and eight (8) copies of a completed application for purchased water adjustment in the form set forth in Section 6 of this administrative regulation. All exhibits designated therein must be filed with the application and shall be considered a part of the application.

(3) An applicant shall not implement its proposed rates until the commission issues an order authorizing the applicant to adjust its rates. The maximum amount of the adjustment so ordered shall not produce revenue adjustments greater than the difference between the purchased water billed at the base rate and the purchased water billed at the changed rate. Where the applicant's unaccounted for water loss is determined to be greater than either fifteen (15) percent or the percent expressly allowed in the applicant's last rate case, water purchases as defined in subsection (1)(b) of this section shall be adjusted to allow only the unaccounted for water loss found reasonable.

(4) In the event of an increase only, the applicant shall notify its customers of the proposed rate increase. The notice may be accomplished by a bill insert or by publication once a week for three (3) consecutive weeks in a newspaper of general circulation. Such notice shall set out the rates proposed to be charged by the applicant to its customers and shall contain the following language: "The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice."

Section 3. Calculation of the Purchased Water Adjustment. If a change is made in a base rate charged to a water utility by its supplier(s), the unit charges of the utility's tariff shall be increased or decreased by a purchased water adjustment calculated as follows:

(1) Water purchases shall be computed at the supplier's base rate and the supplier's changed rate using a period of twelve (12) calendar months ending within ninety (90) days of the filing date of the application. The difference between these amounts shows the total change in the applicant's purchased water costs.

(2) The total change in purchased water costs shall be divided by the actual number of cubic feet or gallons sold, yielding the purchased water adjustment expressed in cents per cubic foot or gallons, unless the applicant's unaccounted for water loss exceeds either fifteen (15) percent or the percent allowed in the applicant's last rate case.

(3) In instances where the water loss exceeds fifteen (15) percent and no reasonable percentage has been determined in its last rate case, the actual water sales shall be divided by eighty-five (85) percent yielding the maximum allowable water purchases. Where a reasonable percentage of unaccounted for water loss was expressly determined in the applicant's last rate case, the actual water sales shall be divided by (100 percent minus the percentage found reasonable) yielding the maximum allowable water purchases. The maximum allowable water purchases shall then be multiplied by the supplier's base rate and the changed rate. The difference between these amounts will be the total allowable change in the applicant's purchased water costs. The total allowable change shall then be divided by the actual number of cubic feet or gallons sold, yielding the purchased water adjustment expressed in cents per cubic foot or gallons.

Section 4. Procedure for Distribution of Refunds from Suppliers. In the event a water utility receives a refund from its supplier for amounts previously paid, the water utility shall immediately apply to the commission for authority to make adjustments on the amounts charged customers' bills under this administrative regulation as follows:

(1) The total refund received by the water utility shall be divided by the number of cubic feet or gallons of water the water utility estimates it will sell to its customers during the two (2) month period beginning with the first day of the month following receipt of the refund, yielding the refund factor to be applied against each cubic foot or gallon of water sold thereafter.

(2) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the water utility will reduce by the refund factor any purchased water adjustment that would otherwise be applicable during the period. The period of reduced purchased water adjustment shall be adjusted, if necessary, in order to most nearly approximate the total amount to be refunded. The water utility shall make full distribution of the refund within two (2) months.

(3) In the event a water utility receives a large or unusual refund, the water utility may apply to the commission for a deviation from the procedure for distribution of refunds specified herein.

Section 5. Procedure for Decrease in Purchased Water Costs. In the event a water utility receives a decrease in the rates charged it by its supplier, the purchased water adjustment shall be determined by the same procedure as set out in Section 3 of this administrative regulation and the utility's rates to its customers reduced accordingly.

Section 6. Form of Application for Purchased Water Adjustment. Applications for purchased water adjustments shall be in substantially the following form, shall contain all information requested and shall be accompanied by all exhibits designated therein. Copies of forms for use in making such applications may be obtained from the commission upon request.

APPLICATION FOR RATE ADJUSTMENT BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY
For Purchased Water Adjustment
Pursuant to 807 KAR 5:067

Name of Utility:

Business Mailing Address:

Telephone Number: (Area Code, Number)

NAME, TITLE, ADDRESS and TELEPHONE NUMBER of the person to whom correspondence or communications concerning this application should be directed:

NAME:

TITLE:

ADDRESS:

TELEPHONE NUMBER: (Area Code, Number)

Signature:

I. Basic Information

NOTICE: (1) This application must be completed in its entirety and will not be considered until all required information has been filed with the Commission.

(2) The purchased water adjustment is designed for the purpose of providing a mechanism whereby a utility may recover the actual costs of water purchased only. No other increases in costs will be considered within this application nor is any change in rate design permissible under this administrative regulation.

(3) Eight (8) copies of the application and exhibits must be filed. The application and any additional information that may be requested shall be addressed and/or submitted to: Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40601.

1. Has this application been filed for purposes of an increase in rates, decrease in rates or a refund?

Increase _____ Decrease _____ Refund _____

2. What is the amount of the increase, decrease, or refund?

Total revenue change \$

Purchased water adjustment _____¢ per cubic foot or gallon as determined in Item 10(c).

3(a) Names of all wholesale suppliers and the base rate and

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changed rate of each. In the event the water purchased is billed by the supplier on other than a flat rate schedule, the entire rate schedule must be shown. Attach additional sheets if needed.

Supplier	Base Rates	Changed Rates
-	-	-
-	-	-
-	-	-

(b) A copy of the wholesale supplier's tariffs, ordinances, or other documents establishing both the base supplier rate and the changed supplier rate are attached as Exhibit _____ to this application.

(c) A copy of the supplier's statement to the utility showing the effective date of the changed rate is attached as Exhibit _____ to this application.

4.(a) Has the utility provided appropriate notice to its customers by either a bill insert or by publication in accordance with the provisions of 807 KAR 5:067, Section 2(4). Yes U No U

(b) A copy of the utility's notice to its customers is attached as Exhibit _____ to this application.

5. Revised tariff sheet(s) showing the rates proposed to be charged by the utility to its customers is attached as Exhibit _____ to this application.

Note: The revised tariff sheet(s) must show the rates proposed to be charged by the utility for each customer class in the form shown in Item 12. The issue date should be the date the application is filed with the commission. The effective date will be the date of the commission's order in this case. In the event the proposed tariff is correct and approved as filed, no further tariff forms will be required. The effective date, case number and order date will be completed by commission staff and a stamped copy of the approved tariff sheet will be returned to the utility for its files. Each sheet must be signed by the officer authorized to issue tariffs.

6. The twelve (12) month period used to calculate the purchased water adjustment ends _____ (month and year). This test period must end within ninety (90) days of the date this application is filed.

7. Water purchases. Where water is purchased from more than one (1) supplier, purchases from each supplier must be shown separately. Where water is purchased from a supplier through more than one (1) meter and bills are computed individually for each meter, purchases should also be shown separately for each meter. Attach additional sheets if necessary.

SUPPLIER'S NAME	TOTAL GALLONS PURCHASED		
	Meter No. 1	Meter No. 2	Meter No. 3
-	-	-	-
-	-	-	-
TOTAL	-	-	-

8. Water sales. Total gallons sold during twelve (12) month test period:

9. Maximum allowable gallons. The maximum allowable gallons upon which the purchased water adjustment may be based shall be determined in one of the following ways:

(a) Where a reasonable unaccounted-for water loss was expressly determined in the utility's last general rate case and actual unaccounted-for water loss exceeds the percent found reasonable, the water sales shall be divided by (100 percent minus the percent found reasonable) yielding the maximum allowable gallons to be entered in Item 10(a) or (b).

(b) Where no reasonable unaccounted-for water loss was expressly determined in the utility's last general rate case and the actual water loss exceeds fifteen (15) percent, the water sales shall be divided by eighty-five (85) percent and the resulting gallons entered in Item 10(a) or (b).

(c) Where no reasonable water loss was expressly determined in the utility's last general rate case and the actual unaccounted-for water loss is less than fifteen (15) percent, the actual gallons of water purchased shall be entered in Item 10(a) or (b).

10. Allowable change in purchased water costs.

(a) Where supplier bills on a flat rate schedule

_____ X _____ = \$ _____
 Allowable gallons changed rate _____ cost at changed rate
 minus
 _____ X _____ = \$ _____

Allowable gallons base rate _____ cost at base rate

(b) Where supplier bills on a declining block rate schedule*

Changed Rates Usage Blocks	Rate	Cost
1st _____ gal. x 12 mo. = _____	gal.(12 x Min.) = _____	-
Next _____ gal. x 12 mo. = _____	gal. x _____ = _____	-
Next _____ gal. x 12 mo. = _____	gal. x _____ = _____	-
Next _____ gal. x 12 mo. = _____	gal. x _____ = _____	-
Over _____ gal. x 12 mo. = _____	gal. x _____ = _____	-
Total allowable gal. _____		
Cost at changed rate \$ _____		

Base Rates Usage Blocks	Rate	Cost
1st _____ gal. x 12 mo. = _____	gal.(12 x Min.) = _____	-
Next _____ gal. x 12 mo. = _____	gal. x _____ = _____	-
Next _____ gal. x 12 mo. = _____	gal. x _____ = _____	-
Next _____ gal. x 12 mo. = _____	gal. x _____ = _____	-
Over _____ gal. x 12 mo. = _____	gal. x _____ = _____	-
Total allowable gal. _____		
Cost at changed rate \$ _____		
Cost at changed rate: \$ _____ minus Cost at base rate: \$ _____		
ALLOWABLE CHANGE: \$ _____		

*Where the utility receives purchased water through two (2) or more meters and the supplier computes bills individually for each meter, the costs should be calculated separately for each meter at the base rate and the changed rate, then combined to arrive at the total allowable change in costs. Attach additional sheets if necessary.

(c) Purchased water adjustment.

_____/_____= _____¢ per gal. or c.f.
 Allowable Change Gallons Sold

NOTE: In the event the utility receives a decrease in the rates from its wholesale supplier, the purchased water adjustment shall be calculated in the same manner as set out in Items 9 and 10, and its rates reduced accordingly.

11. Refund. In the event a refund is received from the supplier for amounts previously paid, the following tabulations will be made:

(a) Total refund received: \$ _____

(b) Total amount of water estimated to be sold during 2-month period beginning with the first day of the month following receipt of the refund: _____ M. Gal.

(c) Refund factor unit of water sold (Item (a) divided by Item (b)): _____¢

(d) The refund factor may be adjusted in the final month to more accurately reflect the amount to be refunded.

12. Form for filing Rate Schedules:

For: (Community, Town or City)

P.S.C. No.:

 SHEET NO. _____
 CANCELLING P.S.C. NO. _____

Name of Issuing Corp. _____

 SHEET NO. _____
 CLASSIFICATION OF SERVICE
 RATE PER UNIT
 DATE OF ISSUE _____ DATE EFFECTIVE _____

ISSUED BY (Name of Officer):

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Issued by authority of an Order of the Public Service Commission of Kentucky in Case No. _____ dated _____. (7 Ky.R. 793; eff. 9-2-81; Am. 1895; eff. 7-2-86.)]

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DAVID L. ARMSTRONG, Chairman
APPROVED BY AGENCY: July 11, 2013
FILED WITH LRC: July 12, 2013 at 2 p.m.
CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard
P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015[Chapter 278]

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires[provides] that all rates charged by a [water] utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation prescribes the requirements under which a water district or a water association may implement a purchased water adjustment[designed] to recover the cost[actual costs] of water purchased.

Section 1. Definitions. (1) "Application" means:

- (a) A completed Purchased Water Adjustment Form 1;
- (b) A schedule listing current and proposed rates;
- (c) A copy of the supplier's notice showing a change in supplier's base rate;
- (d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation;
- (e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and
- (f) If the applicant is a water district and proposes to increase any of its rates for [water] service, a statement from an authorized[utility] official of the district indicating the date its proposed

$$\text{PWA Adjust-ment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(2) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, [foot] depending upon the unit of measure that the utility bases its customers' bills.

(3) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total utility water purchases and total water utility sales.

Section 4. Submitting the Purchased Water Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

- (a) In accordance with 807 KAR 5:001, Sections 7 and 8; and
- (b) No earlier than thirty (30) days prior to the proposed effective date of the supplier's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its purchased water costs due

rate adjustment[increase] was reported to the governing body of the county in which the largest number of its customers re-side[resides] and the date it presented testimony, or is scheduled to present testimony, to that governing body.

(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.

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

(4) "Person" is defined by KRS 278.010(2).

(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of water service[a public water supply]; or

(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) The purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

to the supplier's changed rate.

Section 5. Notice. Upon[When] filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

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1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate; or

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing; or

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the date/dates of the notice's publication.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

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

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

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application and any related documents the utility has filed with the Public Service Commission at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application and any related documents at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner prescribed in Section 5(2) of this administrative regulation.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet/foot depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor upon/when calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 1", Purchased Water Adjustment for Water Districts and Associations, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov> Water Utility Base Rate. The supplier's base rate in effect immediately prior to the most recent increase shall be considered the base rate.

Section 2. Applications for Change in Base Rate. (1) For purposes of a purchased water adjustment, the supplier's rate as defined in Section 1 of this administrative regulation shall be considered as the base rate for purchased water and any increase or decrease in the base rate shall be considered the changed rate.

(2) In the event there is an increase in the supplier's base rate, the water district or water association shall determine the increased cost of water purchased based on the twelve (12) month period ending within ninety (90) days immediately prior to the effective date of its rate adjustment to its customers. The cost of purchased water shall be calculated at the supplier's base rate and changed rate, as defined in Sections 1 and 2 of this administrative regulation. The difference in costs shall then be divided by the actual number of cubic feet or gallons sold during the same twelve (12) month period, yielding the purchased water adjustment in cents per cubic foot or gallon unit. This adjustment amount shall be added to all the utility's rate schedules on a per-unit basis regardless of the customer class.

(3) In the event there is a decrease in the supplier's rate, the purchased water adjustment shall be calculated in the same manner as set out in subsection (2) of this section and its rates reduced accordingly.

(4) In the event a water district or water association receives a refund from its supplier for amounts previously paid, the water district or water association shall immediately apply to the commission for authority to make adjustments on the amounts charged customer's bills under this administrative regulation as follows:

(a) The total refund received by the utility shall be divided by the number of cubic feet or gallons of water the utility estimates it will sell to its customers during the two (2) month period beginning with the first day of the month following receipt of the refund, yielding the refund factor to be applied against each cubic foot or gallon of water sold thereafter.

(b) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility will reduce by the refund factor any purchased water adjustment that would otherwise be applicable during the period. The period of

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reduced-purchased water adjustments shall be adjusted, if necessary, in order to most nearly approximate the total amount to be refunded. The water utility shall make full distribution of the refund within two (2) months.

(c) In the event a water utility receives a large or unusual refund, the utility may apply to the commission for a deviation from the procedure for distribution of refunds specified herein.

Section 3. Filings with the Commission. (1) Within twenty (20) days after any such purchased water rate adjustment, the water district or water association shall file with the commission its revised tariff sheets setting forth the adjusted rates and information concerning the water purchases and sales upon which the adjustment was based sufficient to determine the accurateness of the calculations and application of the purchased water adjustment to its rates. Such tariffs and information shall be in substantially the form set forth in subsection (2) of this section. Copies of these forms may be obtained from the commission upon request.

(2) Form of purchased water adjustment filing.

PURCHASED WATER RATE ADJUSTMENT

Pursuant to KRS 278.012 and 278.015

(Name of Utility):

(Date):

(Business Mailing Address):

(Telephone Number):

1. (a) Names of all wholesale suppliers and the base rate and changed rate of each. In the event the water purchased is billed by the supplier on other than a flat rate schedule, the entire rate schedule must be shown. Attach additional sheets if necessary.

Supplier(s)	Base Rate	Changed Rate
(1)	-	-
(2)	-	-
(3)	-	-

(b) A copy of the supplier's notice of the changed rate showing the effective date of the increase is attached as Exhibit _____.

2. Twelve-month period upon which purchased water adjustment is based:

From: (Month & Year)	Through: (Month & Year)
-------------------------	----------------------------

3. Statement of Water Purchases (Where water is purchased from more than one (1) supplier, purchases from each supplier must be shown separately. Where water is purchased from a supplier through more than one (1) meter and bills are computed individually for each meter, purchases should also be shown separately for each meter.)

Supplier's Name	Gallons Purchased Meter No. 1	Gallons Purchased Meter No. 2
(1)	-	-
(2)	-	-
(3)	-	-
TOTAL	-	-

4. Total Sales for the twelve (12) Months _____

5. Purchased Water Adjustment Factor _____¢ per gallon or cubic foot.

NOTE: Revised tariff sheets must be attached showing rates to be charged by the utility and the effective date of such increased rates.

Signature of Utility Officer:

Title:

Form for filing Rate Schedules

For: (Community, Town or City)

P.S.C. No.:

_____ SHEET NO. _____

_____ CANCELLING P.S.C. NO. _____

Name of Issuing Corp. _____

_____ SHEET NO. _____

CLASSIFICATION OF SERVICE

RATE PER UNIT

DATE OF ISSUE _____ DATE EFFECTIVE _____

ISSUED BY (Name of Office):

TITLE:

Issued by authority of an Order of the Public Service Commission of Kentucky in Case No. _____ dated _____.

Section 4. Orders of the Commission. (1) Within thirty (30) days after the documents required by Section 3 of this administrative regulation are filed, the commission shall enter its order either approving the rates or establishing revised rates.

(2) If the rates contained in the tariff are correct and approved as filed, no further tariff forms will be required to be filed and a stamped copy of the approved tariff sheet(s) shall be returned to the utility for its files. If the rates are incorrect and corrected rates are established by the commission, within thirty (30) days of the date of the commission's order, the utility shall file revised tariff sheet(s) setting out the rates so ordered.

Section 5. Notice to Customers. The water district shall notify its customers of any increase in rates resulting from a supplier increase no later than the rendering of the first bill at the increased rate].

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 12, 2013 at 2 p.m.

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.

ENERGY AND ENVIRONMENT CABINET Public Service Commission (As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015, 278.030, 278.040[Chapter 278]

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires[provides] that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation establishes[prescribes] the requirements under which a water district or a water association may implement a treated sewage adjustment to recover the costs of treated sewage.

Section 1. Definitions. (1) "Application" means:

(a) A completed Treated Sewage Adjustment Form 1;

(b) A schedule listing current and proposed rates;

(c) A copy of the provider's notice showing a change in provider's base rate;

(d) The calculation and all supporting documents used to determine the change in treated sewage costs sufficient to determine the accuracy of the calculation;

(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and

(f) If the applicant is a water district and proposes to increase any of its rates for [sewage] service, a statement from an authorized [utility] official of the district indicating the date its proposed rate adjustment[increase] was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body.

(2) "Changed rate" means the rate of a utility's provider after the most recent increase or decrease in the provider's base rate.

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

(4) "Person" is defined by KRS 278.010(2).

(5) "Provider's base rate" means the rate of a utility's provider in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges,

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regulations, rules, ~~fees~~ tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of sewage service; or

(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Provider's Base Rate. (1) Upon an increase in its provider's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased

$$\text{TSA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Treated Sewage}) - (\text{Base Rate} \times \text{Total Treated Sewage})}{\text{Total Utility Water Sales}}$$

(2) The treated sewage adjustment factor shall be expressed in cents per gallons or cubic ~~feet~~~~[feet]~~ depending upon the unit of measure that the utility bases its customer bills.

(3) Total treated sewage shall be determined based upon the level of treated sewage for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total treated sewage and total utility water sales.

Section 4. Submitting the Treated Sewage Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the provider's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its treated sewage costs due to the provider's changed rate.

Section 5. Notice. Upon~~[When]~~ filing an application for a treated sewage adjustment resulting from a provider's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice. A utility shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order

treated sewage costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the provider's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased treated sewage costs on a per unit basis regardless of customer classification.

Section 3. Treated Sewage Adjustment Factor. (1) The treated sewage adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

approving an adjustment to the utility's rates pursuant to this administrative regulation an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

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

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

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application ~~[and any related documents the utility has filed with the Public Service Commission]~~ at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application ~~[and any related documents]~~ at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner ~~established~~~~[prescribed]~~ in Section 5(2) of this administrative regulation.

Section 7. Refund from a Provider. (1) A utility that receives a refund from its provider for previously paid for treated sewage due to a reduction in the provider's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the provider's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

tion.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic ~~feet~~ foot depending upon the unit of measure that the utility bases its customer bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor when calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Treated Sewage Adjustment Form 1", Treated Sewage Adjustment for Water Districts and Associations, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 11, 2013

FILED WITH LRC: July 12, 2013 at 2 p.m.

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460.

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

815 KAR 4:030. Elevator contractor licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4023, 198B.4025, 198B.4027, 198B.4033

STATUTORY AUTHORITY: KRS 198B.4009, 198B.4011, 198B.4023, 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator contractors to be licensed, and KRS 198B.4011 provides the eligibility requirements to be met for issuance of an elevator contractor's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education~~educations~~ requirements for elevator licensee renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. KRS 198B.4009(3) authorizes fees for the elevator licensure program to implement KRS 198B.400 through 198B.540. This administrative regulation establishes the licensure requirements for elevator contractors.

Section 1. General Requirements. (1) Supervision. The elevator contractor shall supervise generally, and be primarily responsible for, all elevator work performed by the mechanics, employees, and subcontractors of the licensee.

(2) Company license. A licensee who is an employee of a company and whose license represents the company shall notify the department, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on that license and paying the change of information fee established in Section 6~~5~~(5) of this administrative regulation.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator contractor license shall submit to the department:

1. A completed, signed, and notarized Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license.

a. The initial license fee may be prorated.

b. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;

3. Proof of applicant's experience as required by KRS 198B.4011;

4. A~~recent~~ passport-sized color photograph of the applicant taken within the past six (6) months; and

5. Proof of insurance as required by KRS 198B.4027.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is received by the department~~submitted~~.

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the elevator contractor license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 4. Experience requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have:

(a) A minimum of three (3) years of verifiable experience as an elevator mechanic; or

(b) A current license, certification, or registration as an elevator contractor in another state whose standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4.

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by W-2s.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.

Section 5. Renewal and Reactivation Requirements and Pro-

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cedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator contractor shall submit to the department:

(a) A completed, signed and notarized Elevator License Renewal Application on Form EV-7;

(b) A renewal fee of \$240 made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) Each application for license renewal shall be submitted~~filed~~ by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal application submitted~~filed~~ late, but with a United States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section ~~6(4)~~(1) of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section 6(2) of this administrative regulation, shall be added to the annual renewal fee.

(5) Inactive elevator contractor status and renewal requirements.

(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of \$120.

(b) An inactive elevator contractor shall not:

1. Secure an elevator permit;

2. Advertise; or

3. Represent himself as an elevator contractor currently authorized to contract elevator work in the commonwealth.

~~(6) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.~~

~~(7) Continuing education requirements shall not be required for renewal, if the initial license was issued within twelve (12) months of renewal.~~

~~(7)(b)~~ The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;

(b) Comply with elevator contractor continuing education requirements;

(c) Provide the current insurance certificates required by KRS 198B.4027; or

(d) Submit~~File~~ the renewal application as required by this section.

~~(8)(b)~~ To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, the~~an~~ additional \$120 reactivation fee, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 6. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be \$100.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be \$120.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee.

(a) The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars.

(b) If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 7. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons established in KRS 198B.4033.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Elevator Contractor License Application", Form EV-3, September 2013~~October 2011~~; and

(b) "Elevator License Renewal Application" Form EV-7, June 2013~~August 2012~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412~~5405~~, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 25, 2013 at 11 a.m.

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone (502)573-0365, ext. 144, fax (502)573-1057.

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

815 KAR 4:040. Elevator mechanic licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: KRS 198B.4009, 198B.4013, 198B.4023, 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator mechanics to be licensed and KRS 198B.4013 provides the eligibility requirements to be met for issuance of an elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator licensee renewals. This administrative regulation establishes the licensure requirements for elevator mechanics and establishes procedures for license renewal.

Section 1. Initial Application Requirements. (1) Filing the application. An applicant seeking an elevator mechanic license or an accessibility and residential elevator mechanic license shall submit to the department:

(a) A completed, signed, and notarized Elevator Mechanic License Application on Form EV-4;

(b) An initial license application fee of ninety-six (96) dollars for a twelve (12) month license~~1. The initial license fee may be prorated.~~

~~2. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;~~

(c) Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

(d) A ~~recent~~ passport-sized, color photograph of the applicant taken within the past six (6) months.

(2) Proration of fees.

(a) The initial license fee may be prorated.

(b) If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months.

(3) Termination of application.

(a) The initial application shall remain pending until all require-

ments are met up to a period of one (1) year after the date the application is ~~received~~submitted.

(b) At the end of one (1) year, the application shall be void.

Section 2. Examination Requirements. (1)~~[(1)]~~ An applicant ~~who~~ applies for licensure under the provisions of KRS 198B.4013(2)(a)~~[(1)]~~, ~~the applicant~~ shall take and pass the examination known as the Kentucky Elevator Mechanic Examination administered in compliance with this section. ~~[(1)]~~The Kentucky Elevator Mechanic Examination shall test the applicant's basic knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators and elevator systems.

(2) An applicant who applies for licensure under the provisions of KRS 198B.4013(2)(b) shall take and pass the examination known as the Kentucky Accessibility and Residential Elevator Mechanic Examination. The Kentucky Accessibility and Residential Elevator Mechanic Examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of accessibility lifts and private residential elevators.

(3) The department or its designee shall develop, administer, and score the Kentucky Elevator Mechanic Examination and the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(4) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(5)~~[(3)]~~ Except as provided by subsection (9)~~[(7)]~~ of this section, an applicant shall successfully complete with a passing score of at least seventy (70) percent the Kentucky Elevator Mechanic Examination or Kentucky Accessibility and Residential Elevator Mechanic Examination, as applicable~~the examination known as the "Kentucky Elevator Mechanic Examination", which is developed, administered, and scored by the department or its designee.~~

(6)~~[(4)]~~(a) A request to sit for the Kentucky Elevator Mechanic Examination or the Kentucky Accessibility and Residential Elevator Mechanic Examination shall be made directly to the department-approved testing facility.

(b) A list of facilities and contact information shall be provided to applicants following receipt of the~~examination~~ application.

(7)~~[(5)]~~ The cost shall not exceed \$100 for either the Kentucky Elevator Mechanic Examination or for the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(8)~~[(6)]~~ A passing score on an approved elevator~~the~~ examination shall be valid for a period of two (2) years.

(9)~~[(7)]~~ Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department or department's designee if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations.

Section 3. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.4013(2).

(2) Records of experience.

(a) Proof of listed experience shall be provided by W-2s or an affidavit from a licensed elevator contractor or the equivalent.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department finds reason to believe that the experience shown is insufficient or nonexistent.

Section 4. Renewal Requirements and Procedures. (1) Filing for renewal. Each license shall be renewed ~~annually~~each year. To renew an elevator mechanic or accessibility and residential elevator mechanic~~a~~ license, the licensee~~an elevator mechanic~~ shall submit to the department:

(a) A completed, signed, and notarized Elevator License Renewal Application on Form EV-7;

(b) A renewal fee of ninety-six (96) dollars made payable to the

Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing education provider evaluation forms for each continuing education class attended.

(2) Each application for license renewal shall be submitted to the department~~filed~~ by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal fee of ninety-six (96) dollars shall be paid prior to renewal. The department shall send a renewal application to each licensee ~~annually~~each year to be returned with the required fee.

(4) A renewal application ~~submitted~~filed late, but with a United States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section ~~6~~5(1) of this administrative regulation, shall be added to the annual renewal fee.

(5) Failure to renew by sixty-one (61) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 1 of this administrative regulation for reinstatement and a reinstatement fee, in accordance with Section ~~6~~5(2) of this administrative regulation, shall be added to the annual renewal fee.

(6) Inactive elevator mechanic or accessibility and residential elevator mechanic renewal.

(a) To place an elevator mechanic's or accessibility and residential~~the~~ elevator mechanic's license in inactive status, the~~an~~ elevator mechanic or accessibility and residential elevator mechanic shall pay annually an inactive fee of forty-eight (48) dollars.

(b) An inactive elevator mechanic or accessibility and residential elevator mechanic shall not perform work within the Commonwealth if the work requires an elevator mechanic's or accessibility and residential elevator~~a~~ mechanic's license.

(7)~~[(1)]~~ If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis. (8)~~[(2)]~~ Continuing education requirements shall not be required for renewal ~~if provided~~ the initial license was issued within twelve (12) months of renewal.

(8)~~[(9)]~~ The application for renewal or reactivation of a licensed elevator mechanic or accessibility and residential elevator mechanic shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal and restoration, if applicable;

(b) Comply with applicable~~elevator mechanic~~ continuing education requirements; or

(c) Submit~~File~~ the renewal application as required by this section.

(9)~~[(10)]~~ Reactivation of Inactive Elevator Mechanic's or Accessibility and Residential Elevator Mechanic's License. To reactivate an elevator mechanic or accessibility and residential elevator mechanic license, the inactive elevator mechanic or accessibility and residential elevator mechanic shall pay the annual renewal fee, the~~an~~ additional forty-eight (48) dollar reactivation fee~~dollars~~, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 5. Limitation on Applicability. A licensed elevator mechanic may perform work on accessibility and residential elevators without obtaining an accessibility and residential elevator license.

Section 6. Special Services and Fees. In addition to the other fees required by this administrative regulation, the following special fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be twenty-five (25) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be twenty-five (25) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be forty-eight (48) dollars.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

Section 7~~[(6)]~~. Revocation or Suspension of License. A license

issued pursuant to this administrative regulation may be suspended or revoked by the commissioner for any of the reasons stated in KRS 198B.4033.

Section 8[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Elevator Mechanic License Application", Form EV-4, June 2013~~(September, 2014)~~; and

(b) "Elevator License Renewal Application", Form EV-7, June 2013~~(August 2012)~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412~~[5405]~~, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: June 14, 2013

FILED WITH LRC: June 25, 2013 at 11 a.m.

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone (502) 573-0365, ext. 144, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, [7 C.F.R.] 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 18.

Section 1. Definitions. (1) "Above-50-percent vendor" means a vendor that receives or is expected to receive more than fifty (50) percent of its annual food sales revenue from WIC benefits.

(2) "Alcohol" is defined by KRS 241.010(1).

(3) "Alcoholic beverage" is defined by KRS 241.010(2).

(4) "Approved product listing" or "APL" means an electronic list or file identifying the food items approved by the state WIC agency for purchase with WIC food instruments by food category and sub-category.

(5) "Authorized supplemental food" means a supplemental food authorized by the state or a local agency for issuance to a particular participant.

(6) "Cash value voucher" is defined by 7 C.F.R. 246.2.

(7) "Certifying professional authority" means a person authorized to determine eligibility and certify persons for the WIC program.

(8) "Class" means food sale classification.

(9) "Compliance buy" means a covert, on-site investigation.

(10) "Contract price" means the price for a WIC food item negotiated between the state WIC agency and the vendor.

(11) "Dual participation" means simultaneous participation in the WIC Program and in:

(a) One (1) or more WIC clinics; or

(b) The Commodity Supplemental Food Program.

(12) "Electronic WIC benefits" or "eWIC" means a Web-based technology that allows WIC participants to obtain food benefits by using a plastic debit-type card with a personal identification number

(PIN) at authorized participating WIC retailers.

(13) "Exempt infant formula" is defined by 7 C.F.R. 246.2.

(14) "FNS" means Food and Nutrition Services.

(15) "Food instrument" is defined by 7 C.F.R. 246.2.

(16) "Good letter with exceptions" means a written notification letter that:

(a) A compliance buy has been conducted in the store;

(b)~~and that~~ A violation occurred; and

(c)~~however,~~ No sanction was applied due to lack of pattern of incidence.

(17) "High risk vendor" means a vendor having a high probability of noncompliance with KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18~~[federal and state regulations, policies, and procedures as identified in 902 KAR 18:090]~~.

(18) "Integrated" means a commercial system that fully incorporates eWIC functionality into an existing cash register (ECR) system.

(19) "Inventory audit" means an examination of food invoices or other proof of purchase to determine if a vendor has purchased sufficient quantities of authorized supplemental food to provide to participants the quantities of food items redeemed by the vendor during a given period of time.

(20) "Investigation" means a method used by the state WIC agency to detect a WIC program violation.

(21) "Local agency" means an applying or participating WIC agency.

(22) "Low variance" means the redemption of the same type of food item at the same price or within a narrow price range.

(23) "Medical foods" means enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition when the use of conventional foods is precluded, restricted, or inadequate.

(24) "Not to exceed" or "NTE" means:

(a) FNS-approved cost containment methodology whereby WIC authorized vendors are subject to price limitations; and

(b)~~is~~ NTE is the maximum amount that Kentucky will pay for a specific food item identified by its UPC code.

(25) "Participant" means:

(a) A pregnant, breastfeeding, or postpartum woman or an infant or child who is receiving supplemental food or food instruments;

(b) The breastfed infant of a breastfeeding woman who is receiving WIC program benefits;

(c) The parent or caretaker of an infant or child receiving a WIC benefit; and

(d) The proxy for a person identified in paragraphs (a), (b), or (c) of this subsection.

(26) "Participant violation" means an intentional, knowing act of a participant that violates KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18~~[federal or state law governing the WIC program]~~.

(27) "Peer Groups" means categories into which vendors are assigned based upon sales volume and region.

(28) "PIN" means a unique four (4) digit personal identification number designated by the WIC participant.

(29) "Point of sale" or "POS" means the system supporting WIC/eWIC food transactions in a store checkout lane.

(30) "POS device" means a physical electronic cash register or dedicated point of sale hardware or terminal that is used for WIC processing.

(31) "Positive buy" means a compliance buy, on-site review, or on-line WIC transaction review that provides evidence that in which evidence of a violation of the vendor agreement or KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18~~[the federal or state law governing the WIC program]~~ has occurred.

(32) "Price look up" or "PLU" means a four (4) or five (5) digit identifier used to identify individual and bulk produce.

(33) "Proxy" means a person designated by a female participant or by a parent or caretaker of an infant or child participant to obtain and transact a food instrument or cash value voucher to obtain a supplemental food or foods on behalf of a participant.

(34) "Routine monitoring" means overt, on-site monitoring dur-

ing which representatives of the WIC program identify themselves to vendor personnel.

(35) "Rural" means any area not defined as urban.

(36) "Shelf price" means the price displayed on the food item, shelf, or display case where the food item is stored.

(37) "SNAP" means the Supplemental Nutrition Assistance Program, formerly known as the Food Stamp Program.

(38) "Standard bar code" means a printed series of lines of varying width on a container or product that can be read by an optical scanner to determine product classification and price.

(39) "Staple food items" means meat, poultry, fish, bread, breadstuff, cereals, vegetables, fruit, vegetable and fruit juices, and dairy products, excluding items such as coffee, tea, cocoa, carbonated and uncarbonated beverages, condiments, and spices.

(40) "State WIC agency" means the Cabinet for Health and Family Services or its designated representative.

(41) "Systematic review" means a review of electronic WIC transactions by the state WIC agency or its representatives to monitor systematic violations of the program.

(42) "Trafficking" means the redemption or exchange of WIC food instruments for cash, a firearm, ammunition, an explosive, or a controlled substance as defined in 21 U.S.C. 802.

(43) "Unauthorized food" means foods not authorized by the state or local agency for issuance to a particular participant.

(44) "Unique customer" means the number of unduplicated individuals that have one (1) or more transactions at the sanctioned vendor during the specified time period.

(45) "UPC" means a barcode consisting of twelve (12) digits used for tracking trade items in retail stores.

(46) "Urban" means a metropolitan area as defined by the U.S. Office of Management and Budget (OMB) Bulletin No. 13-01 [that is delineated by the Standards for Delineating Metropolitan and Metropolitan Statistical Areas that the Office of Management and Budget (OMB) published on June 28, 2010, in the Federal Register (75 Fed. Reg. 37246-37252)].

(47) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one (1) or more stores by providing authorized supplemental foods to participants under a retail food delivery system.

(48) "Vendor authorization" means the process by which the state WIC agency assesses, selects, and enters into an agreement or contract with a store that applies or subsequently reapplies to be authorized as a vendor.

(49) "Vendor overcharge" is defined by 7 C.F.R. 246.2.

(50) "Vendor violation" means an intentional or unintentional act of a vendor's current owner, officers, agent, or employee, with or without the knowledge of management, that violates the vendor agreement or KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18 [either the federal or state law governing the WIC program].

(51) "WIC agency" means a local health department or agency contracted with the state to deliver WIC services.

(52) "WIC benefits" means a voucher, check, electronic benefits transfer card (EBT), coupon, or document that is used by a participant to obtain supplemental foods.

(53) "WIC program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by Section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786, and administered pursuant to 42 U.S.C. 1786 and 7 C.F.R. Part 246.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 2013

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2013 at 9:00 a.m. in Suite C. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written

request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services,
275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, September 11, 2013)

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

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, [7 C.F.R.] 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the application and participation process for participants of the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Eligibility. To be certified as eligible to participate in the WIC program, a person shall:

(1) Be categorically eligible as follows:

(a) A pregnant woman;

(b) A postpartum woman, up to six (6) months after termination of pregnancy;

(c) A breastfeeding woman, up to the infant's first birthday;

(d) An infant, birth to one (1) year of age; or

(e) A child, one (1) to five (5) years of age;

(2) Provide proof of residence in the Commonwealth of Kentucky, such as a utility bill, driver's license, or SNAP identification card;

(3) Provide proof of identity as defined by 7 C.F.R. 246.7(c), such as a driver's license, medical card, birth certificate, or photo identification;

(4) Provide proof of household income, such as the most recent paystub, tax form (W-2), or medical card, and meet the following income criteria:

(a) Receive KTAP, SNAP, or Medicaid;

(b) A pregnant woman or infant in the household receives Medicaid;

(c) A member of the household receives Medicaid; or

(d) The household income is at or below 185 percent of the federal poverty level;

(5) Meet the required nutritional risk data at certification:

(a) Height or length and weight measurements shall be performed and documented.

(b) Hematological tests shall be performed and documented; and

(6) Meet one (1) of the following nutritional risk criteria:

(a) A detrimental or abnormal nutritional condition detectable by biochemical or anthropometric measurements, such as:

1. Anemia;

2. Underweight;

3. Overweight;

4. Abnormal pattern of weight gain in a pregnant woman;

5. Low weight gain in an infant; or

6. Stunting in an infant or child; or

(b) A documented nutritionally related medical condition such as:

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1. Clinical signs of nutritional deficiency;
2. Metabolic disorder;
3. Pre-eclampsia in a pregnant woman;
4. Failure to thrive in an infant;
5. Chronic infection;
6. Alcohol or drug abuse or mental retardation in a woman;
7. Lead poisoning;
8. History in a pregnant woman of a high risk pregnancy or an

associated factor such as:

- a. Smoking;
 - b. Conception before sixteen (16) months postpartum;
 - c. Low birth weight, premature birth, or neonatal loss;
 - d. Adolescent pregnancy; or
 - e. Current multiple pregnancy; or
9. Congenital malformation in an infant or child or an infant

born to a woman with:

- a. A history of alcohol abuse;
- b. A history of drug abuse;
- c. Mental retardation;
- d. A dietary deficiency that impairs or endangers health, such

as an inadequate dietary pattern as assessed by:

- (i) A twenty-four (24) hour dietary recall;
- (ii) Dietary history; or
- (iii) Food frequency checklist; or

e. A condition that predisposes a person to an inadequate nutritional pattern or nutritionally related medical condition, such as homelessness or migrancy.

Section 2. Certification Periods. WIC program benefits shall be based upon certifications established in accordance with the ~~following~~ time frames established in this section.[:]

(1) A pregnant woman shall be certified for the duration of her pregnancy and for up to six (6) weeks postpartum.

(2) A postpartum woman shall be certified for up to six (6) months postpartum.

(3) A breastfeeding woman shall be certified at intervals of approximately six (6) months, ending with the breastfed infant's first birthday.

(4) An infant shall be certified at intervals of approximately six (6) months, except an infant under six (6) months of age shall be certified for a period extending up to the first birthday if the quality and accessibility of health care services is not diminished.

(5) A child shall be certified at intervals of approximately six (6) months, ending with the end of the issuance month in which a child reaches the fifth birthday.

Section 3. Priority System. Vacancies in the WIC program shall be filled as they occur unless maximum participation has been reached. If maximum participation has been reached[At that time], vacancies shall be filled by a priority system based upon the nutritional risk of the patient.

Section 4. Time Frames for Processing Applicants. Pregnant and breastfeeding women, infants, and migrants shall be screened and notified of WIC program eligibility or ineligibility within ten (10) days of application. All other applicants shall be screened and notified of WIC program eligibility or ineligibility within twenty (20) days of application. WIC benefits shall be provided when participants are notified of certification.

Section 5. Nutrition Education. (1) Nutrition education shall be made available to the participant or the participant's parent or guardian and shall relate to the participant's nutritional needs, household situation, and cultural preferences.

(2) Tobacco, drug, and other substance abuse information shall be provided to each participant or the participant's parent or guardian.

(3) Breastfeeding information, including the benefits of breastfeeding, shall be provided to each pregnant participant, unless contraindicated.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 2013

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

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 Public Health

Division of Maternal and Child Health

(As Amended at ARRS, September 11, 2013)

902 KAR 18:031. Participant abuse.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, ~~[7 C.F.R.]~~ 278.6, 21 U.S.C. 802.

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the sanction schedule for participant abuse of the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Participant Abuse of the Program. (1) The state WIC agency or a local agency shall issue a written warning for the following suspected acts for which a complaint is received concerning a participant:

- (a) Purchasing unauthorized foods;
- (b) Redeeming WIC benefits at an unauthorized store;
- (c) Making a verbal offer to sell or exchange supplemental food or WIC food ~~instruments[instrument(s)]~~ with another individual, group, or vendor; or

- (d) Returning supplemental foods to a vendor for cash.

(2) The state WIC agency or a local agency shall take the following specified action for an intentional act of abuse by a participant ~~[that is proven or documented]~~:

(a) Redeeming a food instrument before the first day to use or after the last date of use:

1. First offense: written warning;
2. Second offense: monthly pickup of food instruments; or
3. Third or subsequent offense:

a. One (1) month suspension; and

b.[4:] Reinstatement of two (2) or three (3) month issuance shall be/is at the discretion of the certifying professional authority;

(b) Redeeming a food instrument that has previously been reported to the local agency as being lost or stolen and which has been replaced:

1. First offense: written warning; or
2. Second and subsequent offenses: claim issued to recoup the WIC benefits that have been redeemed;

(c) Purchasing unauthorized food:

1. First offense: written warning; or
2. Second and all subsequent offenses: one (1) month suspension from the WIC program;

(d) Redeeming WIC benefits at an unauthorized store:

1. First offense: written warning; or
2. Second and all subsequent offenses: one (1) month suspension from the WIC program;

(e) Verbal abuse or threatening physical abuse of clinic or vendor staff:

1. First offense: written warning; or
2. Second and all subsequent offenses: one (1) month suspension from the WIC program;

(f) Physical abuse of clinic or vendor staff, first and all subsequent offenses: three (3) month suspension from the WIC Program;

1. First offense: three (3) month suspension from the WIC

~~program; or~~

~~2. Second and all subsequent offenses: three (3) month suspension from the WIC program];~~

(g) Exchanging or selling supplemental food or a WIC food instrument with another individual, group, or vendor, first and all subsequent offenses: three (3) month suspension from the WIC Program];

~~1. First offense: three (3) month suspension from the WIC program; or~~

~~2. Second and all subsequent offenses: three (3) month suspension from the WIC program];~~

(h) Exchanging supplemental food or a WIC food instrument for credit, nonfood items, or supplemental food in excess of WIC benefits prescribed, first and all subsequent offenses: three (3) month suspension from the WIC Program];

~~1. First offense: three (3) month suspension from the WIC program; or~~

~~2. Second and all subsequent offenses: three (3) month suspension from the WIC program];~~

(i) Posting possible WIC issued foods, benefits, or food instruments for sale in print, online, or allowing another person to do so:

1. First offense: written warning; or
2. Second offense: Three (3) month suspension;

(j) Dual participation in more than one (1) WIC program or participation in both the WIC program and the Commodities Supplemental Food Program:

1. First offense: written warning and immediate termination from one (1) of the WIC programs. The continuing WIC agency shall be chosen based upon the participant's residence or services; or

2. Second and all subsequent offenses: one (1) year disqualification from the WIC program and a claim to recoup WIC benefits previously redeemed;

(k) Knowingly and deliberately making a false or misleading statement or misrepresenting, concealing, or withholding a fact in order to obtain program benefits:

1. First offense: three (3) month disqualification from the WIC program and a claim issued to recoup the WIC benefits redeemed; or

2. Second and all subsequent offenses: one (1) year disqualification from the WIC program and a claim issued to recoup the WIC benefits redeemed; or

(l) Selling supplemental foods in print or online by posting WIC foods, WIC benefits, or food instruments for sale or allowing another person to do so:

1. First offense: written warning~~[Three (3) month suspension from the WIC program];~~ or

2. Second and all subsequent offenses: Three (3) month suspension from the WIC program.

(3) Mandatory disqualification. Except as provided in subsections (4) and (5) of this section, a participant shall be~~is~~ disqualified from the WIC program for one (1) year if the state WIC or local WIC agency assesses:

- (a) A claim of \$100 or more; or
- (b) A second or subsequent claim of any dollar amount.

(4) A mandatory disqualification shall~~may~~ not be imposed if, within thirty (30) days of receipt of the claim letter demanding repayment:

- (a) Full restitution is made;
- (b) A repayment schedule is agreed on; or
- (c) The state WIC or local WIC agency approves the designation of a proxy if the participant is an infant, child, or under age eighteen (18).

(5) A participant may~~be permitted to~~ reapply to participate in the WIC program before the end of a mandatory disqualification period if one (1) of the following conditions has been met:

- (a) Full restitution is made;
- (b) A repayment schedule is agreed upon; or
- (c) The state WIC or local WIC agency approves the designation of a proxy if the participant is an infant, child, or under age eighteen (18).

(6) The amount of a claim shall be determined by the value of the WIC benefits redeemed. If the claim is not paid, the participant shall be denied application to the WIC program for the number of

months of benefits which were used to calculate the claim amount.

(7) A participant with a pattern of abuse of the WIC program shall be referred to the Office of the Inspector General for prosecution under KRS 194A.505.

(8) Activities prohibited by KRS 194A.505 apply to participants, vendors, and agency personnel. Penalties in KRS 194A.990 apply to participants, vendors, and agency personnel who have violated KRS 194A.505.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

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CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 194A.050, 194A.505, 194A.990, ~~[205.080, 205.120,]~~ 205.231, 7 C.F.R. Part 246, ~~[7-C.F.R.]~~ 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 205.231, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the fair hearing procedures for participants for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Fair Hearing Procedures. (1) In accordance with 7 C.F.R. 246.9, a local agency shall inform an individual in writing of the right to a fair hearing and the method by which a hearing may be requested when the person is:

- (a) Determined to be ineligible for the program;
- (b) Disqualified or suspended during a certification period; or
- (c) Issued a claim.

(2)(a) In accordance with 7 C.F.R. 246.9, a person shall request a fair hearing by contacting the state WIC agency within sixty (60) days from the date the person receives the adverse action letter by hand delivery or by certified mail.

(b) In accordance with 7 C.F.R. 246.9, the hearing shall be accessible to the appellant and shall be held within twenty-one (21) days from the date a person requests a hearing, or the next regular work day if the twenty-first day is a holiday or weekend.

(c) The hearing official shall provide the person with at least ten (10) days advanced written notice of the time and place of the hearing.

(3) The state WIC agency shall not deny or dismiss a request for hearing unless:

- (a) The request is not received within the time limit set by subsection (2)(a) of this section;
- (b) The request is withdrawn in writing by the appellant or a representative of the appellant;
- (c) The appellant or representative fails, without good cause, to appear at the scheduled hearing; or
- (d) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to the WIC program eligibility have changed in a way that would justify a hearing.

(4) The hearing shall be conducted in accordance with KRS Chapter 13B, subject to the partial exemption from that chapter, as certified by the Office of the Attorney General, a copy of which certification is available online at

<http://chfs.ky.gov/dph/mch/ns/wic.htm>.

(5)(a) In accordance with 7 C.F.R. 246.9, the hearing officer shall complete and submit to the cabinet and the appellant or representative a written notification of the recommended order no later than forty-five (45) days after the cabinet's receipt of the request for the hearing, which shall include the findings of fact, conclusions of law, and recommended disposition, including recommended penalties, if any.

(b) In accordance with 7 C.F.R. 246.9, decisions of the hearing official shall be based upon the application of KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18~~[appropriate federal and state law, administrative regulations, and policies]~~ as related to the facts of the case as established in the hearing record.

(6)(a) Participants who appeal the termination of benefits within the fifteen (15) days advance adverse action notice period provided by 7 C.F.R. 246.7 shall continue to receive WIC program benefits until the hearing officer reaches a decision or the certification period expires, whichever occurs first.

(b) This shall not apply to:

1. Applicants who are denied benefits at initial certification;
2. Participants whose certification periods have expired; or
3. Participants who become categorically ineligible.

(c) If the hearing officer's recommended order concerns disqualification and is in favor of the state WIC agency, as soon as administratively feasible any continued benefits shall be terminated.

(d) If the decision regarding repayment of the benefits by the appellant is in favor of the state WIC agency, efforts to collect the claim shall be resumed, even during pendency of an appeal of a fair hearing decision.

(7)(a) The appellant may appeal a hearing officer's decision to the Appeal Board for Public Assistance by filing exceptions to the recommended order in accordance with KRS 13B.110(4).

(b) Exceptions shall be filed with or mailed to Cabinet for Health and Family Services, Office of the Secretary, Appeal Board for Public Assistance, 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.

(c) Each party in the hearing shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order with the cabinet.

(d) A party may file a response to an opposing party's exceptions within twenty-five (25) days from the date the recommended order is mailed.

(e) Exceptions and responses to exceptions shall be considered filed on the date they are received by the cabinet.

(8) Any party aggrieved by the decision of the Appeal Board for Public Assistance may seek judicial review of the decision by filing a petition in the circuit court of the county in which the petitioner resides, in accordance with KRS 13B.140, 13B.150, and 13B.160.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

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CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, September 11, 2013)

902 KAR 18:050. Vendor Authorization Criteria.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246,~~[7 C.F.R.]~~ 278.6, 21 U.S.C. 802.

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for

Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor authorization criteria for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Vendor Authorization Criteria. (1) Only a vendor authorized by the state WIC agency shall redeem a food instrument.

(2) Each store operated by a business entity shall be authorized separately from other stores operated by the business entity.

(3) Each store shall have a single, fixed location and redeem the WIC food instruments and provide the WIC foods within the four (4) walls of the establishment.

(4) A retailer authorized as a pharmacy shall only redeem food instruments for exempt infant formulas and medical foods.

(5) Food vendors shall be authorized in sufficient numbers and with distribution adequate to ensure:

- (a) Participant convenience and access; and
- (b) Effective management of vendor review by the cabinet and the local agency.

(6) In order to be an authorized WIC vendor, a vendor shall:

(a) Complete the application process, meet authorization criteria, and be approved by the state agency in accordance with the Kentucky WIC Manual for Applying Retailers;

(b) Provide information required by the WIC Manual, including sales volume and an updated application, requested by the state WIC agency;

(c)~~[(b)]~~ Stock, at all times, minimum inventory in accordance with the Quantified Minimum Inventory Requirements outlined in the Kentucky WIC Manual for Applying Retailers:

1. The stock shall be in the store or in the store's stockroom;
2. Expired foods shall not count towards meeting the minimum inventory requirement; and

3. A pharmacy shall supply exempt formula or medical foods within forty-eight (48) hours of the state WIC agency request;

(d)~~[(e)]~~ Obtain infant formula only from the listing of Kentucky WIC Program Authorized Suppliers of WIC Approved Infant Formulas, <http://chfs.ky.gov/dph/mch/Vendor+Management.htm>;

(e)~~[(d)]~~ Except for a pharmacy, be in compliance with the Kentucky Food Code~~[Retail Market Sanitation Regulations]~~, 902 KAR 45:005, and have a valid retail food establishment or retail food store permit in the current owner's name;

(f)~~[(e)]~~ Except for a pharmacy, be an authorized SNAP retailer;

(g)~~[(f)]~~ Have competitive prices with other authorized WIC vendors in the area, compared according to the policy outlined in the WIC Manual for Applying Retailers and the Manual for Contracted WIC Vendors;

(h)~~[(g)]~~ Display the prices of WIC approved food items on each item or on the shelf or display case where the items are located. A cost plus ten (10) percent store shall post the final price (WIC price) on the shelf or on the signage in aisle;

(i)~~[(h)]~~ Be in compliance with the other Food and Nutrition Service programs or the Medicaid program, including:

1. Not be disqualified or withdrawn by the United States Department of Agriculture from participation in another Food Nutrition Service program or the Medicaid program;
2. Not be denied application to participate in SNAP or Medicaid;

3. Not be currently paying a civil money penalty to SNAP or Medicaid; or

4. Not have been assessed a civil money penalty by SNAP or Medicaid, and the disqualification period that would otherwise have been imposed has not expired;

(j)~~[(i)]~~ Request authorization for a business whose primary purpose is to be a retail grocery.

1. A direct distribution outlet or wholesale food establishment shall not be eligible.

2. A vendor who derives more than fifty (50) percent of annual food sales revenue from the sale of food items that are purchased with WIC food instruments shall not be eligible.

3. A retail grocery shall:

- a. Have a separate and distinct grocery department in a stationary location which stocks staple food items in addition to WIC

approved foods; and

b. Have fifteen (15) percent of gross sales in nontaxable food sales, excluding specialty items such as bakery goods for a bakery or produce for a fruit and vegetable stand.

4. A dairy or home delivery grocery shall not be approved if it operates solely as a mobile operation.

5. The use of drive-up windows shall not be approved;

(k)(ii) Be registered with the Secretary of State and be in good standing [according to <http://sos.ky.gov/business>], if a corporation or partnership;

(l)(k) Be open for business year round at least eight (8) hours per day, six (6) days per week;

(m)(f) Be accessible to monitoring by state and federal officials without prior notice;

(n)(m) Not be indebted to the WIC program for an unpaid claim or a civil money penalty against a store owned or previously owned by the applying owners; and

(o)(n) Have the capability to accept WIC program benefits electronically. A store shall have the use of an internet cable or a currently Food and Nutrition Services certified system to accept online WIC EBT.

(7) The WIC program shall not authorize a vendor applicant if, during the last six (6) years, an applicant current owner, officer, or manager has been convicted of or had a civil judgment for:

- (a) Fraud;
- (b) Antitrust violation;
- (c) Embezzlement, theft, or forgery;
- (d) Bribery;
- (e) Falsification or destruction of records;
- (f) Making false statements or claims;
- (g) Receiving stolen property;
- (h) Obstruction of justice; or

(i) Another act reflecting on the business integrity and reputation of the applicant, such as removal from other federal or state programs.

(8) The WIC program shall not authorize a store that has attempted to circumvent a period of disqualification from the program, including a store that has undergone a sale or changes of operation if the transaction involved the following parties:

(a) The seller or transferor is an owner, operator, or manager currently suspended, sanctioned, or disqualified from WIC, SNAP, or Medicaid; and

(b) The buyer or transferee is related to the seller by marriage or consanguinity within the fourth degree, or was a manager or employee of the seller when the sanction, suspension, or disqualification was issued or the violation occurred.

(9) A contract shall not be entered into with a vendor if the contract would cause a conflict of interest, real or apparent.

(10) The WIC program shall terminate a vendor contract if it determines the vendor or vendor's employee provided false information in connection with the vendor application.

(11) An authorized WIC vendor shall send appropriate employees (owner, manager or head cashier) to attend state WIC agency required training.

(12) If an applying retailer does not meet the criteria upon review by either the local or state WIC agency:

(a) The applying retailer shall[will] be notified in writing;

(b) After two (2) reviews, the applying retailer shall not[cannot] apply for the program for sixty (60) days from the date of denial;

(c) After three (3) reviews, the applying retailer shall not[cannot] apply for 120 days from the date of the denial;

(d) Each subsequent denial shall result in an additional sixty (60) day denial.

(13) A person aggrieved by a decision of the cabinet may file a written request for a hearing with the cabinet within fifteen (15) days after receipt of notice of the adverse action. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. **Procedures for Authorized Vendors. Authorized vendors shall comply with the Manual for Contracted WIC Vendors.**

Section 3. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a) "Kentucky WIC Manual for Applying Retailers", **October** 2013; and

(b) "Manual for Contracted WIC Vendors", **October** 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(As Amended at ARRS, September 11, 2013)

902 KAR 18:061. Vendor violations and sanctions.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. **Part** 246, **7-C.F.R.]** 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. **Part** 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. **Part** 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the vendor violations and sanctions for the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Section 1. Vendor Violations and Sanctions. (1) In addition to any criminal penalty imposed pursuant to KRS 194A.990, the cabinet shall impose one (1) or more of the following civil sanctions for designated violations committed by a vendor, his employee, or agent:

(a) Failure of a vendor to meet the authorization criteria in 902 KAR 18:050:

1. First occurrence: a sixty (60) day disqualification or non-renewal;

2. Second occurrence: a ninety (90) day disqualification or non-renewal; or

3. Third and subsequent occurrences: a 120 day disqualification or non-renewal;

(b) Failure of a vendor to pay a claim. The state WIC agency shall request payment as follows:

1. Mail a letter to the vendor requesting payment by a specified date;

2. If payment **is[was]** not received, the state WIC agency shall contact the vendor by either email or telephone, reminding vendor of payment due; **and]**

3. If payment **is[was]** not received, the state WIC agency shall send a second letter by certified mail, return receipt requested, of past due claim; **and]**

4. If payment is not received by the deadline specified in the second letter, then the following disqualification shall be issued:

a. First occurrence: a six (6) month disqualification; or

b. Second occurrence and subsequent occurrences: a one (1) year disqualification from the WIC program;

(c) Failure of a vendor to return the WIC vendor authorization stamp and XAC device (if applicable). **The state WIC agency shall request receipt of stamp and XAC device (if applicable) as follows:**

1. Mail a certified letter to the vendor requesting return of the vendor stamp and XAC device (if applicable) within seven

(7) days of disqualification or termination:

2. If the vendor stamp and XAC device (if applicable) are not received, the state WIC agency shall contact the vendor by either email or telephone, reminding the vendor of the vendor stamp and XAC device (if applicable) being due; and

3. If the stamp and XAC device (if applicable) are not returned within seven (7) days of the effective date of termination or disqualification, then an additional six (6) month disqualification shall be issued to the local WIC agency within seven (7) days of receipt of disqualification or termination letter shall result in an additional six (6) month disqualification when the following condition has been met: the state WIC agency contacted the vendor by telephone to request the return of the stamp and XAC device;

(d) Store personnel requesting the PIN: two (2) positive buys out of three (3) shall result in a one (1) year disqualification;

(e) Using the integrated or WIC XAC device Cash Value Benefits (CVB) functionality to provide non-produce food item(s): two (2) positive buys out of three (3) shall result in a one (1) year disqualification from the WIC program;

(f) Providing free merchandise exclusively to WIC participants as an incentive to redeem WIC benefits: one (1) positive buy out of three (3) shall result in a six (6) month disqualification;

(g) Public notice by a WIC vendor of providing free merchandise exclusively to participants as an incentive to redeem WIC benefits: one (1) occurrence shall result in a six (6) month disqualification;

(h) Conviction of trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a permanent disqualification;

(i) Trafficking in WIC benefits or selling a firearm, ammunition, an explosive, or controlled substance, as defined in 21 U.S.C. 802, in exchange for a food instrument: one (1) positive buy shall result in a six (6) year disqualification;

(j) Sale of alcohol or alcoholic beverage or tobacco product in exchange for a food instrument: one (1) positive buy shall result in a three (3) year disqualification;

(k) Claiming reimbursement for the sale of an amount of a specific supplemental food item, which exceeds the vendor's documented inventory of that supplemental food item for a specific period of time:

1. An inventory audit for a thirty (30) day period, which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification; or

2. An inventory audit for a ninety (90) day period, which results in more WIC sales than the documented inventory, shall result in a three (3) year disqualification;

(l) Charging a participant more for supplemental food than a non-WIC customer is charged or the current shelf price:

1. Two (2) positive compliance buys out of three (3) shall result in a three (3) year disqualification if:

a. The vendor has exhibited a prior pattern of overcharging based upon routine monitoring visits which have resulted in two (2) letters for price discrepancies; or

b. The vendor has exhibited a pattern of two (2) out of four (4) quarters of low variance in the prior federal fiscal year;

2. The state WIC agency shall:

a. Require a vendor who has received two (2) letters for price discrepancies during the federal fiscal year to receive training provided by the state WIC agency; and

b. Notify a vendor who exhibits a pattern of low variance for two (2) or more quarters during the federal fiscal year; and

3. Three (3) positive compliance buys out of three (3) shall result in a three (3) year disqualification for a vendor who does not meet the conditions in subparagraph 1. of this paragraph:

1. A non-WIC customer is charged; or

2. The current shelf price shall result in the following disqualifications:

a. Two (2) positive buys out of three (3) shall result in a three (3) year disqualification from the WIC Program if:

(i) The vendor has exhibited a prior pattern of overcharging during the prior federal fiscal year based upon routine

monitoring visits which have resulted in two (2) letters for price discrepancies.

(ii) The state WIC agency shall require a vendor who has received two (2) letters for price discrepancies during the federal fiscal year to receive training provided by the state WIC agency.

b. Three (3) positive buys out of three (3) shall result in a three (3) year disqualification for a vendor who does not meet the conditions in clause a.(i) of this subparagraph];

(m) Receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or unauthorized person: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(n) Charging for supplemental food not received by the participant, such as charging for one (1) food item or more listed on the WIC benefits but not purchased by the WIC participant: three (3) positive buys out of three (3) shall result in a three (3) year disqualification;

(o) [1.] Providing credit, an IOU, a rain check, a due bill, or a store credit; [2.] or

[2.] providing a nonfood item other than cash, alcohol, tobacco, firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. 802, in exchange for food benefits shall result in the following disqualification: two (2) positive buys out of three (3) shall result in a three (3) year disqualification;

(p) Providing an unauthorized food item or items in exchange for a food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(q) Charging for supplemental food provided in excess of those listed on the food instrument: three (3) positive buys out of four (4) shall result in a one (1) year disqualification;

(r) A vendor who has been disqualified from the SNAP shall be disqualified from the WIC program for the same length of time as the SNAP disqualification; or

(s) A vendor who has been assessed a civil money penalty by SNAP, as provided under 7 C.F.R. 278.6, shall be disqualified from the WIC program for the same length of time for which the vendor would have been disqualified from SNAP unless the WIC program determines that disqualification would result in inadequate participant access, in which case a penalty shall not be assessed.

(2) If multiple vendor violations are found during an investigation, the length of the disqualification shall be determined by the most serious violation.

(3) A vendor who has previously received two (2) or more of the mandatory sanctions designated in subsection (1)(h) through (q) of this section, and who receives another sanction for a violation designated in subsection (1)(h) through (q) of this section, shall have the third and all subsequent sanctions [shall] be doubled. A civil monetary penalty shall not be assessed for a third or subsequent sanction.

(4) Disqualified vendors, even if the decision is later overturned, shall not be entitled to receive compensation for revenues lost as a result of a disqualification.

Section 2. Vendor Notification (1) Except for violations identified in Section 1(1)(a) through (c), (f) through (j), (r), and (s) of this administrative regulation, the state WIC agency shall notify a vendor in writing if an investigation reveals a potential initial violation.

(2) The vendor shall be notified before another violation is documented unless the state WIC agency determines that notifying the vendor would compromise the investigation.

(a) The notification determination shall be made on a case by case basis.

(b) A notification of a potential initial violation shall not be issued if:

1. The vendor is identified as a high-risk vendor in accordance with 902 KAR 18:090;

2. One (1) or more of the same type of violation occurred within the same federal fiscal year or prior federal fiscal year and the vendor has received prior notification; and

3. Sending a notification letter would divulge the identity of the investigator.

STEPHANIE MAYFIELD GIBSON, MD, FCAP Date, Commissioner

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AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: July 10, 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:
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CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (As Amended at ARRS, September 11, 2013)

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

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, [7-C.F.R.] 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes procedures for WIC vendor disqualification including the participant access determination and civil money penalty.

Section 1. Participant Access Determination. (1) Except for a violation specified in 902 KAR 18:061, Section 1(1)(h) and (i), prior to disqualifying a vendor for a violation specified in 902 KAR 18:061, the state WIC agency shall determine if disqualification of the vendor will result in inadequate participant access.

(2) Mileage shall be measured by automobile odometer or geotagging.

(3) The determination and documentation of adequate participant access shall be made using the following criteria:

(a) The sanctioned vendor is located within:

1. A metropolitan area, as defined by the U.S. Office of Management and Budget (OMB) Bulletin No. 13-01, and there is another authorized vendor located within two (2) miles of the sanctioned vendor; or

2. A nonmetropolitan area and there is another authorized vendor located within seven (7) miles of the sanctioned vendor;

(b) The sanctioned vendor has redeemed food instruments for medical foods or exempt infant formula within thirty (30) days preceding the date of the letter issuing the notice of disqualification, and there is another authorized vendor within the designated mileage as defined in paragraph (a) of this subsection who can supply the products which were previously redeemed; and

(c) The sanctioned vendor has redeemed food instruments from a minimum number of unique customers within thirty (30) days preceding the date of the letter issuing the notice of disqualification.

1. The following shall be the minimum number of customers according to the vendor's peer group:

- Class 1: forty (40) or more unique customers;
- Class 2: seventy-five (75) or more unique customers;
- Class 3: 100 or more unique customers;
- Class 4: 200 or more unique customers; or
- Class 5: 400[forty (40)] or more unique customers.

2. If a sanctioned vendor meets the criteria for unique customers, then the local agency WIC coordinator or designee shall be consulted to determine if:

a. Conditions exist which would allow travel using public transportation[transaction] to another authorized WIC vendor within the designated mileage in paragraph (a)1. of this subsection;

b. Crosswalks exist across multilane highways or railroad tracks if another authorized WIC vendor is located in a metropolitan area; or

c. Impassable mountain or an unbridged river would prevent travel if another authorized WIC vendor is located in a non-

metropolitan area.

(4) If the WIC program determines there is adequate participant access, retailers shall be afforded the opportunity to submit written documentation providing evidence of the impact of the adverse action on WIC participants.

(5) If inadequate participant access is determined pursuant to subsection (3) of this section, a civil money penalty shall be assessed for a violation listed in 902 KAR 18:061. The civil money penalty shall be calculated in accordance with the procedures outlined in the Manual for Contracted WIC Vendors incorporated by reference in 902 KAR 18:050.

(6) The written documentation shall be received by the state WIC agency within fifteen (15) days from the date of receipt of the state WIC agency notification of disqualification. If the written documentation is not received within fifteen (15) days, further consideration shall not be given to participant access.

(7) Upon receipt and the review of the documentation, the WIC program shall send, within thirty (30) days, a written summary of the participant access review to the vendor. The vendor may then request a hearing in accordance with 902 KAR 18:081.

Section 2. Civil Money Penalty. (1) The WIC program may negotiate an installment plan for the collection of a civil money penalty if requested by the vendor in writing prior to the payment due date.

(2) A vendor that fails to pay, partially pay, or timely pay a civil money penalty within the required time frame shall be disqualified for the length of time corresponding to the most serious violation.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: July 10, 2013
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CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (As Amended at ARRS, September 11, 2013)

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

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, [7-C.F.R.] 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the local agency's and vendor's rights to a hearing in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Local Agency. (1) A local agency may request a hearing for the following adverse actions:

- Denial of a local agency's application;
- Disqualification of a local agency; and
- Any other adverse action that affects a local agency's participation.

(2) The following state WIC agency actions shall not be subject to administrative review:

- Expiration of the local agency's agreement; and
- Denial of a local agency's application if/when the state WIC agency has issued a request for bid and followed finance procurement procedures.

(3) The following shall be the effective dates of adverse actions

against local agencies:

(a) Denial of local agency applications shall be effective immediately;

(b) Adverse actions in subsection (1)(b) and (c) of this section shall be effective no later than sixty (60) days after the date of the notice of adverse action is served by hand delivery or certified mail receipt; and

(c) Adverse actions that are appealed shall be effective the date that the local agency receives the hearing decision.

Section 2. Vendor Right to a Hearing or Administrative Review.

(1) In accordance with 7 C.F.R. 246.18, a vendor aggrieved by a qualifying adverse action may request a hearing for the following:

(a) Denial of authorization based on the vendor authorization criteria found in 902 KAR 18:050;

(b) Termination of an agreement;

(c) Disqualification in accordance with 902 KAR 18:061; and

(d) Imposition of a fine or civil money penalty in lieu of a disqualification in accordance with 902 KAR 18:071.

(2) In accordance with 7 C.F.R. 246.18, the following state WIC agency actions shall not be subject to administrative review under this section:

(a) The validity or appropriateness of the vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;

(b) The validity or appropriateness of the selection criteria for competitive price, including vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors;

(c) The validity or appropriateness of the participant access criteria and the state WIC agency's participant access determinations;

(d) The determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list of entities where infant formula can be purchased;

(e) The validity or appropriateness of the prohibition of incentive items;

(f) The determination not to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;

(g) The determination that a vendor did not have a policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;

(h) The expiration or non-renewal of a vendor's agreement;

(i) Disputes regarding food instrument payments and vendor claims; or

(j) Disqualification of a vendor as a result of disqualification from the SNAP.

Section 3. Hearing or Administrative Appeal. (1) A vendor or local agency may file a written request by hand delivery or certified mail with the state WIC agency within fifteen (15) days after receipt of notice of the adverse action.

(2) The hearing shall be conducted in accordance with KRS Chapter 13B.

(3) Within fifteen (15) days of a request for a hearing, the cabinet shall issue a date of hearing.

(4) The state WIC agency may dismiss a request for hearing if:

(a) The request is not received within the time limit set by this administrative regulation;

(b) The request is withdrawn in writing by the appellant or a representative of the appellant; or

(c) The appellant or representative fails, without good cause, to appear at the scheduled hearing.

(5) To protect the identity of the state WIC agency investigators, cross examinations of these witnesses shall be conducted behind a protective screen or other device in accordance with 7 C.F.R. 246.18.

(6)(a) In accordance with 7 C.F.R. 246.18, the hearing officer shall issue a written recommended order no later than ninety (90) days after the cabinet receives the request for the hearing which shall include:

1. The findings of fact;

2. Conclusions of law; and

3. Recommended disposition, including recommended penalties, if any, in accordance with KRS 13B.110.

(b) In accordance with 7 C.F.R. 246.18, decisions of the hearing official shall be based on KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18, [the applicable state and federal law] and the facts of the case as established in the official record of the hearing as defined in KRS 13B.130.

(c) A hearing officer shall not ~~[have authority to]~~ reduce or modify sanctions that are prescribed by KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18 [WIC statutes, regulations, or policies].

(7) Exceptions to the hearing officer's recommended order shall be filed with or mailed to Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.

(8) Each party in the hearing shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order, as provided in KRS 13B.110.

(9) A party may file a response to an opposing party's exceptions within twenty-five (25) days from the date the recommended order is mailed.

(10) Exceptions and responses to exceptions shall be considered filed on the date they are received by the cabinet.

(11) Appealing an action shall not relieve an appellant from the responsibility of continued compliance with KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18 [WIC program regulations, policies, and procedures].

(12) The final order shall be issued in accordance with KRS 13B.120.

(13) In accordance with 7 C.F.R. 246.18, the state WIC agency shall make denials of authorization and disqualifications imposed under 902 KAR 18:061 effective on the date of receipt of the notice of adverse action.

Section 4. In accordance with KRS 13B.140, any party aggrieved by the final order may seek judicial review of the decision by filing a petition within thirty (30) days of receipt of final order notice in the Franklin Circuit Court or the circuit court of the county in which the party resides or operates a business.

STEPHANIE MAYFIELD GIBSON, MD, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 2013

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

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 Public Health

Division of Maternal and Child Health

(As Amended at ARRS, September 11, 2013)

902 KAR 18:090. High Risk Criteria.

RELATES TO: KRS ~~[,]~~ 194A.050, 194A.505, 194A.990, ~~[205.080, 205.120,]~~ 205.231, 7 C.F.R. Part 246, [7 C.F.R.] 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 205.231, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the high risk criteria for contracted retailers with the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

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Section 1. High Risk Criteria. In accordance with 7 C.F.R.. 246.12, high-risk vendors shall be identified at least once each federal fiscal year. The criteria and points established in this section shall be assessed.

(1) A vendor with low variance, as defined by 902 KAR 18:011, Section 1, shall be assessed five (5) points per quarter.

(2) A vendor who has greater than or equal to twenty (20) percent but less than fifty (50) percent of the vendor's quarterly WIC transactions ending in whole dollar amounts shall be assessed five (5) points per quarter. The transactions shall not include produce and formula.

(3) A vendor who has greater than or equal to fifty (50) percent of the vendor's quarterly WIC transactions ending in whole dollar amounts shall be assessed ten (10) points per quarter. The transactions shall not include produce and formula.

(4) A vendor in which six (6) or more gallons of milk were redeemed in a single transaction, occurring in thirty (30) or more transactions a quarter, shall be assessed five (5) points per quarter.

(5) A vendor with full package redemptions in one (1) transaction occurring in twenty (20) or more transactions per quarter shall be assessed five (5) points per quarter.

(6) A vendor shall be assessed ten (10) points for every overcharge letter unless the overcharge is justified in writing and accepted by the state WIC agency.

(7) A vendor with a lack of inventory, as outlined in the Kentucky WIC Manual for Applying Retailers, incorporated by reference in 902 KAR 18:050, shall be assessed five (5) points per occurrence during a monitoring visit.

(8) A vendor whose prices for transactions are greater than or equal to ninety (90) percent above the NTE shall be assessed five (5) points per quarter.

(9) A vendor whose percentage of WIC sales to food sales is greater than twenty (20) percent shall be assessed five (5) points for every ten (10) percent increment per federal fiscal year.

(10) A vendor who has redeemed more than \$2,000 in transactions per federal fiscal year from out of its contracted agency shall receive one (1) point per federal fiscal year.

(11) A vendor who received a Good Letter with Exceptions shall be assessed five (5) points per letter.

Section 2. High Risk Referrals. A vendor who is assessed thirty (30) points or more per federal fiscal year shall be referred to a federal, state, or local law enforcement agency for a compliance investigation.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 10, 2013

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CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (As Amended at ARRS, September 11, 2013)

902 KAR 30:110. Point of Entry and service coordination.

RELATES TO: KRS 200.662, 200.664, 200.668, 200.670, [20 U.S.C. 1400, 1435,] 34 C.F.R. 303.34, 303.164, 303.165, 303.167, 303.342, 303.344, [and] 303.403, 303.421, 20 U.S.C. 1400, 1435, 42 U.S.C. 280g-1, 701, 1381, 1396, 1397, 5106, 9801, 10401, 15001-15009

STATUTORY AUTHORITY: KRS 194A.050, 200.660(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660[250.660] 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 point of

entry and service coordination provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1)(a) The point of entry (POE) staff shall serve as the local lead agency and shall coordinate child find efforts with:

1. Programs authorized under part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400[Local education agencies in order to insure compliance with child find mandates by each entity]; and

2. Other state and federal programs serving this population.

(b) The primary referral sources described in paragraph (a) of this subsection may include:

1. Maternal and child health programs, including the Maternal, Infant and Early Childhood Home Visiting Program, under Title V of the Social Security Act (42 U.S.C. 701(a));

2. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B))[Early and periodic screenings, diagnosis, and treatment (EPSDT) programs];

3. Head Start, including Early Head Start programs under section 645A of the Head Start Act (42 U.S.C. 9801);

4. [Homeless shelters;

5. Supplemental Security Income (SSI) programs under Title XVI of the Social Security Act (42 U.S.C. 1381);

5. Child protection and child welfare programs, including programs administered by and services provided through the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));

6. [The local Department for Community Based Services (DCBS) office for cases with a sustained or negligent complaint; and

7. Programs authorized through 42 U.S.C. 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act;

7. Child care programs;

8. Programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401);

9. Early Hearing Detection and Intervention (EDHI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC);

10. The Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa); and

11. Hospitals and physicians.

(2) Each POE staff shall maintain accessibility and provide public awareness activities in each of their districts.

(3) The POE staff shall maintain communication with the District Early Intervention Committee (DEIC) and the state lead agency on matters of child find, service options, and other issues relevant to the First Steps Program.

(4) The POE staff shall accept all referrals[inquiries] for First Steps services to determine eligibility for programs.

(a) Upon receiving a telephone or written referral[inquiry], POE staff shall determine if:

1. The family is aware that a referral[an inquiry] is being made; and

2. The referral is appropriate based on:

a. The child's age, which shall be between birth and three (3) years old;

b. The family's residence within the assigned district or the family being homeless; and

c. An established risk diagnosis or a developmental concern[that is confirmed by administration of the cabinet approved screening protocol].

(b) A child who is referred due to a developmental concern, and not screened by the primary referral source, shall have a cabinet approved screening protocol completed prior to the initial evaluation.

(c) If the point of entry[initial screening] finds the child does not meet the criteria established in paragraph (a)2. of this subsection, the POE shall [:

4.] provide to the referral source appropriate resources for the child and family for services that meet that child's needs. These

resources may include:

1. [a.] Public schools;
2. [b.] The Department for Community Based Services;
3. [c.] Medical services;
4. [d.] Other appropriate community services; or
5. [e.] Another POE if residency alone is the reason for an inappropriate referral; and

2. Provide a parent with a First Steps Notice of Action or a First Steps Notice of Action and Consent in accordance with 34 C.F.R. 303.403(b)].

(d)[(e)] If it is determined that the child meets the criteria established in paragraph (a)2. of this subsection, POE staff shall contact the family by telephone or letter within five (5) working[three (3) calendar] days of receipt of the referral to provide information about the program and obtain consent for intake[determine if the family would like more information and an initial visit scheduled].

(e) For a child referred due to an established risk condition, if[(d)] the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(f) For a child referred due to a developmental concern that has been confirmed by administration of the cabinet approved screening protocol, if the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(g) The parent or guardian of a child referred due to a developmental concern shall:

1. Be provided with prior written notice of the POE's intent to administer the cabinet approved screening protocol. The notice shall include the option to request an evaluation at any time during the screening procedure; and

2. Give written consent prior to the administration of the cabinet approved screening protocol.

(h)[(e)] If the family is not interested in participating, the family shall be provided contact information for the POE and other community resources. The POE staff shall document in the child's record the refusal of services.

(i) If the POE staff is unable to contact the family within five (5) working days from the date of the referral, a follow-up letter shall be sent to the family and the case closed.

(j) If the POE is able to contact the family initially but the family fails to return the screening protocol or consent, the POE shall send a First Steps Notice of Action (FS-9) and close the case five (5) working days from the date of notice[(f) Within fifteen (15) working days of the referral, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at that time].

(5) All children who are two (2) years and ten and one-half (10 1/2) months old to age three (3) years when first referred to First Steps shall not be eligible for First Steps. The POE shall notify the parent or guardian in writing that due to the child's age at the time of referral, the First Steps Program will not provide an evaluation to determine eligibility for First Steps, but with written consent will refer the child to the state and will connect the parent or guardian with the local education agency or other community resource.

(6) The POE staff shall maintain a complete record on all children referred through the POE and provide data to the state lead agency as requested. A complete record shall include:

- (a) A hard copy of all documents that include a parent signature;
 - (b) Any correspondence generated by the POE; and
 - (c) The data entered into the child's electronic early intervention record in the First Steps data management system.
- (7) The POE staff shall provide data as requested by the DEIC.

Section 2. Service Coordination. (1) The service coordinator shall serve as the main point of contact in helping families obtain the services and assistance they need.

(2) During the intake process[initial visit to the family], the service coordinator shall:

- (a) Identify the purpose of the visit;
- (b) Discuss the role of the service coordinator;
- (c) Explain the First Steps service delivery system, including:

1. The consultative model and primary service provider; and
2. The First Steps system of payment, which includes:
 - a. The family share participation fee; and
 - b. The billing of public and private insurance for early intervention services;

(d) Interview the family and document findings related to:

1. The parent or guardian's developmental concern for the child; and
2. The pregnancy, birth, and health information;

(e) Explain the family rights by reviewing the Family Rights Handbook;

(f) Discuss the forty-five (45) day timeline and determine the next action needed to determine eligibility for the child;

(g) Discuss evaluation and service options;

(h) Obtain parent or guardian signature on the First Steps Consent to Release/Obtain Information (FS-10) form for medical and developmental information;

(i) Collect insurance information and data necessary for billing and obtain parent or guardian signature on the Notice and Consent for Use of Private Insurance (FS-12A) form; and

(j) Assess the family's ability to pay using the Financial Assessment Verification (FS-13) form[(e) Explain the family rights by reviewing the Family Rights Handbook and the Statement of Assurances—Procedural Safeguards;

(d) Obtain the signature of a parent or guardian on the Statement of Assurances—Procedural Safeguards;

(e) Obtain consent for an initial evaluation as required by 902 KAR 30:180, Section 2(3);

(f) Request the First Steps Consent to Release/Obtain Information form be completed by a parent or guardian for medical or developmental information, risk indicators, or other diagnostic or hearing test results;

(g) Determine the willingness of the family to participate in First Steps services or refusal of services;

(h) Interview the family and document findings relating to:

1. The child's developmental status;
2. The pregnancy, birth, and health information;
3. Social relationships;
4. Context for learning, including the family's history, resources, priorities, and concerns; and
5. The family's daily routines and activities, the family's satisfaction level with these routines, and the family's desired outcomes;

(i) Determine the next action needed with the family to determine eligibility of the child;

(j) Discuss evaluation and service options;

(k) Establish the potential date for developing an Individual Family Service Plan (IFSP);

(l) Discuss the role of the service coordinator; and

(m) Collect insurance information and data necessary for billing].

(3) The service coordinator shall:

(a) Assist the parents of infants and toddlers with disabilities with obtaining[obtain] access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

(b) Coordinate the provision of early intervention services and other services, including educational, social, or medical services that are not provided for diagnostic or evaluative purposes, that the child needs or is being provided;

(c) Coordinate evaluations and assessments;

(d) Facilitate and participate in the development, review, and evaluation of IFSPs;

(e) Conduct referral and other activities to assist families in identifying available early intervention service providers;

(f) Coordinate, facilitate, and monitor the delivery of early intervention services to ensure that the services are provided in a timely manner;

(g) Conduct follow-up activities to determine that appropriate early intervention services are being provided;

(h) Coordinate the funding sources for service;

(i) Facilitate the development of a transition plan to preschool, school, or, if appropriate, to other services;

(i) Provide written confirmation in accordance with 34 C.F.R. 303.342(d)(2) to the parent or guardian and all IFSP team members~~[Notify parents, in accordance with the parental prior notice requirements of 34 C.F.R. 303.403, and all the IFSP team members in writing]~~ of the date, time, and location of the meetings for the initial and annual Individual Family Service Plan (IFSP), the six (6) month review, and any other IFSP team meeting or the transition conference at least within~~[no less than]~~ seven (7) calendar days prior to the IFSP, review, or transition conference date;

(k)~~[(b)]~~ If there is a cancellation of an IFSP meeting, notify the IFSP members in writing of the rescheduling of the IFSP meeting within five (5) working days of the cancelled meeting date;

(l) Reassess the family's ability to pay at the six (6) month review and annual IFSP meeting, and at other times if requested by the family; and

(m) Following the IFSP meeting~~[(e) Facilitate the initial, annual and six (6) month review IFSP meetings and any IFSP meetings requested to address revisions. The service coordinator shall:]~~

1. Enter all IFSP data into the First Steps data management system;

2. Finalize the plan within five (5) working days of the date of the meeting;

3. Provide a written copy to the parent or guardian within five (5) working days of the meeting and provide copies to persons identified and consented to by the family;

4. Refer the family to appropriate agencies for service identified on the IFSP in accordance with 902 KAR 30:130, Section 2(5)(i); and

5. Ensure that transition steps and services are discussed with the family during each IFSP meeting.

(4) The service coordinator shall inform the family of the family's rights and procedural safeguards by:

(a) Summarizing the Family Rights Handbook at the initial IFSP, at each subsequent IFSP, and at any time the family requests;

(b) Familiarizing the family with the procedural safeguards at every IFSP meeting~~[and due process rules, and ensuring that the family reviews and signs the Statement of Assurances – Procedural Safeguards at every IFSP review];~~

(c) Ensuring that all materials are given to the family in a format the family can understand in the family's native language; and

(d) Assisting the family, at the family's request, with resolving conflicts among service providers.

(5) The service coordinator shall assist the family in identifying available service providers by:

(a) Keeping current on all available services in the district; and

(b) Having available to the families a list of all eligible First Steps services providers in each district. If the family chooses a service provider outside the First Steps approved provider list, the service coordinator shall inform the family that the provider is not approved through First Steps and may result in a cost to the family.

(6) The service coordinator shall ensure that service coordination is available to families during normal business hours and at the family's request.

(7) The service coordinator shall contact the child's family at a minimum of one (1) time per plan to discuss service coordination needs, unless otherwise stipulated in the IFSP.

(8) The service coordinator shall give the family a business address and phone number and any other information needed to contact the service coordinator.

(9) If a family desires a change in the family's service coordinator, the family shall contact the POE and the POE shall seek to resolve the situation.

(10) The service coordinator shall facilitate the development of a transition plan by:

(a) Knowing the transition procedures as established in 902 KAR 30:130, Section 3(4)(f)2(8)(i);

(b) Ensuring that all potential agencies and programs that could provide service to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

(c) Holding a transition conference at least ninety (90) calendar days and, at the discretion of all parties, not more than nine (9) months prior to the child's third birthday. The transition conference

shall involve the family, IFSP team, the special education local school district representative, and staff from potential next placement options; and

(d) Including at least one (1) transition outcome as a part of every IFSP that is consistent with 34 C.F.R. 303.344(h).

(11) The service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record in the First Steps data management system. This documentation shall occur within five (5)~~[seven (7)]~~ days of the date of service and include:

(a) The date of contact;

(b) Amount of time spent;

(c) Reason for contact;

(d) Type of contact whether by telephone or face-to-face;

(e) Result of contact; and

(f) Plan for further action.

(12) The service coordinator shall document in~~[as notes on]~~ the First Steps data management system all contacts attempted but not made~~[- and the reason if services were not delivered in a timely manner]~~.

(13) The service coordinator shall encourage the family to access all services identified on the individualized family service plan.

(14) If the family wants to voluntarily terminate a service or all services, the service coordinator shall:

(a) Document in the child's record which services are ending and the date of termination; and

(b) Send a follow-up letter that meets the requirements for prior written notice as specified in 34 C.F.R. 303.421~~[403]~~ to the family which includes what services are terminating, and the date services will terminate, within five (5)~~[seven (7)]~~ working days after notice from the family of the family's choice to end services.

(15) If the family is absent from a scheduled service with no prior notice for two (2)~~[at least three (3)]~~ consecutive visits, the service provider shall notify the service coordinator~~[within seven (7) working days]~~ after the last absence. If the service coordinator receives notice of no show from a provider, the service coordinator shall:

(a) Document the service provider's contact and try to make contact with the family to discuss the circumstances. The service coordinator shall:

1. If contact is made, notify each provider~~[within seven (7) working days]~~ of the result of the discussion; or

2. If unable to contact the family within five (5) working days, send the family a notice of action without consent to indicate service will be terminated within seven (7) days of the date of the notice~~[no contact is made, send the family a letter within seven (7) working days:]~~

a. Requesting direction as to the choice of the family in continuation of services;

b. Stating that the service will be discontinued until a choice is made by the family by contacting the service coordinator; and

c. Stating that if no contact is made by the family, services will be terminated fifteen (15) working days from the date of the letter; and

(b) Notify the service provider, in writing, if services are terminated and the date of termination.~~[(16) The service coordinator shall be responsible for securing any Release of Information necessary to send or secure information, upon request from other service providers, including non First Steps providers involved in the care of the child.]~~

(17) The service coordinator shall provide data to the cabinet upon request.

(18) The service coordinator shall limit practice in First Steps to service coordination only.]

Section 3.~~[Determination of Child's Hearing Status. (1) If the referral is for a birth to three (3) year old child who is "at risk" as confirmed by the Early Hearing Detection and Intervention Data Base and the "at risk" indicator is the only reason the child was referred to First Steps, and no audiological evaluation has been performed, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiological Assessment and Diagnostic Center as specified~~

by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(2) If the referral is for a birth to three (3)-year-old child who is suspected of having a hearing problem, but not suspected of having any developmental problems, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(3) If the referral is for a birth to three (3)-year-old child who has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.

(4) If the referral is for a birth to three (3)-year-old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having delays in developmental areas, the POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an Approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.

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

(a) "Family Rights Handbook", December 2010;

(b) "First Steps Notice of Action (FS-9)", September 2012[December 2010];

(c) "First Steps Notice of Action and Consent", December 2010;

(d) "First Steps Consent to Release/Obtain Information (FS-10)", May 2012;

(e) "Financial Assessment Verification (FS-13)", May 2012[December 2010]; and

(f) "Notice and Consent for Use of Private Insurance (FS-12A)" May 2012["Statement of Assurances — Procedural Safeguards", December 2010].

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STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY HAYNES, Secretary

APPROVED BY AGENCY: May 14, 2013

FILED WITH LRC: May 15, 2013 at 10 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(As Amended at ARRS, September 11, 2013)

902 KAR 30:120. Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 211.647, 216.2970, 34 C.F.R. 303.11, 303.321[303.300], 303.322, 303.421, 20 U.S.C. 1434

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 34 C.F.R. 303.321[303.322], 20 U.S.C. 1434

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 evaluation, eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Initial Eligibility. (1) Initial eligibility shall be determined by:

(a) Administering at least one (1) evaluation instrument designed to confirm the presence of a significant developmental de-

lay;

(b) Gathering information about the child's developmental history through parent interview;

(c) Identifying the child's level of functioning in each developmental area;

(d) Gathering information from other sources, such as child-care workers; and

(e) Reviewing all available medical and educational records.

(2) A child shall be eligible for First Steps service if the child:

(a) Is age birth up to three (3) years;

(b) Is a resident of Kentucky or homeless within the boundaries of the state at the time of referral and resides in Kentucky while receiving early intervention services; and

(c) 1. Has a documented established risk condition that has a high probability of resulting in developmental delay; or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process. [(2) A determination of initial eligibility, assessments, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral for a child who meets the requirements established in subsection (1) of this section.]

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria established in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible once the diagnosis is confirmed by a physician. The established risk condition shall be documented in the child's record through the First Steps on-line data management system[and documented in the medical records provided to the First Steps Program].

(b) A list of approved established risk diagnoses is incorporated by reference in this administrative regulation[shall be maintained by the First Steps Program and made available in policies and procedures].

1. A child with an established risk shall have a five (5) area assessment, assessing the five (5) areas listed in subsection (4)(a) of this section, completed by a developmental evaluator using a cabinet-approved, criterion referenced assessment instrument in lieu of a norm-referenced[primary level] evaluation, in accordance with 902 KAR 30:130.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be:

a. Performed by a speech therapist or a teacher of the deaf and hard of hearing; and

b. Authorized as a discipline specific assessment[who is approved as a developmental evaluator].

(4) Eligibility by developmental delay:

(a) A child meeting the criteria established in subsection (2)[(4)](a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development.

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm-referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) 1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by paragraph (b) of this subsection, a more in-depth standardized test in that area of development may be administered if the following is evident:

a. The initial[primary level] evaluator and a parent or guardian have a concern or suspect that the child's delay is greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of the alternate testing required by subparagraph 1. of this paragraph shall determine the child's eligibility if the standardized scores indicate a delay of at least~~[greater than]~~ two (2) standard deviations.

(5) Eligibility by professional judgment. A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team, as described in 902 KAR 30:150, Section 2(3)(e);

(b) An approved intensive level evaluation team, as described in 902 KAR 30:150, Section 2(3)(d); or

(c) The designated record review team, if reviewing for eligibility.

~~[(6) To be an approved neonatal follow-up program team, a university-based program shall:~~

~~(a) Submit to the cabinet the credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and~~

~~(b) Contract with the cabinet to conduct neuro-developmental follow-up of high risk infants.~~

~~(7) To be an approved intensive level evaluation team, two (2) or more professionals who meet the criteria established in Section 2(9) of this administrative regulation shall:~~

~~(a) Submit to the cabinet their credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and~~

~~(b) Contract with the cabinet to conduct intensive level evaluations.]~~

Section 2. Initial Child Evaluation. (1) Prior to the administration of an evaluation instrument, the child's vision and hearing status shall be determined through screening or evaluation.

(2) A child referred to the First Steps Program who meets the criteria established in Section 1 ~~2~~~~[(4)]~~(a) and (b) of this administrative regulation shall receive an initial evaluation to determine eligibility if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol; ~~and~~

(b) The child does not have an established risk diagnosis; ~~and~~

~~(c) The parent requests and consents to an evaluation.~~

~~3~~~~[(2)]~~ For a child without an established risk diagnosis, an initial~~[the primary level]~~ evaluation shall be used to:

(a) Determine eligibility;

(b) Determine developmental status;

(c) Establish the baselines for progress monitoring; and

(d) Make recommendations to ~~[for]~~ the Individual Family Service Plan (IFSP) team~~[outcomes]~~.

(4) For a child with an established risk diagnosis, a criterion referenced assessment shall be completed to:

(a) Determine developmental status;

(b) Establish the baseline for progress monitoring; and

(c) Make recommendations to the Individual Family Service Plan (IFSP) team.

5~~[(3)]~~ (a) Initial~~[Primary level]~~ evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument, in accordance with 902 KAR 30:130.

(b) The initial~~[primary level]~~ evaluation shall include:

1. A medical component completed by a physician or nurse practitioner that includes a recent complete history and physical examination and other medical information:

a. History and physical examination;

b. Hearing and vision screening; and

c. Recent medical evaluation in accordance with the timelines established in subsection (5) of this section]; and

2. A developmental component completed by a cabinet-approved initial~~[primary level]~~ evaluator, in accordance with 902 KAR 30:150, that includes:

a. A review of pertinent health and medical information; and

b. Completion of each appropriate instrument needed to determine the child's unique strengths and needs; ~~and~~

~~c. A recommendation of eligibility.~~

~~(c) [Results of the evaluation shall be explained to the family.~~

~~(d) An evaluation report shall be entered into the First Steps online data management system~~~~[written]:~~

1. Within five (5) working~~[ten (10) calendar]~~ days of the completion of the evaluation; and

2. In clear, concise language that is easily understood by the family.

~~6~~~~[(4)]~~ Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection ~~7~~~~[(5)]~~ of this section; and

(b) The records contain the developmental evaluation information required by subsection ~~5~~~~(b)~~~~[(3)(b)]~~ of this section.

~~7~~~~[(5)]~~ If there is a recent medical or developmental evaluation available, as required by subsection ~~5~~~~(b)~~~~[(3)(b)]~~ of this section, it shall be used to determine eligibility if the evaluation was performed within:

(a) Three (3) months prior to referral to First Steps, for a child under twelve (12) months of age; or

(b) Six (6) months prior to referral to First Steps, for a child between twelve (12) months of age and three (3) years of age.

~~8~~~~[(6)]~~(a) A child referred to the First Steps program who was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity, unless the child is twenty-four (24) months of age or older at the time of the referral.

(b) For a child who is less than six (6) months corrected age, the initial~~[primary]~~ evaluation shall be done by an approved intensive level evaluation team, ~~or~~ an approved neonatal follow-up program team, or an approved district child evaluation specialist in accordance with Section 1(5) of this administrative regulation.

~~9~~~~[(7)]~~ If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall:

(a) Provide a First Steps Notice of Action (FS-9) in accordance with 34 C.F.R. 303.421; and

(b) Discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other community programs~~[third-party payors]~~.

~~10~~~~[(8)]~~ A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:

1. The child does not meet eligibility guidelines at the initial ~~evaluation~~~~[primary level]~~;

2. The initial~~[primary level]~~ evaluator and a parent or guardian have concerns that the child is developing atypically; and

3. A determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.~~[(9) If the record review team requests an intensive level clinical evaluation, this shall be conducted by a team of early intervention professionals approved by the Part C Coordinator that shall include the following:~~

~~(a) 1. A board-certified medical professional with expertise in early childhood development;~~

~~2. A board-certified developmental pediatrician;~~

~~3. A pediatrician who has training and experience in the area of early childhood development;~~

~~4. A board-certified pediatric psychiatrist; or~~

~~5. A board-certified pediatric neurologist; and~~

~~(b) One (1) or more developmental professionals identified in 902 KAR 30:150, Section 2(1)(a)-(s).]~~

Section 3. Annual Redetermination of Eligibility. (1) A redetermination of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First Steps services if:

(a) The child is:

1. Under three (3) years old; and

2. A resident of Kentucky or homeless within the boundaries of the state; and

(b) The result of the most recent[~~semi-annual~~] progress review, including the annual five (5) area assessment, demonstrates:

1. A significant delay[~~An ongoing delay or failure to attain an expected level of development~~] in at least one (1) or more developmental areas; and

2. Continued First Steps services are required in order to support continuing developmental progress[~~by consensus of the IFSP team~~].

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same outcomes and services;

(b) Continue with modified outcomes and services; or

(c) Transition the child from First Steps services.

(4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5) areas by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument, in accordance with 902 KAR 30:130.

(b) If a person directly involved in conducting the evaluation and assessments is unable to attend an IFSP meeting, arrangements shall be made for that person's involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making[pertinent] records and reports available at the meeting.

Section 4. Determination of Child's Hearing Status. (1) If the referral is for a child who has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an established risk diagnosis and be eligible for First Steps services and the referral process shall continue.

(2) If the referral is for a child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having developmental delays, the POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.

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

(a) "First Steps Notice of Action (FS-9)", October[~~September~~] 2012 edition; and

(b) "First Steps: Established Risk Conditions", September 2013[~~The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule", August 2003~~][edition, 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: May 14, 2013

FILED WITH LRC: May 15, 2013 at 10 a.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, September 11, 2013)

902 KAR 30:180. Procedural safeguards.

RELATES TO: KRS 13B.080, **13B.110**, 200.672, [20-U.S.C. 1439,] 34 C.F.R. 303.400-303.438, 20 U.S.C. 1439[~~to 303.460~~]

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 of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes procedural safeguards for facilities participating in First Steps, Kentucky's Early Intervention System.

Section 1. Records.~~[Definitions.~~

(1) "Consent" means:

(a) ~~The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;~~

(b) ~~The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and~~

(c) ~~The parent understands that the granting of consent is voluntary and may be revoked at any time.~~

(2) "Native language" means the language or mode of communication normally used by the parent of a child eligible for or participating in First Steps.

(3) "Personally identifiable" means that information includes:

(a) ~~The name of the child, the child's parent, or other family member;~~

(b) ~~The address of the child;~~

(c) ~~A personal identifier, such as the child's or parent's Social Security Number; or~~

(d) ~~A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.~~

Section 2. (1) In accordance with 34 C.F.R. 303.400 through 303.417[303.460], the parents of a child eligible for the Kentucky Early Intervention Program shall be afforded the opportunity to inspect, and review, and receive records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints dealing with the child, and any other records maintained by First Steps staff about the child and the child's family.

(2) The first requested copy of the early intervention record released to the parent or guardian shall be at no cost.

(3) A fee of ten (10) dollars shall be charged for each additional copy and shall not prevent the parent or guardian from exercising the right to inspect and review those records.

(4) An early intervention provider or agency shall inform parents when personally identifiable information collected, maintained, or used during the provision of early intervention services is no longer needed to provide services to the child.

Section 2. Parental notice and consent. (1)[(2)] Prior written notice.

(a) Prior written notice shall be given to the parents of an eligible child at least five (5) working[~~seven (7)~~] days before the Point of Entry (POE) staff or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) The notice shall be in sufficient detail to inform the parents about:

1. The action that is being proposed or refused;

2. The reasons for taking the action;

3. All procedural safeguards that are available to the parent; and

4. The[~~complaint~~] procedures under 34 C.F.R. 303.430

~~303.434[303.510-303.512, including a description of how to file a complaint and the required timelines under those procedures].~~

(c) The written prior notice shall be:

1. Written in language understandable to the general public; and

2. Provided in the native language or other mode of communication of the parents, unless it is clearly not feasible to do so.

(d) If the native language or other mode of communication of the parent is not a written language, the POE staff, or designated service provider, shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

2. The parent understands the notice; and

3. There is written evidence that the requirements of this paragraph have been met.

~~(2)(e) If a parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (which may include sign language, Braille, or oral communication).~~(3) Parent consent.

(a) Written parental consent shall be obtained before:

1. Administering any screening procedures;

2. Conducting all evaluations and assessments~~[the initial evaluation and assessment]~~ of a child;

3.~~[and 2.]~~ Initiating the provision of early intervention services;

4. Billing private insurance; and

5. Disclosing personally identifiable information.

(b) If consent is not given for screening, evaluation, assessment, or early intervention services, the POE shall make reasonable efforts to ensure that the parent understands:

1. The nature of the evaluation and assessment or the services available; and

2. That the child will not receive the evaluation and assessment or services unless consent is given.

~~(3)(5)]~~ The parents of an eligible child may determine if they, their child, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it, without jeopardizing other early intervention services.

Section 3. Representation of Children and Surrogate Parents.

(1) Each POE shall ensure that the rights of an eligible child are protected if:

(a) A parent, as defined in 902 KAR 30:001, Section 1~~(28)~~~~[(24)]~~, cannot be identified;

(b) The POE, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The child is a ward of the state.

(2) If the child is a foster child and does not reside with the child's parents, the POE shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The POE shall not be required to obtain parental consent if:

(a) Despite reasonable efforts, the POE cannot discover the whereabouts of the parent;

(b) The rights of the parents have been terminated; or

(c) The rights of the parents to make educational decisions have been subrogated by a court and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.

(3)(a) If more than one (1) party meets the definition of parent under 902 KAR 30:001, Section 1~~(28)~~~~[(24)]~~, the biological or adoptive parent shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.

(b) If there is a judicial order that identifies a specific person to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(4)(a) A POE shall determine if a child needs a surrogate parent and, if so, shall assign a surrogate parent to the child.

(b) The surrogate parent of the child shall have all the rights afforded parents under 34 C.F.R. Part 303 to make decisions about early intervention issues for a child.

(c) A POE shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

1. An individual cannot be identified as a parent;

2. The POE, after reasonable efforts, cannot discover the whereabouts of the parents;

3. The child is a ward of the state; or

4. The child is an unaccompanied homeless child.

(5) The POE shall keep a record of the reasonable efforts made to discover the whereabouts of the parents, including:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The POE shall have a procedure for selecting surrogates that is approved by the Department of Public Health. The department shall approve a procedure that is established to ensure that a surrogate:

(a) Is not an employee of the Kentucky Department for Public Health, the POE, or any other state agency that is involved in early intervention services or care of the child;

(b) Does not have any personal or professional interest that conflicts with the interests of the child; and

(c) Has knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the POE solely because he or she is paid by the POE to serve as a surrogate parent.

(8) If a child is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, or street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The POE shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) calendar days after there is a determination by the Point of Entry that the child needs a surrogate.

(10) Responsibilities. A surrogate parent shall represent a child in all matters related to:

(a) The evaluation and assessment of the child;

(b) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(c) The ongoing provision of early intervention services to the child; and

(d) Any other rights established under this administrative regulation.

Section 4. Mediation. (1) Each POE shall ensure that procedures are established and implemented to allow parties to disputes involving any matter concerning the identification, evaluation, placement of the child or the provision of appropriate early intervention services to resolve the disputes through a mediation process which, at a minimum, shall be available if a hearing is requested under 34 C.F.R. 303.431~~[303.420]~~.

(2) The POE agency shall use the mediation system established by the Department for Public Health.

(a) Mediation shall be adopted as an option to resolve complaints.

(b) Mediation shall be voluntary and freely agreed to by both parties, and shall not deny or delay a parent's right to a due process hearing to be conducted at any time.

(c) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute.

(d) Mediators shall be trained in applicable state and federal law relating to the First Steps program.

(3) Time table for mediation.

(a) Within five (5) working days after a request for mediation is made to the department using a Mediation/Due Process Request Form, the appointment of a mediator shall be made.

(b) Either party may waive the mediation and, if waived, the

parents shall be informed by the department within two (2) working days of this decision.

(c) Mediation shall be completed within thirty (30) working days of the receipt by the department of the request for mediation.

(d) At any time during the mediation process, a request for a due process hearing may be initiated.

(e) If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the lead agency who has the authority to enter into an agreement.

(f) A copy of the legally binding agreement~~[written resolution]~~ shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the department. The agreement~~[written resolution]~~ shall specify in writing the agreement reached by the parties.

(4) A written mediation agreement~~[Mediation resolutions]~~ shall not conflict with state and federal laws and shall be to the satisfaction of both parties. Satisfaction shall be indicated by the signature of both parties on the legally binding agreement~~[written resolution]~~.

(5) Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process shall be required to sign a confidentiality pledge prior to the commencement of the process.

Section 5. Due Process Procedures for Parents and Children.

(1)~~[(a)]~~ An administrative hearing shall be conducted within fifteen (15) days of receipt of a request for hearing by an impartial hearing officer appointed by the secretary of the cabinet.

~~(2) [(b)]~~ The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.080.

~~(3) [(c)]~~ A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the family and the cabinet within ten (10) days of the administrative hearing.

~~(4) [(d)]~~ All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision.

~~(5) [(e)]~~ A final decision on the recommendation shall be made no later than forty-five (45) days following receipt of the appeal.

~~(6) [(f)]~~ Any parent involved in an administrative hearing may:

[a]-[4-] Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible for the First Steps Program;

[b]-[2-] Present evidence and confront, cross-examine, and compel the attendance of witnesses;

[c]-[3-] Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;

[d]-[4-] Obtain a written or electronic verbatim transcription of the proceeding; and

[e]-[5-] Obtain written findings of fact and decisions.

~~(7) [(g)]~~ Any proceeding for implementing the complaint resolution process established in Section 4 of this administrative regulation shall be held at a time and place that is reasonably convenient to the parent.

~~(8) [(h)]~~ Any party aggrieved by the findings and decision regarding an administrative hearing may bring a civil action in state or federal court under 20 U.S.C. 1439(a)(1).

~~(9) [(i)]~~ During the pendency of any proceeding involving a hearing under this section, unless the POE and parents of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

Section 6.~~[(2)]~~ State Complaint Procedures. The procedures established in this section~~[subsection]~~ shall apply to the Cabinet for Health and Family Services, Department for Public Health as to written complaints submitted pursuant to 34 C.F.R. 303.432-303.434~~[303.320 through 303.460]~~.

(1) Any organization or individual may file a signed written complaint.~~[(a)]~~ The complaint shall be submitted on a First Steps Complaint Form and shall include:

[a]-[4-] A statement that the state lead agency, point of entry, or early intervention provider has violated a requirement of state or federal law;

[b]-[and 2-] The facts on which the complaint is based; and

[c] The signature and contact information for the complainant.

(2) If the alleged violation is with respect to a specific child, the complaint shall include:

(a) The **child's name and residential address**~~[name and address of the residence of the child]~~.

(b) The name of the early intervention provider serving the child;

(c) A description of the nature of the problem of the child, including facts related to the problem; and

(d) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(3) [(b)] The alleged violation shall have occurred not more than one (1) year before the date that the complaint is received by the Department for Public Health~~[unless a longer period is reasonable because:~~

1. The alleged violation continues for that child or other child-~~ren; or~~

2. The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three (3) years before the date on which the complaint is received by the Department for Public Health].

(4) The party filing the complaint shall forward a copy of the complaint to the point of entry or early intervention provider serving the child at the same time the party files the complaint with the state lead agency.

(5) [(e)] Within sixty (60) calendar days after a complaint is filed, the Department for Public Health shall:

[a]-[4-] Carry out an independent on-site investigation, if the agency determines that an investigation is necessary;

[b]-[2-] Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

[c] Provide the point of entry or early intervention provider an opportunity to respond to the complaint, including:

1. A proposal to resolve the complaint; and

2. An opportunity for a parent who has filed a complaint and the point of entry or early intervention provider to voluntarily engage in mediation, in accordance with Section 4 of this administrative regulation;

[d]-[3-] Review all relevant information and make an independent determination as to whether the point of entry or early intervention provider~~[public agency]~~ is violating a requirement of the Kentucky Early Intervention System;

[e]-[4-] Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

1. [a-] Findings of fact and conclusions; and

2. [b-] The reasons for the agency's final decision;

[f]-[5-] Permit an extension of the sixty (60) day time limit only if exceptional circumstances exist with respect to a particular complaint; and

[g]-[6-] Include procedures for effective implementation of the state lead agency's final decision, if needed, including:

1. [a-] Technical assistance activities;

2. [b-] Negotiations; and

3. [c-] Corrective actions to achieve compliance.

[6] [(d)] If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of a due process hearing, the Department for Public Health shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process action shall be resolved within the sixty (60) calendar-day timeline using the complaint procedures established in this section.

[7] [(e)] If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the:

a. [The] Hearing decision shall be binding; and

b. [The] Agency shall inform the complainant of that effect.

[8] [(f)] A complaint alleging the state lead agency, point of entry, or early intervention~~[a public agency's or private service]~~

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provider's failure to implement a due process decision shall be resolved by the Department for Public Health.

Section 7[5]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) First Steps Complaint Form, August 2012 edition[December 2010]; and

(b) Mediation/Due Process Request Form, May 2012 edition[November 2010].

(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:

FILED WITH LRC: May 14, 2013

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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, September 11, 2013)

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) **"Intellectual disability" means an individual has:**

(a) Sub-average intellectual functioning;

(b) An intelligence quotient of seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;

2. Self-care;

3. Home living;

4. Social or interpersonal skills;

5. Use of community resources;

6. Self-direction;

7. Functional academic skills;

8. Work;

9. Leisure; or

10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(13) "Licensed psychological associate" means an individual who is currently licensed in accordance with KRS 319.064.

~~(14)~~~~(13)~~ "Licensed psychological practitioner" means an individual who is currently licensed in accordance with KRS 319.053.

~~(15)~~~~(14)~~ "Licensed psychologist" means an individual who is currently licensed in accordance with KRS 319.050.

~~(16)~~~~(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.

~~(17)~~~~(16)~~ "Medically necessary" means determined by the department to be needed in accordance with 907 KAR 3:130.

~~(18)~~ **"Mental illness" is defined by KRS 210.005(2).**

~~(19)~~~~(17)~~ "Neurologist" means a physician who specializes in neurology.

~~(20)~~~~(18)~~ "Occupational therapist" is defined by KRS 319A.010(3).

~~(21)~~~~(19)~~ "Occupational therapist assistant" is defined by KRS 319A.010(4).

~~(22)~~~~(20)~~ "Ophthalmic dispenser" means an individual licensed to perform ophthalmic dispensing in accordance with KRS 326.030.

~~(23)~~~~(21)~~ "Ophthalmic dispensing" is defined by KRS 326.010(2).

~~(24)~~~~(22)~~ "Physical therapist" is defined by KRS 327.010(2).

~~(25)~~~~(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.

~~(26)~~~~(24)~~ "Physical therapy" is defined by KRS 327.010(1).

~~(27)~~~~(25)~~ "Physician" is defined by KRS 311.550(12).

~~(28)~~~~(26)~~ "Physician services" means the practice of medicine or osteopathy provided by a physician.

~~(29)~~~~(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

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with an intellectual or developmental disability.

~~(30)/(28)~~ "Practice of medicine or osteopathy" is defined by KRS 311.550(11).

~~(31)/(29)~~ "Practice of psychology" is defined by KRS 319.010(6).

~~(32)/(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).

~~(33)/(31)/(32)~~ "Psychological services" means the practice of psychology.

~~(34)/(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.~~

~~(35)/(33)/(34)~~ "Recipient" is defined by KRS 205.8451(9).

~~(36)/(34)/(35)~~ "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

~~(37)/(35)/(36)~~ "Specialty intermediate care clinic" or "specialty IC clinic" means a clinic licensed pursuant to 902 KAR 20:410.

~~(38)/(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, ~~Section 4(4)~~; or

2. ~~[Section 4(5) of]~~ 907 KAR 1:022, ~~Section 4(5)~~.

~~(2)(a) A recipient shall be eligible to receive services stated in Section 5 of this administrative regulation:~~

~~1. In accordance with the requirements established in Section 5 of this administrative regulation if the recipient is:~~

~~a. Eligible in accordance with subsection (1) of this section;~~

~~b. Receiving services via:~~

~~(i) A 1915(c) home and community services waiver program; or~~

~~(ii) An intermediate care facility for individuals with an intellectual disability; and~~

~~3. Not enrolled with a managed care organization; or~~

~~2. In accordance with Section 6(3) of this administrative regulation.~~

~~(b) 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 ~~either Section 3(2)(a) or 6(3)(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 ~~subparagraph 1. of this 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)(b)[(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 ~~subparagraph 1 of this 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 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)(a)[(2)(b)]~~ of this administrative regulation:

(1) Dental services provided:

(a) By an authorized practitioner in accordance with 907 KAR 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; **and**

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; **and**

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. **(1)** 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)(b)(2)(a))** of this administrative regulation:

(a)(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;

(b) Physician(2)–Physicians] services provided in accordance with 907 KAR 3:005 except that:

1.(a)] A physician who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

2.(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;

(c)(3)] Psychiatric services provided in accordance with 907 KAR 3:005 except that:

1.(a)] A psychiatrist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

2.(b)] A physician who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

3.(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;

(d)(4)] Behavioral health services in accordance with:

1.(a)] 907 KAR 1:054 except that:

a.(1)] A clinical psychologist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

b.(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;

2.(b)] 907 KAR 1:082 except that:

a.(1)] A clinical psychologist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

b.(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

3.(c)] 907 KAR 1:044 except:

a.(1)] That:

(i)(a.) A clinical psychologist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(ii)(b.) A psychiatrist who is employed by or under contract with

a specialty IC clinic shall be authorized to provide the services; or
(iii)(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 services as established in subsection (2)(b) of this section];

(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

b.[2.] For the following which shall not be covered if provided by a specialty IC clinic:

(i)[a.] Inpatient services;

(ii)[b.] Therapeutic rehabilitation services for adults;

(iii)[c.] Therapeutic rehabilitation services for children; or

(iv)[d.] Services in a detoxification setting;

(e)[(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;

(f)[(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;

(g)[(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;

(h)[(8)] Preventive health care in accordance with 907 KAR 3:005 except that:

1.[(a)] A physician who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

2.[(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;

(i)[(9)] Occupational therapy in accordance with 907 KAR 3:005 except that an:

1.[(a)] Occupational therapist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

2.[(b)] Occupational therapy assistant who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(j)[(10)] Physical therapy in accordance with 907 KAR 3:005 except that a:

1.[(a)] Physical therapist who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

2.[(b)] Physical therapist assistant who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services;

(k)[(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;

(l)[(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:

1.[(a)] A physician who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services; or

2.[(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

(m)[(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.

(2)(a) 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 shall be prohibited for any behavioral health service.

(b) In accordance with 907 KAR 1:044, 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:

1. Chemotherapy services if the APRN meets the requirements of 201 KAR 20:057, Section 2(1) and Sections 6(1) to (3); or

2. Psychiatric evaluations and testing if the APRN meets the requirements of 201 KAR 20:057, Section 2(1).

(3) The department, rather than a managed care organization, shall reimburse for a service that is:

(a)1. Listed in Section 5 of this administrative regulation; and

2. Not covered by a managed care organization for an individual who is:

a. Eligible for the service in accordance with Sections 3(1), (2)(b), and 4 of this administrative regulation; and

b. Enrolled with a managed care organization; or
(b)1. Needed in excess of the limit for the service established in this section;

2. Within the limit for the service established in Section 5 of this administrative regulation;

3. Medically necessary as determined by the department pursuant to 907 KAR 3:130; and

4. For an individual who is:

a. Eligible for the service in accordance with Sections 3(1), (2)(b), and 4 of this administrative regulation; and

b. Enrolled with a managed care organization.

(4) In addition to other services, the following shall be included in the scope of physician services:

(a) Neurology;

(b) Epileptology;

(c) Primary and sub-specialist medical assessment and treatment;

(d) Nutritional or dietary consultation;

(e) Mobility evaluation or treatment;

(f) Medication consultation;

(g) Medication management; and

(h) Seizure management.

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,
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(As Amended at ARRS, September 11, 2013)

**907 KAR 3:230. Reimbursement policies and requirements
for specialty intermediate care (IC) clinic services.**

RELATES TO: KRS 205.520(3), 205.560(1)~~216B.450
through 459~~, 42 C.F.R. Part 413, 42 C.F.R. 447.204, 42 C.F.R.
447.321

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2),
194A.050(1), 205.520(3), and 205.560(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet
for Health and Family Services, Department for Medicaid Services
has responsibility to administer the Medicaid program. KRS
205.520(3) authorizes the cabinet, by administrative regulation, to
comply with any requirement that may be imposed or opportunity
presented by federal law to qualify for federal Medicaid funds. This
administrative regulation establishes the reimbursement policies
and requirements for covered specialty intermediate care clinic
services provided to a Medicaid recipient who is not enrolled with a
managed care organization and optional policies for covered specialty
IC clinic services provided to a Medicaid recipient who is
enrolled with a managed care organization.

Section 1. Definitions. (1) "Bad debt" means accounts receivable
which will likely remain uncollected.

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

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

(4) "Government Auditing Standards" means the standards:

(a) For audits of government organizations, programs, activities,
functions, and of government assistance received by contractors,
nonprofit organizations, and other nongovernment organizations;

(b) Often referred to as generally accepted government auditing
standards or GAGAS; and

(c) Accessible at the Web site of
<http://www.gao.gov/govaud/ybk01.htm>.

(5) "Medically necessary" means determined by the department
to be needed in accordance with 907 KAR 3:130.

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

(7) "Specialty intermediate care clinic" or "specialty IC clinic"
means a clinic located on the grounds of a state-owned facility
licensed pursuant to 902 KAR 20:086 as an intermediate care
facility for individuals with an intellectual disability.

Section 2. Interim Reimbursement. (1)(a) Except for a specialty
IC clinic's first fiscal year of operation, the department shall
reimburse on an interim basis:

1. For specialty intermediate care clinic services via an interim
rate and utilizing a clinic-specific cost-to-charge ratio:

a. For each service;

b. Based on the clinic's most recently filed cost report, unless
no cost report exists; and

c. Expressed as a percent of the clinic's charges; and

2. During the course of a state fiscal year until the most recent
full fiscal year cost report from the clinic has been finalized by the
department.

(b) The department shall use projected costs to establish interim

rates for the first fiscal year of a specialty IC clinic's operation.

(2) The department shall determine a:

(a) Clinic-specific cost-to-charge ratio for each service; and

(b) Specialty IC clinic's interim rate for a service by:

1. Multiplying the total charges for the service by the service-specific
cost-to-charge ratio; and

2. Dividing the number established pursuant to subparagraph
1. of this paragraph by the applicable number of service units. For
example, \$500,000 in total charges multiplied by a cost-to-charge
ratio of 0.95 divided by 10,000 units equals an interim rate of forty-seven
(47) dollars and fifty (50) cents.

(3) An interim rate for a fiscal year shall be effective on July 1
of a calendar year and remain in effect until close of business June
30 of the subsequent calendar year.

(4)(a) The department shall adjust an interim rate if:

1. The department miscalculated a specialty IC clinic's interim
rate;

2. A specialty IC clinic submits an amended cost report which
applies to the interim rate period; or

3. A further desk or on-site audit of a cost report used to establish
the interim rate discloses a change in allowable costs.

(b) The department shall not adjust an interim rate for a reason
not described in paragraph (a)1, 2, or 3 of this subsection.

(5) The department shall use the most recently received ICF-IID
and Specialty Intermediate Care Clinic Cost Report as of March
15 to establish interim rates for a specialty IC clinic to be effective
on July 1 of a given year.

Section 3. Final Reimbursement. (1) After the most recent full
fiscal year cost report for a specialty IC clinic has been finalized by
the department, the department shall cost settle with the clinic to
establish final reimbursement to the clinic for the corresponding
fiscal year.

(2) A cost settlement between the department and a specialty
IC clinic shall:

(a) Be limited to an amount, if any, by which the specialty IC
clinic's allowable costs exceeds the amount of:

1. Any third party recovery during the fiscal year; and

2. Interim payments made to the specialty IC clinic; and

(b) Not exceed the federal upper payment limit in accordance
with 42 C.F.R. 447.321.

(3)(a) The department's reimbursement to a specialty IC clinic
shall be payment in full to the specialty IC clinic for services provided
to recipients.

(b) A specialty IC clinic shall not bill a recipient for a service
provided to a recipient.

(c) A bad debt shall not be:

1. An allowable cost; or

2. Reimbursable by the department.

Section 4. Cost Reporting Requirements. (1)(a) A specialty IC
clinic shall annually submit to the department a fully completed
ICF-IID and Specialty Intermediate Care Clinic Cost Report within
four (4) calendar months of the end of the prior state fiscal year.

(b) For example, an ICF-IID and Specialty Intermediate Care
Clinic Cost Report covering the fiscal year ending June 30, 2013
shall be submitted to the department by close of business October
31, 2013.

(2) A specialty IC clinic shall complete an ICF-IID and Specialty
Intermediate Care Clinic Cost Report in accordance with the ICF-IID
and Specialty Intermediate Care Clinic Cost Report Instructions.

(3) Interim reimbursement for a specialty IC clinic which does
not submit a legible and complete ICF-IID and Specialty Intermediate
Care Clinic Cost Report to the department within the time period
referenced in subsection (1) of this section shall be placed in
escrow by the department until the department receives a legible
and completed ICF-IID and Specialty Intermediate Care Clinic Cost
Report.

(4) After finalizing the first full fiscal year cost report submitted
by a facility, the department shall establish an interim rate based
on the first full year cost report.

(5)~~(a)~~ An ICF-IID and Specialty Intermediate Care Clinic Cost
Report shall include the following statement immediately be-

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~~fore[stated in paragraph (b) of this subsection and the statement shall immediately precede]~~ the dated signature of the specialty IC clinic's administrator or chief financial officer: ~~f.-(b)]~~ "I certify that I am familiar with the laws and regulations regarding the provision of health care services under the Kentucky Medicaid program, including the statutes[laws] and administrative regulations relating to claims for Medicaid reimbursements and payments, and that the services identified in this cost report were reported in compliance with those statutes[such laws] and administrative regulations. This cost report includes total computable cost incurred to provide Medicaid services."

(6) If a cost report indicates a payment is due by a specialty IC clinic to the department, the specialty IC clinic shall submit the amount due or submit a payment plan request with the cost report.

(7) If a cost report indicates a payment is due by a specialty IC clinic to the department and the specialty IC clinic fails to remit the amount due or request a payment plan, the department shall suspend future payment to the specialty IC clinic until the specialty IC clinic remits the payment or submits a request for a payment plan.

(8)(a) If it is determined that an additional payment is due by a specialty IC clinic after a final determination of cost has been made by the department, the additional payment shall be due by the specialty IC clinic to the department within sixty (60) days after notification.

(b) If a specialty IC clinic does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the specialty IC clinic until the department has collected in full the amount owed by the specialty IC clinic to the department.

(9)(a) A specialty IC clinic shall report all of its costs, allowable costs, and unallowable costs on a cost report.

(b) The department shall not reimburse for or cost settle unallowable costs.

Section 5. Allowable and Unallowable Costs. (1) An allowable cost shall:

- (a) Be allowable in accordance with 42 C.F.R. Part 413;
- (b) Be a cost allowed after an audit by the department; and
- (c) Include:

- 1. A cost incurred by a specialty IC clinic in meeting and maintaining health standards pursuant to 42 C.F.R. 431.610(c); and
- 2. Costs resulting from meeting Kentucky specialty clinic licensure requirements pursuant to 902 KAR 20:410.

(2) Reimbursable services shall be the specialty IC clinic services established in 907 KAR 3:225.

(3) Costs relating to unallowable clinic activities shall:

- (a) Be excluded from any cost settlement;
- (b) Not be reimbursable; and
- (c) Be reported separately on a cost report.

Section 6. Audits. (1) An ICF-IID and Specialty Intermediate Care Clinic Cost Report and all related documents submitted to the department by a specialty IC clinic shall be subject to audit, review, and reconciliation by the department.

(2) An audit, if performed, shall be performed in accordance with the most current Government Auditing Standards [available via the Web site of <http://www.gao.gov/govaud/ybk01.htm>].

Section 7. Pharmacy, Medication, Immunization, and Other Costs Not Reimbursed at Cost. (1) The department shall reimburse for:

(a) Prescription drug costs experienced by a specialty IC clinic through the department's pharmacy program in accordance with 907 KAR 1:018; or

(b) Immunization costs experienced by a specialty IC clinic through the department's physician[physicians'] program in accordance with 907 KAR 3:010.

(2) Medication:

- (a) Consultation costs shall be allowable; and
- (b) Management costs shall be allowable.

Section 8. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse for specialty IC clinic services in accordance with this administrative regulation.

(2) The reimbursement policies established in this administrative regulation shall not apply to a managed care organization.

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. Appeals. (1) An interim rate adjustment or denial of an interim rate adjustment may be appealed in accordance with 907 KAR 1:671.

(2) A Medicaid program sanction or appeal shall be in accordance with 907 KAR 1:671.

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

(a) "ICF-IID and Specialty IC Clinic Cost Report", March 2013 edition; and

(b) "ICF-IID and Specialty IC Clinic Cost Report Instructions", March 2013 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 15, 2013

FILED WITH LRC: May 8, 2013 at 10 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, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (As Amended at ARRS, September 11, 2013)

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

RELATES TO: KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the Kentucky Transitional Assistance Program (K-TAP) and the State Supplementation Program (SSP). KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) A household shall, for the month payment is intended to cover the household, meet the eligibility criteria in:

- (a) 921 KAR 2:006 and 921 KAR 2:016 for K-TAP; or
- (b) 921 KAR 2:015 for SSP.

(2) A household shall not receive assistance until approval of the application for benefits.

(3) Each decision regarding eligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(4) The applicant or recipient shall be the primary source of information and shall be required to:

- (a) Furnish verification of:
 - 1. Income;
 - 2. Resources; and
 - 3. Technical eligibility; and
- (b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information when requested shall be considered a failure to present adequate proof of eligibility.

(6)(a) An application shall be considered filed if a PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), or a PA-100, Application/Recertification for K-TAP, Kinship Care, and Family/AFDC Related MA, containing the name, address, and signature of the applicant is received by a DCBS office.

(b) An application shall be processed after the:

- 1. Applicant or representative is interviewed;
- 2. Required information and verification for the application is provided to the Department for Community Based Services (DCBS) office; and

3. Application and related documents, pursuant to subsection (4) of this section, are received by the DCBS office.

(c) If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for K-TAP by using form PA-100.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting, within ten (10) calendar days, any change in circumstances which may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

- (a) If a report is received or information is obtained about changes in circumstances;
- (b) Every twenty-four (24) months for SSP cases; and
- (c) Every twelve (12) months for K-TAP cases.

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

(a) "PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance)", [edition] 11/11; and

(b) "PA-100, Application/ Recertification for K-TAP, Kinship Care, and Family/AFDC Related MA", 11/13 [edition 11/14].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 11, 2013

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

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 Family Support
(As Amended at ARRS, September 11, 2013)

921 KAR 2:046. Adverse action; conditions.

RELATES TO: KRS 205.010, 205.200, 205.245, 605.120(5), 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050 (1), 205.200(2), 605.120(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205

requires the Cabinet for Health and Family Services to administer public assistance programs including the Kentucky Transitional Assistance Program or "K-TAP" and mandatory and optional supplementation of persons who are aged, blind, and have a disability. KRS 205.200(2) requires the cabinet to promulgate administrative regulations concerning the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619 and federal regulations. KRS 605.120(6) requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish uniform conditions and requirements for kinship care. This administrative regulation establishes the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for:

- (a) State Supplementation Program benefits;
- (b) K-TAP benefits; or
- (c) Kinship Care Program benefits.

(2) "Application" means the process set forth in:

(a) 921 KAR 2:035 for K-TAP or State Supplementation Program; or

(b) 922 KAR 1:130 for Kinship Care Program.

(3) "Recipient" means a:

(a) Person who is aged, blind, or has a disability receiving State Supplementation Program benefits;

(b) Member of a K-TAP assistance group as defined in 921 KAR 2:016; or

(c) Member of a Kinship Care Program assistance group as defined in 922 KAR 1:130.

Section 2. Reasons for Adverse Action. (1) An application shall be denied if:

(a) Income or resources exceed the standards for the specific assistance program as set forth in 921 KAR 2:016, 921 KAR 2:015, or 922 KAR 1:130;

(b) The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 921 KAR 2:006, 921 KAR 2:015, 921 KAR 2:370, or 922 KAR 1:130;

(c) The applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility despite receipt of written notice detailing the additional information needed for a determination;

(d) The applicant fails to keep the appointment for an interview;

(e) The applicant requests in writing voluntary withdrawal of application;

(f) Department staff is unable to locate the applicant; or

(g) The applicant is no longer domiciled in Kentucky.

(2) Assistance shall be discontinued or decreased if:

(a) Income or resources of the recipient increase or deductions decrease resulting in reduced or discontinued benefits as set forth in 921 KAR 2:016, 921 KAR 2:015, or 922 KAR 1:130;

(b) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 921 KAR 2:006, 921 KAR 2:015, 921 KAR 2:370, or 922 KAR 1:130;

(c) The recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility despite receipt of written notice detailing the additional information needed for a redetermination;

(d) The recipient fails to keep the appointment for an interview;

(e) The cabinet is recovering K-TAP or Kinship Care Program overpayments through recoupment;

(f) Department staff is unable to locate recipient;

(g) The recipient is no longer domiciled in Kentucky; or

(h) Change in program policy adversely affects the recipient[; or

~~(i) The grant amount is less than ten (10) dollars for K-TAP only].~~

Section 3. Notification of Denial of an Application. (1) If an application is denied, the applicant shall be given a form as follows:

(a) ["KIM-105-Adult"] MA["] for a State Supplementation Program recipient;

(b) ["KIM-105-KC"] for a Kinship Care applicant; or

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(c) [“]KIM-105-KTAP for a K-TAP applicant who does not concurrently apply for the Supplemental Nutrition Assistance Program (SNAP)[Food Stamp Program].

(2) A form listed in subsection (1) of this section shall include:

- (a) The reason for the denial;
- (b) ~~Citation~~[The ~~cites~~] of the applicable state administrative regulation; and
- (c) Information regarding:
 1. The opportunity to confer with the worker; and
 2. The right to a fair hearing as provided by 921 KAR 2:055.

Section 4. Advance Notice of a Decrease or Discontinuance.

(1) The recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:

(a) A money payment shall be:

1. Reduced;
2. Suspended; or
3. Discontinued; or

(b) An individual shall be removed from the K-TAP or Kinship Care Program grant, even if the grant increases.

(2) The ten (10) days advance notice of the proposed action shall:

- (a) Be given on a form listed in Section 3(1) of this administrative regulation;
- (b) Explain the reason for the proposed action;
- (c) Cite the applicable state administrative regulation; and
- (d) Extend the opportunity to confer with the worker or to request a fair hearing pursuant to 921 KAR 2:055.

(3) A hearing request received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision, as provided in 921 KAR 2:055.

Section 5. Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given on a form listed in Section 3(1) of this administrative regulation, if:

(1) A decrease or discontinuance results from:

(a) Information reported by the recipient, if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;

(b) A clear written statement, signed by a recipient that the recipient no longer wishes to receive assistance from the department;

(c) Factual information received by the department that the:

1. State supplementation recipient has died; or
2. K-TAP payee has died and a new payee is unavailable;

(d) Whereabouts of a recipient are unknown and mail addressed to the recipient is returned indicating no known forwarding address; however, a returned check shall be made available if whereabouts of the recipient becomes known during the payment period covered by the returned check;

(e) Establishment by the agency that assistance has been accepted in another state;

(f) Removal from the home of a K-TAP or Kinship Care Program child by judicial order or voluntary placement in foster care by his legal guardian;

(g) The person who is aged, blind, or has a disability and is a State Supplementation Program recipient, enters a nursing facility resulting in vendor payment status;

(h) The recipient enters a:

1. Penal institution;
2. Tuberculosis hospital, if under sixty-five (65); or
3. Psychiatric hospital, if between twenty-one (21) and sixty-five (65); or

(2) A recipient is granted a special allowance, or time limited assistance, that is terminated at the end of a specified period.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KIM-105-Adult[?] MA", 11/13[~~edition 11/03~~];

(b) "KIM-105-KC", 11/13[~~edition 11/03~~]; and

(c) "KIM-105-KTAP", 11/13[~~edition 11/03~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-

Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 11, 2013

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

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 Family Support
(As Amended at ARRS, September 11, 2013)**

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

RELATES TO: KRS 205.220, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.220, 205.245, 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.220 prescribes who is eligible for public assistance and requires the cabinet to prescribe by administrative regulation the time and manner of payments of public assistance grants for eligible individuals. KRS 205.245 provides for a money payment to the needy aged, needy blind, and needy permanently and totally disabled. This administrative regulation establishes the time and manner of payments for the Kentucky Transitional Assistance Program (K-TAP) and the Kentucky Works Program (KWP) in conformity with the Social Security Act, 42 U.S.C. 601 - 619, and federal regulations. It also establishes the time and manner of State Supplementation Program (SSP) payments and Mental Illness or Mental Retardation (MIMR) Supplement Program payments.

Section 1. Authorization of K-TAP Payments. (1) Method of payment.

(a) A payment shall[~~may~~] be issued monthly by:

1. Check;
2. Electronic benefit transfer (EBT); or
3. Direct deposit into a recipient's checking account upon completion by the recipient of the Direct Deposit Authorization, Form PA-63[; and]

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) A K-TAP approval shall not be made for a period prior to the date of application.

(b) The effective date of an initial payment for a K-TAP approval shall be the date an application is filed if eligibility factors are met as of that date.

(c) If eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payment.

(a) Except in a situation pursuant to paragraph (b) of this subsection, a subsequent K-TAP payment shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.

(b) A special payment shall be issued:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payment.

(a) A K-TAP payment shall be unconditional and exempt from a remedy for the collection of a debt, lien, or encumbrance from an

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individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services may initiate recoupment to recover overpayment of benefits pursuant to 921 KAR 2:016.

(c) The Cabinet for Health and Family Services shall make adjustments to an EBT account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(5) EBT Account Inactivity.

(a) If an EBT account has not been debited in 365 days, the cabinet shall:

1. Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is 365 days in the past; and

2. Notify the household in writing:

a. That the household's EBT account has not been debited in the last 365 days; and

b. Of the amount of EBT benefits that have been expunged.

(b) If a recipient debits the EBT account, the expungement process shall cease.

(6) Eligible payee.

(a) A money payment shall be issued in the name of the approved applicant.

(b) Upon request of an individual specified in this subsection, a K-TAP payment for the month of death shall[may] be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(c) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

(7) In accordance with 42 U.S.C. 608(a)(12), a K-TAP payment received on EBT shall not be accessed via an EBT transaction, such as a point-of-sale terminal or an automated teller machine, at a:

(a) Liquor store;

(b) Business that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment;

(c) Casino;

(d) Gambling casino; or

(e) Gaming establishment.

(8) The terms used in subsection (7) of this section shall be defined in accordance with 42 U.S.C. 608(a)(12)(B).

Section 2. Supportive Services for KWP Participants. A supportive services payment for a KWP participant shall be made according to the type of service provided, as follows:

(1) A child care payment shall be issued pursuant to 922 KAR 2:160.

(2) A transportation payment pursuant to 921 KAR 2:017 shall[may] be made directly to the K-TAP recipient.

(3) Other approved supportive services payments shall be made:

(a) Directly to the provider; and

(b) Within thirty (30) days of receipt of appropriate verification of service delivery of billing, pursuant to 921 KAR 2:017.

Section 3. Authorization of an[a] SSP payment. (1) Method of payment.

(a) A payment shall be issued monthly by:

1. Check; or

2. Direct deposit into a recipient's checking account upon completion by the recipient of the PA-63, Direct Deposit Authorization form; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for SSP approval shall be the first day of the month in which:

1. An application is filed; and

2. Eligibility factors are met.

(b) An[A] SSP payment shall be made for the entire month of

which eligibility factors are met.

(3) Subsequent and special payment.

(a) A subsequent SSP payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) An[A] SSP money payment shall be unconditional and is exempt from a remedy for the collection of a debt, lien, or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall be issued in the name of the eligible applicant except as provided in paragraph (b) of this[the] subsection.

(b) A money payment may be issued to the:

1. Legally appointed committee or guardian; or

2. Person serving as the representative payee for another statutory benefit such as Supplemental Security Income.

(c) Upon request of an individual specified in this subsection, an[A] SSP payment for the month of death shall[may] be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons With MIMR Supplement Program Payment. (1) Method of payment.

(a) The MIMR supplement payment shall be made:

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(b) The training reimbursement payment for the MIMR Supplement Program shall be made:

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(2) Initial payment.

(a) Following the notification to the Cabinet for Health and Family Services by the personal care home (PCH) of its intent to participate, the effective date of the MIMR supplement shall be the first day of a month that certification requirements pursuant to 921 KAR 2:015 are met.

(b) If a Type A citation issued from the Office of Inspector General occurs, payment shall be made only for eligible months pursuant to 921 KAR 2:015.

(3) A subsequent payment shall be made for a month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, pursuant to 921 KAR 2:015.

(b) Payment for the MIMR training reimbursement shall be made to the participating PCH.

Section 5. Incorporation by Reference. (1) The "PA-63, Direct Deposit Authorization", [edition] 11/11, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621,

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Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

COUNCIL ON POSTSECONDARY EDUCATION
(Amended After Comments)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 164.945, 164.946, 164.947, 164.992, 165A.320

STATUTORY AUTHORITY: KRS 164.947(1), (2), 164.020(37)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Net tuition and fees" means the total of tuition and mandatory fee revenue less institutional scholarships and fellowships.

(9) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

(10) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

(11) "President" means the president of the Council on Postsecondary Education.

(12) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

(13) "Unrestricted cash" means any cash or cash equivalents held by a college which are available to cover payments to students for any unearned tuition.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection or subsection (7) of this section, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which

students leave Kentucky to attend, licensure shall not be required.

(2)(a) An out-of-state college shall be licensed separately for each instructional site in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(c) Licensure shall not be required for an out-of-state college if the college:

1. Is only operating and soliciting under Section 1(9)(b) of this administrative regulation solely due to a faculty member residing in Kentucky and providing online instruction to Kentucky students; and

2. Has less than one (1) percent of its faculty members residing in Kentucky.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice Doctorate, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and whenever the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11) of this administrative regulation.

(g) 1. The institution shall disclose to each prospective student:

a. A statement of the purpose of the institution, its educational

programs, and curricula;

- b. A description of its physical facilities;
- c. Its status regarding licensure;
- d. Its fee schedule and policies regarding retaining student fees if a student withdraws;
- e. Its refund policy on tuition and other instructional charges; and
- f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures. (1) An application for a license shall be submitted on the form entitled:

(a) Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or

(b) Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college.

(2) An application shall be accompanied by a copy of the following:

- (a) College charter;
- (b) College catalog;
- (c) College constitution and bylaws;
- (d) Student enrollment application;
- (e) Student contract or agreement;
- (f) 1. Documentation of accreditation, licensure, or approval by appropriate agencies; and

2. Disclosure of any prior loss or denial of:

a. Accreditation with the dates and reason for the loss or denial; or

b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or denial; and

(g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits.

(a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days after receipt of the invoice.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;

(b) Deny the application for a license;

(c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or

(d) Issue a conditional license in accordance with subsection (3)[(2)] of this section if the college has:

1. Not met all of the standards for licensure at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall be required to submit a new application and fee.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at an instructional site~~[the main campus]~~.

(e) A Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program.

(f) A college shall submit a Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020 at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative

site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020 within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;
2. A college losing accreditation or licensure; or
3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. (1) Within sixty (60) [thirty (30)] working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

(a) [(1)] Approve the supplementary application and amend the current license without changing the renewal date;

(b) [(2)] Deny the supplementary application without amendment to the college's license;

(c) [(3)] Suspend or revoke the college's license; [or]

(d) [(4)] Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended; or

(e) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall be required to submit a new application.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall amend the current license in accordance with subsection (1)(a) of this section.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this section in order to be licensed.

(1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;

2. An audit report prepared by an independent certified public accountant for each corporation of the college; and

3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents when acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) Except as provided in paragraph (d) of this subsection, an in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted cash reserve[endowment] equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond;

1. That is:

a. Equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; and

b. At least \$10,000;

2. [.] Executed by a surety company qualified and authorized to do business in Kentucky; [.] and

3. Made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) An in-state college licensed continuously by the council for:

1. Five (5) to ten (10) years shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for ten (10) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year; or

2. Ten (10) years or more shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for five (5) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year.

(e) A college shall provide a letter[statement] from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted cash reserve[endowment] or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted cash reserve[endowment] or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the appropriate application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members,

1. For a course or program licensed by the council prior to January 1, 2014:

a. Effective until December 31, 2015, faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges.

es that offer degrees at comparable levels.

b. Effective beginning on January 1, 2016, faculty members shall meet the requirements established in paragraph (d) of this subsection.

2. For a course or program not licensed by the council prior to January 1, 2014, faculty members shall meet the requirements established in paragraph (d) of this subsection at the time the course or program is licensed.

(d) Faculty member qualifications~~shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels].~~

1. Each degree possessed by a faculty member shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

2. To teach a certificate or diploma course, a faculty member shall have:

a. A bachelor's degree; or

b. A high school diploma or GED along with one (1) or more of the following:

(i) Completed a training or degree program in the applicable occupational area;

(ii) Demonstrated outstanding professional experience;

(iii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iv) Professional licensure or certification in the field.

3. To teach an associate degree course not designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A bachelor's degree in the discipline being taught; or

b. An associate's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

4. To teach a general education course, a faculty member shall hold:

a. A master's degree in the discipline being taught; or

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught.

5. To teach a baccalaureate course or an associate course designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A master's degree in the discipline being taught;

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or

c. A baccalaureate degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

6. To teach a graduate course, a faculty member shall hold:

a. An earned doctorate or terminal degree in the discipline being taught or in a related discipline; or

b. A master's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

(e)(d)] There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(f)(e)] Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the appropriate application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(7) Library resources. The library shall be appropriate to support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president at the time of license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;

2. 120 student credit hours for a baccalaureate degree; or

3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is:

a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

(i) Licensed by the Council on Postsecondary Education; or

(ii) A Kentucky state-supported postsecondary education institution.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and

2. Either:

a. Licensed by the Council on Postsecondary Education; or

b. A Kentucky state-supported postsecondary education institution.

(e) A college shall have a systematic program of curriculum

revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are appropriately related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include:

(a) Adequate supervision by the college; and

(b) Other instructional support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form, based on which statement is applicable to the college:

1. "(Name of College) is licensed by the Kentucky Council on Postsecondary Education."; or

2. "(Name of College) has a religious exemption from the Kentucky Council on Postsecondary Education to operate or solicit in Kentucky."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent.

(b) The college shall provide academic counseling by faculty or staff to each student at the time of admission and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records if the college ceases operations in accordance with

KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2.a. Except as provided in clause b. of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2. of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college

shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License. (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 to the president by April 1 of each year.

(a) In an odd numbered year, the application shall contain the following information:

1. [(a)] Financial Information:

a[1]. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

b[2]. A letter[statement] prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation; and

c[3]. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year;

2. [(b)] Institutional information:

a[1]. Name and address of college;

b[2]. Chief executive officer's name, title, address, phone number, fax number, and email address;

c[3]. Institutional liaison's name, title, address, phone number, fax number, and email address;

d[4]. A current list of the college's agents;

e[5]. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last two (2) years[year]; and

f[6]. A copy of each articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last two (2) years[year];

3. [(e)] Accreditation status:

a[1]. If the college is accredited by an accrediting agency, verification of the college's accreditation status; or

b[2]. If the college is not accredited by an accrediting agency, a statement indicating if, when, and from whom the college will seek accreditation;

4. [(e)] Tuition for the current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

5. [(e)] A copy of the college's current catalog;

6. [(f)] For an in-state college, a list of all licensed instructional sites away from the main campus of the in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

7. [(g)] Program information:

a[1]. Changes, if any, in program requirements for each pro-

gram within the last two (2) years[year] including admission requirements, courses required, and the number of credit hours required for the program or major;

b[2]. Results of the most recent program evaluation;

c[3]. Methods used to assess student achievement;

d. [(4)] Results of the most recent assessment of student achievement; and

e[5]. A list of programs withdrawn within the last two (2) years[year] in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

8. [(H)] Faculty information: Vitae for each program faculty member employed within the last two (2) years[year];

9. [(I)] Facilities information: Verification of compliance with all applicable local, state, and federal safety and fire codes; and

10. [(J)] Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

(b) In an even numbered year, the application shall only contain the information required by paragraphs (a)1.b., and (a)2.a., b., and c., of this subsection. An institution shall provide any other information listed in paragraph (a) of this subsection upon request of the council.

(2) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative regulation.

(3) Within ninety (90) working days of the submission of a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

(a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;

(b) Deny maintenance or renewal of the college's license;

(c) Maintain the college's license without changing the college's license renewal date;[or]

(d) Renew the college's license to June 30 of the next year; or

(e) Issue a conditional license in accordance with subsection (4) of this section if the college has:

1. Not met all of the standards for licensure at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed one (1) year.

(4) A conditional license shall not exceed a period of one (1) year and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall renew the license in accordance with subsection (3)(d) of this section.

[(5)] [(4)] A college's failure to submit a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the Licensure Compliance Reporting Manual.

(2) The president may conduct, or may have conducted, a site

visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating or soliciting shall comply with Section 8(13)(f) of this administrative regulation and KRS 164.020(23).

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed.

(1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing within thirty (30) working days of notice~~[consistent with the provisions of KRS 13B.005-13B.170]~~ in order to determine the facts if the president has determined that there is sufficient cause for a suspension, a~~or~~ revocation of a license, or placement of a college's license in a probationary status or if a college which is subject to this administrative regulation fails to apply for a license.

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held or if the college fails to appear for the hearing, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If it is determined that the public interest requires that sanctions be imposed, the president shall:

(a) Impose one (1) of the following sanctions:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year; or

3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(5) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(6) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty

(60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Upon completion, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

1. Issue a license;

2. Renew the license;

3. Impose one (1) of the sanctions authorized in this section; or

4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the Kentucky Licensure Fee Schedule.

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(g) "Supplementary Application to Operate as an In-State Non-public Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", June 2013~~[November 2009]~~;

(k) "Licensure Compliance Reporting Manual", September 8, 2009;

(l) "Kentucky Licensure Fee Schedule", June 2013~~[January 2010]~~; and

(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAM MILLER, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: September 12, 2013

FILED WITH LRC: September 13, 2013 at 10 a.m.

CONTACT PERSON: Sarah Levy, Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 350, fax 502.573.1535, email sa-rah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the standards and rules related to the licensing of private nonprofit postsecondary education institutions, and proprietary postsecondary education institutions that are not licensed by the Commission on Proprietary Education.

(b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.947 states that the Council on Postsecondary Education, by regulation, shall adopt standards and procedures for the licensing of colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards institutions must meet in order to be licensed to operate in Kentucky. It also defines the process for new license applications, for amendments to licenses, and for license renewals.

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

(a) How the amendment will change this existing administrative regulation: First, faculty qualification requirements will now be specifically identified in the regulation and applied consistently amongst all licensed institutions effective January 1, 2016. Currently, an institution's respective accreditation faculty standards are applied, which vary depending on the accreditor. Second, the unearned tuition coverage requirement for in-state colleges is modified to a graduated schedule based on a percentage of overall annual net tuition and fees. Third, annual fees will now be instituted for licensed institutions with less than 100 Kentucky students. Fourth, licensure will no longer be required for out-of-state institutions "operating or soliciting" in Kentucky only as a result of less than one (1) percent of their faculty delivering online instruction from Kentucky. Fifth, institutions that do not respond to notifications of deficiency in both initial and supplementary applications within sixty (60) days will now be required to submit a new application and fee in accordance with the fee schedule. Sixth, the annual licensure application will now be abbreviated in even numbered years. And finally, technical revisions are being made.

(b) The necessity of the amendment to this administrative regulation: The faculty requirement revisions will help ensure that Kentucky students are receiving quality instruction at any licensed institution they attend consistent with what is adhered to by Kentucky's public postsecondary institutions. It will give institutions with programs and courses currently licensed by the Council until January 1, 2016 to bring those programs and courses into compliance with the new faculty requirements. The unearned tuition coverage for in-state colleges is revised to a level more commensurate with the refund liability and risk of non-payment to students. Annual fees are being instituted for institutions with less than 100 Kentucky students to help stabilize the recurring fees collected by the Council and to recognize resources dedicated to licensure functions each year. The licensure requirement for institutions with less than one (1) percent of their faculty delivering online instruction from Kentucky is removed due to the de minimis nature of this contact to Kentucky. The requirement that institutions respond in sixty (60) days to a notice of deficiency is instituted to facilitate a more efficient application process. An abbreviated annual licensure process in even numbered years will help to alleviate the reporting burden on institutions. Finally, technical revisions are being made for clarity, consistency, and conformance with regulation drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the requirements of KRS 164.947 by helping to ensure that licensed institutions provide a quality educational experience for Kentucky students.

(d) How the amendment will assist in the effective administration of the statutes: The amendment helps to better ensure quality education for Kentucky students and provides a licensure process better aligned with the statutory goals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Council currently licenses ninety (90) institutions with multiple licensed instructional sites, and eleven (11) new applications are currently under review. The primary impact is on institutions currently licensed or who are in the process of being licensed by the Council, and on those new institutions who will seek licenses from the Council.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In-state colleges licensed five (5) years or more will need to provide unearned tuition coverage in an amount based on the new calculation. All licensed institutions will now file an abbreviated annual licensure application in even numbered years. Licensed institutions with less than 100 Kentucky students will now be required to pay an annual fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For in-state institutions falling under the new unearned tuition coverage requirement, the coverage amount is likely to be less thereby requiring them to either maintain a smaller pool of funds or to purchase a surety bond or letter of credit for a smaller amount, which would cost less. Institutions licensed for more than five (5) years with 500 Kentucky students or less will now pay a \$500 annual fee. This is \$250 more for the institutions with 100 - 500 Kentucky students. Those institutions with less than 100 Kentucky students are not currently required to pay an annual fee. Institutions licensed less than five (5) years with 100 Kentucky students or less will pay \$1,000 annually. Currently there is no fee for such institutions. The abbreviated annual application process in even years should result in cost savings of an undetermined amount for institutions as fewer resources will be required to complete the process in those years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): See 4(b) above. Cost of compliance with the unearned tuition requirement will likely decrease for some institutions. The annual licensure process burden will decrease in even numbered years.

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

(a) Initially: We estimate that there will be no additional cost in implementing the proposed changes to the regulation.

(b) On a continuing basis: We estimate that there will be no additional costs on a continuing basis to implement the proposed changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees and General Fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. Implementation of this amendment does not require an increase in fees or funding, however fees are being increased slightly for institutions with small enrollments to enable the Council to obtain more recurring fees to cover the cost of administration as the licensure of new institutions begins to wane.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. The proposed amendment to the regulation directly increases fees slightly for institutions with very small enrollments of Kentucky students.

(9) TIERING: Is tiering applied? Tiering is applied. The amendment provides that in-state colleges licensed between five (5) and ten (10) years and ten (10) years or more will have an unearned tuition coverage requirement that differs from that of out-of-state institutions and in-state institutions licensed less than five (5)

years. The risk for students being unable to recover unearned tuition payments in the event of a closure is less for in-state institutions, particularly those that have maintained licensure status with the Council through at least one accreditation cycle (ten (10) years). Also, institutions with programs and courses currently licensed by the Council will have until January 1, 2016 to bring those programs and courses into compliance with the new faculty qualification requirements. All new programs and courses must meet the new faculty qualification requirements effective January 1, 2014.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? CPE is responsible for implementation, but this regulation only applies to private colleges and universities and public institutions in other states.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.947 and 164.020(37)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? We estimate revenue generation of \$325,000 per year for CPE. This increased fee is estimated to generate an additional \$50,000 per year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? Approximately \$345,500.

(d) How much will it cost to administer this program for subsequent years? Approximately \$345,500.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amended After Comments)

201 KAR 30:040. Standards of practice.

RELATES TO: KRS 324A.035, 324A.050(1)(j), 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice.

Section 1. The following Certificate holders or licensees listed in subsections (1) through (5) of this section shall comply with the Uniform Standards of Professional Appraisal Practice in effect at the time the services were performed:

- (1) A certified general real property appraiser.;
- (2) A certified residential real property appraiser.;
- (3) A licensed real property appraiser.;
- (4) An associate real property appraiser.;
- (5) A licensed nonfederal real property appraiser.

Section 2. The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the American National Standard for Single-Family Residential Buildings; Square Footage-Method for Calculating, ANSI Z765-2003, as approved by the American National Standards Institute, Inc.

Section 3. Appraisal Reporting Requirements. For each appraisal assignment that includes an appraisal management company reference as the client or agent for the client, an appraiser shall identify within the appraisal report:

(1) The name that is on file with the board for the appraisal management company;

(2) The Kentucky registration number that is on file with the board for the appraisal management company; and

(3) The fee that will be paid to the appraiser for each appraisal assignment ordered by an appraisal management company, unless the appraiser is a W-2 employee of the appraisal management company.

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

(a) "Uniform Standards of Professional Appraisal Practice", 2014 - 2015~~(2012-2013)~~; and

(b) "American National Standard for Single Family Residential Buildings; Square Footage Method for Calculating, ANSI Z765-2003", 2003.

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

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: September 4, 2013

FILED WITH LRC: September 13, 2013 at 8 a.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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the standards of professional practice.

(b) The necessity of this administrative regulation: This regulation is necessary to set reporting standards for appraisers preparing appraisal reports for an appraisal management company.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the standards for professional appraisal practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying reporting standards for appraisers preparing appraisal reports for an appraisal management company.

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

(a) How the amendment will change this existing administrative regulation: The amendment will add a reporting requirement for appraisers performing appraisals for appraisal management companies that are registered by the board. The amendment exempts employees of the registrant from the fee reporting requirement, and incorporates the 2014-2015 edition of USPAP.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to add a requirement that

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appraisers working for appraisal management companies must identify the registered name and number of the company and to incorporate the 2014-2015 edition of USPAP.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the standards for professional appraisal practice.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board in administering this program by identifying reporting standards for appraisers preparing appraisal reports for an appraisal management company.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of certificate holders that are performing appraisals for registered appraisal management companies, but estimates the number to be approximately 1,500 licensees or certificate holders.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensee or certificate holder will be required to identify the appraisal management company, the registration number, and the fee paid.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying beyond the standard application fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The reporting information will fully disclosed to the client the information regarding the employment relationship between the appraiser and the appraisal management company.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. Tiering is not applied because the proposed amended administrative regulation applies consistently to all real property appraisers applying from, and those holding real property appraisal credential issued by the board.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339.

2. State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

4. Will this administrative regulation impose stricter require-

ments, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339.

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing (Amended After Comments)

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

RELATES TO: KRS 186.115, 186A.170(1)(b), 186A.510-186A.990[Chapter 186A]

STATUTORY AUTHORITY: KRS 186A.530(11), 186A.550[186.115, 186A.500-186A.550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.530 requires the Transportation Cabinet to issue a certificate of title with a brand printed on the face of the title if the vehicle has been rebuilt or has a branded certificate of title from another jurisdiction. KRS 186A.550 requires the cabinet to promulgate administrative regulations in accordance with federal law that establish a uniform method of titling salvage and rebuilt vehicles. This administrative regulation establishes[sets forth] the procedures for[the Transportation Cabinet shall follow in] issuing the certificate of title and printing a brand on the face of the motor vehicle title. The administrative regulation also establishes the procedures for registration and titling of a rebuilt motor vehicle that[further sets forth procedures to be followed when the owner of a motor vehicle which] has been assembled from parts of wrecked or salvage motor vehicles[presents the rebuilt motor vehicle for registration and titling].

Section 1. Application for a Kentucky Salvage Title. (1) A Kentucky salvage title shall be issued for a wrecked or damaged vehicle if the total estimated cost of repair exceeds seventy-five (75) percent of the retail value of the vehicle.

(2) An applicant for a salvage title shall submit an Application for Kentucky Certificate of Title or Registration, TC Form 96-182, to the county clerk[accompanied by a minimum of six (6) photo-

graphs showing the damage to the vehicle].

(3) If a vehicle with a salvage certificate of title issued pursuant to KRS 186A.520 is transferred within Kentucky or if a vehicle with similar title from another jurisdiction is transferred into Kentucky, the new certificate of title shall be another salvage certificate of title until the owner of the motor vehicle has successfully gone through the process established in Section 3 of this administrative regulation.

(4) An application for a certificate of title shall be rejected by the Transportation Cabinet if there is a lien against the vehicle recorded in the Automated Vehicle Information System or Kentucky Automated Vehicle Information System.

(5) An application for a salvage or rebuilt title shall not be processed through "speed title" as established in KRS 186A.170(1)(b).

Section 2. Vehicles from Other Jurisdictions. (1) If [When] the owner of a motor vehicle with a title from another jurisdiction applies for a Kentucky motor vehicle title, or a title and registration, the county clerk receiving the application shall enter the following information relating to brands into the Automated Vehicle Information System or Kentucky Automated Vehicle Information System:

(a) [(4)] If the brand on a foreign motor vehicle title relates to prior damage to and repair of a motor vehicle, the Kentucky title, if [when] issued, shall bear the notation "rebuilt vehicle".

(b) [(2)] If a vehicle title bears both a "rebuilt" brand [as described in subsection (4) of this section] and a "water damaged" brand as established [set forth] in KRS 186A.530(4), the Kentucky title shall bear the notation "rebuilt vehicle water damaged".

(2) [(3)] If a vehicle certificate of title bears a brand relating to the previous usage [use] of the motor vehicle but not to damage to the motor vehicle, the Kentucky certificate of title shall not be branded. [Section 2. Branding of Title Issued for a Rebuilt Motor Vehicle. (4) If a salvage certificate of title has been issued pursuant to KRS 186A.520 because of both physical damage and water damage to the motor vehicle, a title issued pursuant to KRS 186A.530(2) shall bear the notation "rebuilt vehicle".

(2) If a vehicle with a salvage certificate of title issued pursuant to KRS 186A.520 is transferred within Kentucky or when a vehicle with similar title from another jurisdiction is transferred into Kentucky, the new certificate of title shall be another salvage certificate of title until the owner of the motor vehicle has successfully gone through the process set forth in Section 3 of this administrative regulation.]

Section 3. Application for Title of Rebuilt Motor Vehicle. (1) An owner of a motor vehicle that has been assembled from parts of wrecked or salvaged vehicles may apply for registration and title. If the owner applies for registration and title, the motor vehicle shall comply with the equipment and safety requirements of KRS Chapter 189 [After a motor vehicle which has been assembled from parts of wrecked or salvaged vehicles and if the motor vehicle complies with all equipment and safety requirements of KRS Chapter 189, the owner may apply for registration or title of the motor vehicle].

(2) An application [All applications] for registration and [or] title of a motor vehicle [that] [which] has been assembled from parts of [from] wrecked or salvaged motor vehicles shall be accompanied by [the following]:

(a) A completed Application for Kentucky Certificate of Title and Registration, TC Form 96-182 [(4) The form required by KRS 186A.060, Vehicle Transaction Record. This form, TC 96-182 effective in July 1994, is incorporated by reference as part of this administrative regulation and shall contain an inspection certificate issued by a certified inspector in accordance with KRS 186A.145];

(b) [(2)] A completed [Form TC 96-245; Affidavit of Motor Vehicle Assembled from Wrecked or Salvaged Motor Vehicles, TC Form 96-215 [revised February, 1986. This form is incorporated by reference as a part of this administrative regulation];

(c) [A minimum of six (6) photographs showing the damage to the motor vehicle;

(d) A minimum of six (6) photographs showing the repairs done to the damaged motor vehicle;

(e) [(3)] An address where the motor vehicle may be examined;

(d) [(f)] An [(4)(a) A properly] assigned certificate of title; or

(e) [(g)] A notarized affidavit that explains the ownership of the vehicle including [(b) If the vehicle owner does not have a certificate of title because the motor vehicle has not been through the titling process since the enactment of KRS Chapter 186A in 1983, a notarized affidavit fully explaining ownership of the vehicle which includes the following]:

1. Length of time the vehicle was owned by the current owner, which [but it] shall be a minimum of five (5) years;

2. Where and from whom the vehicle was purchased;

3. When and where the vehicle was last registered or licensed; and

4. A statement that there are [of] no liens against the vehicle; [.]

(f) [(h)] [(5)] A descriptive, notarized labor statement of repairs made and parts replaced;

(g) [(i)] [(6)] An original receipt for each part purchased. Multiple parts may be listed on one (1) [each] receipt. The receipt shall include:

1. [(a)] Seller's name;

2. [(b)] Seller's address;

3. [(c)] Seller's telephone number;

4. [(d)] Date of part purchase;

5. [(e)] Price and serial number of part purchased; and

6. a. [(f) 1. Serial number of each part; 2.] Vehicle identification number of vehicle from which the part was taken; or

b. [3.] A written comprehensive explanation of the reason why the part does not have a serial number; [.]

(h) [(j)] [(7)] If the motor vehicle is a motorcycle, a pencil tracing or picture of [both] the motor identification number and frame identification number of the rebuilt motorcycle and the motorcycle from which parts were obtained; [.]

(i) [(k)] 1. [(a) (8)] The license plate from the motor vehicle even if the plate has expired; or

2. [(b)] A statement of why there is no longer a license plate for the rebuilt motor vehicle; [.]

(j) [(l)] 1. [(9)] A separate federal odometer disclosure statement if unavailable on either the Application for Title or [Registration] or the back of the certificate of title. An Odometer Disclosure Statement, TC Form 96-5 may be used; and

2. A title issued pursuant to KRS 186A.530(2) bearing the notation "rebuilt vehicle" [The separate form may be TC 96-5, Odometer Disclosure Statement, revised March, 1989 or its equivalent. Form TC 96-5 is hereby incorporated by reference].

Section 4. Insurance Companies. (1) If an [When an insured motor vehicle is paid for by an insurance company and the] insurance company becomes the lawful owner of a stolen motor vehicle, the insurance company shall [may] make application in the name of the company for a regular title.

(2) If the motor vehicle is subsequently recovered and damage to the motor vehicle meets the requirements of a salvage vehicle as established in KRS 186A.520 [set forth in KRS 186A.335], the insurance company shall make an application for a salvage certificate of title.

(3) If an insurance company has been issued a salvage certificate of title for a vehicle recovered in a theft, but the motor vehicle does not meet the requirements for a salvage vehicle established in KRS 186A.520, an insurance company may [shall] apply [a theft-recovered motor vehicle for which the company applied and was issued a salvage certificate of title, but the motor vehicle does not meet the requirements of a salvage vehicle as set forth in KRS 186A.335, the insurance company may make application] for a regular certificate of title.

(4) An insurance company shall apply for title by using Application for Kentucky Certificate of Title or Registration, TC Form 96-182. The application shall include [The application for certificate of title shall be made on form TC 96-182 required by KRS 186A.060 and shall include the following]:

(a) The assigned certificate of title; and

(b) Verification on the company letterhead that the motor vehicle is a theft recovery and a description of the damage to the motor vehicle.

Section 5. Additional Information [Recorded Lien Against Title.

An application for a certificate of title to be issued pursuant to KRS 186A.530(2) shall be rejected by the Transportation Cabinet if there is a lien against the vehicle recorded in the Automated Vehicle Information System.

Section 6. Additional Information which may be Required. (1) The Transportation Cabinet shall[may] require a confidential[an] inspection of a rebuilt motor vehicle by the Kentucky State Police if:

(a) The[All] documentation required by Section 3 of this administrative regulation is not available; or

(b) A check of the National Crime Information Center[computer] identifies the motor vehicle as stolen and a check of the Vehicle Identification Number Analysis, "VINA," identifies the motor vehicle as having[one-with] a nonconforming vehicle identification number.

(2) If the repair documentation submitted in accordance with the requirements of Section 3 of this administrative regulation is[appears to be significantly] less than seventy-five (75) percent of the value of the motor vehicle, the Transportation Cabinet shall[may] require a:

(a) Written[A] statement from the insurance company of the damage done to the motor vehicle; or

(b)[A] Salvage pool receipt that[which] describes the damage to the motor vehicle.

Section 6[7]. Mistakenly Issued Brands. (1) If[When] a certificate of title is branded due to an error by the county clerk or the Department of Vehicle Regulation, an application for an updated or corrected title shall[may] be submitted to the county clerk as established in [accordance with]KRS 186A.180.

(2) An[The] application for an updated or corrected certificate of title shall consist of the following documents:

(a) An Application for Kentucky Certificate of Title or Registration, TC Form 96-182[A newly-completed form TC-96-182 required by KRS 186A.060, Vehicle Transaction Record];

(b) The certificate of title; and

(c) An affidavit from the owner or a statement from the county clerk which that describes[which sets forth] the nature of the error.

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

(a)[.] "Application for Kentucky Certificate of Title or Registration", TC Form 96-182, November, 2012;

(b) "Affidavit of Motor Vehicle Assembled from Wrecked or Salvaged Motor Vehicles", TC Form 96-215, May, 2013; and

(c) "Odometer Disclosure Statement", TC Form 96-5, May, 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Division of Motor Vehicle Licensing, 200 Mero Street, Frankfort, Kentucky 40622, or on the cabinet's web site at mvl.ky.gov. This material may also be obtained at the office of a Kentucky county clerk[(3) Production of a corrected certificate of title shall be carried out under the procedures required for those applicable to production of an original certificate of title pursuant to KRS Chapter 186A.

Section 8. Material Incorporated by Reference. The material incorporated by reference may be viewed, copied, or obtained free of charge from any county clerk or the Transportation Cabinet's, Division of Motor Vehicle Licensing. The Division is located on the 2nd and 3rd floors of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-5301. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays].

RICHARD S. TAYLOR, Acting Commissioner
MIKE HANCOCK, Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: September 12, 2013

FILED WITH LRC: September 13, 2013 at noon

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform procedures for the registration and titling of salvage and rebuilt vehicles.

(b) The necessity of this administrative regulation: Amendments to this administrative regulation are necessary to clarify and update the requirements for a Kentucky salvage title.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186A.550 requires the cabinet to promulgate administrative regulations establishing a uniform method of titling salvage and rebuilt vehicles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and update the procedures used to title salvage or rebuilt vehicles.

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

(a) How the amendment will change this existing administrative regulation: Amendments to this administrative regulation update and clarify the current language.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify the titling processes for salvage vehicles

(c) How the amendment conforms to the content of the authorizing statutes: The amendments update the established titling processes required by KRS 186A.550.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update language and forms regarding salvaged vehicles pursuant to KRS Chapter 189.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky State Police, the Kentucky Sheriff's Association, the Kentucky County Clerks, and the Division of Motor Vehicle Licensing in the Transportation Cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Law enforcement will inspect vehicles before title and registration can be issued. The Division of Motor Vehicle Licensing will process, approve, and issue title and registration.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will clarify the processes to be followed in inspecting salvage vehicles to insure that there are safer rebuilt vehicles on state highways.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: No costs are expected.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road funds.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because no distinction is made between applications to the cabinet.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police, Kentucky Sheriff's Association, the Kentucky County Clerks, and the KYTC Division of Motor Vehicle Licensing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186A.530 and KRS 186A.550.

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are required.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission
(Amended After Comments)**

739 KAR 2:080. Candidate Physical Ability Test.

RELATES TO: KRS 75.010, 95A.040

STATUTORY AUTHORITY: KRS 95A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040 requires the commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions. This administrative regulation establishes the candidate physical ability test to be used for candidates seeking professional firefighter positions.

Section 1. Definitions. (1) "CPAT" means the most current version of the Candidate Physical Ability Test Program copyrighted by the IAFF.

(2) "CPAT Administration" means the IAFF's secure web-based tool for all IAFF licensees to collect and provide aggregate and redacted data in support of all aspects of administering the CPAT program.

(3) "IAFC" means the International Association of Fire Chiefs.

(4) "IAFF" means the International Association of Fire Fighters.

(5) "SFRT area offices" means State Fire Rescue Training area offices.

Section 2. Licensure Requirements. (1) All candidates **hired[applying]** for full-time employment as a firefighter with a Kentucky fire department on or after January 1, 2013 shall have successfully completed the CPAT, with the exception of:

(a) Fire department chiefs and their executive staffs, **with the executive staff designation to be determined by the fire chief or other executive authority as provided in the job descriptions of the local government presiding over the fire department, provided that no more than twenty-five (25) percent of a single department's personnel be classified as executive staff;**

(b) Any part-time firefighter employed and paid by a fire de-

partment prior to January 1, 2013, who is promoted to a full-time position within the same fire department;

(c) Any full-time firefighter who is currently employed or who has previously been employed by a Kentucky fire department in accordance with KRS Chapters 67, 75, and 95[75.400] prior to January 1, 2013, who is hired by another fire department and has not been out of fire service for more than 365 days.

(2) Any Kentucky fire department may, **in addition to the requirement of subsection (1) of this section,** require all new candidates **hired** for full-time firefighter positions to successfully complete the CPAT, including the categories of candidates listed in subsections (1)(a)-(c) of this section. **A fire department may accept a CPAT certification obtained in a state other than the Commonwealth of Kentucky to fulfill the requirements of this administrative regulation.**

(3) All fire departments established pursuant to KRS 75.010 shall be fully licensed with the IAFF to implement the CPAT **and may administer the CPAT independently of the Kentucky Fire Commission with thirty (30) days prior notification to the Kentucky Fire Commission. The Kentucky Fire Commission shall assist each fire department in obtaining such licensure upon written request and shall be responsible for all costs associated with IAFF licensure. The Kentucky Fire Commission shall assume all liability for compliance with the CPAT program.**

(a) **The Kentucky Fire Commission[All licensees]** shall agree, **on behalf of all licensees,** to collect and provide to the IAFF and the IAFC data regarding number of male, female, and minority applicants that have taken the CPAT and the pass and fail rates of each. The CPAT Administration shall be used by the **Kentucky Fire Commission[licensee]** as the sole means for collecting and providing data as well as for the administration of the CPAT.

(b) All licensees shall use the CPAT in whole and only for the purpose of candidate testing in accordance with the most current copyrighted version of the "CPAT Manual, 2nd Edition". This includes, but is not necessarily limited to, recruiting, mentoring, preparatory programs, orientation programs, and proper program administration including using specified equipment, test parameters, qualified proctors, and test personnel.

1. The Kentucky Fire Commission shall provide the staff necessary for all CPAT mentoring, orientation, and practice testing, unless a fire department administers the CPAT independently of the Kentucky Fire Commission.

2. The Kentucky Fire Commission shall complete the transportability studies and licensure requirements provided in Chapter 3 of the CPAT Manual.

3. The Kentucky Fire Commission shall provide all candidates with the pre-test materials and preparation guides required in Chapter 4 of the CPAT Manual.

4. Consistent with Chapter 4 of the CPAT Manual, a candidate may opt to take the CPAT examination during either of the mandatory practice sessions. If a candidate opts to take the CPAT examination during a practice session, the candidate shall not be permitted to re-take the examination during the same administration period.

(c) The CPAT shall be administered by the Kentucky Fire Commission annually in two (2) separate locations. One (1) such test shall be given in Louisville, Kentucky, and the other shall be given in Winchester, Kentucky. Future permanent locations may be established by the Kentucky Fire Commission with prior board approval.

(d) The Kentucky Fire Commission shall administer the CPAT and the required orientation and practice sessions throughout the Commonwealth of Kentucky in the manner prescribed in subsections (1) and (2) of this section and this subsection, provided that these regional training requirements may be satisfied if a permanent location providing continuous training is established in the specific region pursuant to paragraph (c) of this subsection. In conducting the CPAT exam and required orientation and practice sessions, the Kentucky Fire Commission shall attempt to locate the facilities in closest proximity to the fire department with the majority of potential candidates.

1. The CPAT shall be administered upon fire department request in Areas 9, 10, 11, 12, 13, and 14 of the SFRT area offices.

2. The CPAT shall be administered at least once per year in Areas 1 and 2 of the SFRT area offices.

3. The CPAT shall be administered at least two (2) times per calendar year in Areas 3, 5, 6, 7, and 15 of the SFRT area offices.

(e) The Kentucky Fire Commission shall administer the CPAT using mobile equipment within an SFRT area office area upon written request from a fire department located within that SFRT area office area, on the conditions that the CPAT has not been administered within that SFRT area office area during the six (6) months prior to the request and that there are a minimum of twenty (20) candidates registered for the examination. The CPAT shall be administered within 120 days of receipt of the request.

(f) The Kentucky Fire Commission shall be responsible for securing the location of the regional examinations provided in paragraph (d)2. and 3. of this subsection.

(g) The requesting fire department shall be responsible for securing the location of the examinations provided in paragraphs (d)1. and (e) of this subsection. The Kentucky Fire Commission shall assist the requesting fire department in locating an appropriate site. In the event that the requesting fire department is unable to secure an appropriate location within thirty (30) days of the scheduled examination, the examination shall be cancelled. The Kentucky Fire Commission reserves the right to inspect the site up to thirty (30) days prior to the scheduled examination.

(h) The Kentucky Fire Commission shall establish a schedule for the administration of the CPAT on an annual basis. This schedule shall be published on the Web site of the Kentucky Fire Commission at least thirty (30) days prior to January 1 of each year. Any additional administrations of the CPAT shall also be publicized and communicated to all fire departments located within the SFRT area office area in which the CPAT is being administered.

(i) A CPAT certification obtained in the Commonwealth of Kentucky shall remain valid for one (1) year if the candidate is not hired by the fire department on whose behalf the CPAT is administered. Such a CPAT certification shall be considered to have fulfilled the requirements of this administrative regulation by another fire department with whom the candidate applies for full-time employment for the year following the date of initial certification.

(4) A third party testing organization may obtain a limited CPAT license for the purpose of testing the physical capability of firefighter candidates. The limited license shall be granted only upon the express condition that the licensee may only administer the CPAT for a fire department that already possesses a complete and valid license from the IAFF. As a condition of receiving a limited license, an applicant shall agree that it shall[will] only administer the CPAT in accordance with the IAFF's licensing requirements, which include full compliance with the EEOC conciliation agreement and utilization of the CPAT Administration.

(a) Limited licensees shall not administer the CPAT to any person without first obtaining a written agreement with the fire department to which the person is applying. The agreement will contain the following provisions:

1. The fire department shall[will] certify that it has a valid CPAT license and that it agrees to recognize and accept proof of completion of the CPAT from the limited licensee;

2. The fire department shall[will] certify that it shall[will] utilize the CPAT only in the context of an overall implementation of the CPAT program that complies with its CPAT license;

3. The limited licensee shall have the capability and agree to assist the fire department in meeting the terms of compliance, including the pre-test orientation and mentoring requirements;

4. The limited licensee shall have the capability and staff to validate the CPAT for jurisdictions through a transportability study, assist the fire department in obtaining CPAT licensure, provide consistent CPAT testing administration, and legally defend their validation and CPAT administration;

5. The limited licensee shall have the capability and agree to provide candidates continuously available practice tests and orientations. It shall further provide the CPAT licensed fire department with assistance in establishing candidate mentoring programs. The limited licensee shall have purchased all CPAT equipment and verify that the equipment and props conform to all specifications in the CPAT Manual and that it has the ability to administer the CPAT in conformity with the specifications of CPAT;

6. No cost shall be imposed upon a Kentucky resident for the administration of the CPAT by a limited licensee located in the Commonwealth of Kentucky. Any such fee shall be paid by the Kentucky Fire Commission[If fees are charged by the limited licensee, a pricing model shall be established that allows flexibility to have applicants or fire departments cover the cost. The limited licensee shall have a mechanism in place to assure that any individual who demonstrates a financial hardship will be provided the CPAT at reduced or no charge]; and

7. If the limited licensee provides[is providing] CPAT certifications for a candidate's use in applying for employment in multiple fire departments, it shall notify the IAFF of the CPAT licensed fire departments for which the certification is provided. The Kentucky Fire Commission[Further, the testing organization] shall provide an electronic system by which to transmit this information. CPAT licensed fire departments that accept the certifications can verify applicant's results and the date when the results are no longer valid.

(b) Limited licensees shall agree to fully cooperate with the IAFF in its conduct of on-site reviews and audits of the facilities holding a limited license. The on-site review and audit shall[will] include, but are not necessarily limited to, the following:

1. Verification of written agreements with fire departments;

2. Verification of test administration procedures;

3. Verification of proctors;

4. Facility inspection in accordance with the CPAT requirements on size, environmental conditions, floor composition, etc.;

5. Equipment inspection to ensure that all equipment and props meet the CPAT specifications;

6. Verification that course layout is in accordance with the CPAT specifications; and

7. Verification that the CPAT Administration is being properly used and data reported.

(c) Limited license holders shall be charged an annual licensing fee of \$5,000 to be paid to the IAFF. Limited licenses shall be non-transferable, nonexclusive, and revocable at will for any reason.

(d) Limited license holders shall confirm their license with the Kentucky Fire Commission prior to administering the CPAT.

Section 3. Incorporation by Reference. (1) "CPAT Manual, 2nd Edition", 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Fire Commission, 118 James Ct., Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE-TYLER MORGAN, Legal Counsel

APPROVED BY AGENCY: September 13, 2013

FILED WITH LRC: September 13, 2013 at noon

CONTACT PERSON: Anne-Tyler Morgan, Legal Counsel, McBrayer, McGinnis, Leslie & Kirkland, PLLC., 201 East Main Street, Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anne-Tyler Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 739 KAR 2:080 establishes the candidate physical ability test to be used for candidates seeking professional firefighter positions.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 95A.040, which requires the Kentucky Fire Commission to implement a candidate physical ability test to

establish uniform standards of the physical abilities required of all firefighter candidates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 95A.040, which requires the Kentucky Fire Commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 95A.040 requires the Kentucky Fire Commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions. This regulation ensures that all candidates for professional firefighting positions will be tested consistently and comprehensively.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation and is not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) All candidates seeking professional firefighter positions;

(b) All fire departments who are licensed with the IAFF to implement the CPAT;

(c) All third party testing organizations who obtain a Limited CPAT license for the purpose of testing the physical capability of fire fighter candidates;

(d) County and City Governments who fund fire departments within their governmental boundaries; and

(e) All residents and citizens who receive firefighting services in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities – fire fighter candidates, fire departments, third party testing organizations, and county and city governments – shall meet applicable requirements for IAFF licensure and CPAT implementation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to fire departments, third party testing organizations, and county and city governments is the cost of IAFF licensure or limited licensure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the consistency of fire fighter performance testing as administered through use of the CPAT, which will result in the greater competency of Kentucky's fire fighters and fire departments.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Kentucky Fire Commission shall pay for the administration of the CPAT to full-time fire fighter candidates.

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

(b) On a continuing basis: The above paragraph is accurate for continuing costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Fire Commission is a state agency that receives its annual budget from the state government. The funding allotted for the administration of the CPAT is provided by an insurance surcharge in a trust and agency account.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees will be

required of fire departments, county and city governments, and third party testing organizations obtaining full or limited IAFF licensure.

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation will relate to any County or City owned fire department obtaining an IAFF license to administer the CPAT.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 95A.040. No federal statutes necessitate this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will impose the cost of annual IAFF licensure to County and City owned fire departments administering the CPAT.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will impose the cost of annual IAFF licensure to County and City owned fire departments administering the CPAT.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will impose the cost of annual IAFF licensure to County and City owned fire departments administering the CPAT, as determined by the IAFF.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of the Kentucky Health Benefit Exchange (Amended After Comments)

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

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of the Kentucky Health Benefit Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Pro-

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gram in accordance with 42 U.S.C. 18031 and 45 C.F.R. parts 155 and 156.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Begin October 1, 2013; and

(b) Extend through March 31, 2014.

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

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

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

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

(18) "Metal level of coverage" means health care coverage provided within plus or minus two (2) percentage points of the full actuarial value as follows:

(a) Bronze level with an actuarial value of sixty (60) percent;

(b) Silver level with an actuarial value of seventy (70) percent;

(c) Gold level with an actuarial value of eighty (80) percent; and

(d) Platinum level with an actuarial value of ninety (90) percent.

(19) "Minimum essential coverage" is defined by 26 C.F.R. 1.5000A-2.

(20) "Participation agreement" means an agreement between the office and a small employer participating in the KHBE Small Business Health Options Program.

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

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

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

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

(25) "Qualified Health Plan" or "QHP" means a health plan that

has in effect a certification issued by the KHBE that it meets the standards described in 45 C.F.R. 156 subpart C.

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

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

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

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

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

(31) "Small employer" ~~[or "small-group"]~~ means for a plan year beginning:

(a) Before January 1, 2016, an employer who employed an average of ~~[at least two (2) but no more than]~~ fifty (50) ~~or fewer~~ full-time employees on business days during the preceding calendar year; or

(b) On or after January 1, 2016, an employer who employed an average of at least one (1) but no more than 100 full-time equivalent employees on business days during the preceding calendar year and who employs at least one (1) employee on the first day of the plan year.

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

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

Section 2. Employer Eligibility and Participation Requirements.

(1) Beginning October 1, 2013, and thereafter, a small employer may submit an application ~~[shall be eligible]~~ to purchase health insurance coverage for its qualified employees ~~[small-group]~~ through the ~~[KHBE]~~ SHOP if the employer is a small employer that:

(a) Elects to offer, at a minimum, a full-time employee coverage in a QHP through the KHBE SHOP; and

(b) 1. Has its principal business address in the service area and offers coverage to its full-time employees through the ~~[KHBE]~~ SHOP; or

2. Offers coverage to each eligible employee through the ~~[KHBE]~~ SHOP serving that employee's primary work site;

(c) Has a valid federal employer identification number; and

(d) Has a group participation rate of at least seventy five (75) percent in accordance with subsection (6) of this section, except as provided in 42 C.F.R. 147.104(b)(1)(i).

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

(3) A small employer may submit an application to participate in ~~[KHBE]~~ SHOP:

(a) Via the KHBE Web site at www.kynect.ky.gov;

(b) By telephone by contacting the KHBE customer service center;

(c) By mail; or

(d) In person.

(4) A qualified employer who ceases to be a small employer solely by reason of an increase in the number of employees shall be eligible to participate in the ~~[KHBE]~~ SHOP until the employer:

(a) Fails to otherwise meet the eligibility criteria of this section; or

(b) Chooses to no longer purchase health insurance coverage for qualified employees through the ~~[KHBE]~~ SHOP.

(5) As part of the verification of an application of the employer ~~[application]~~, a small employer shall submit:

(a) An employee census that includes the name, address, and social security number of all eligible employees;

(b) Proof of a federal employer identification number; and

(c) Copy of most recent Employer's Quarterly Unemployment Wage and Tax Report, if applicable.

(6) A calculation of a group participation rate shall not include in the count of eligible employees an employee:

(a) Enrolled in:

1. A group health plan offered by a second employer;

2. A group health plan offer through the spouse of the employee;

3. ~~An individual health plan;~~

4. ~~Medicare, including a Medicare advantage plan;~~

4. ~~5.~~ ~~Medicaid or CHIP;~~

5. ~~6.~~ ~~TRICARE or other veteran's health coverage;~~

6. ~~7.~~ ~~A parent's health plan;~~

7. ~~8.~~ ~~Coverage identified in 45 C.F.R. 156.602; or~~

8. ~~9.~~ ~~Coverage recognized by HHS as meeting the requirement for minimum essential coverage under 45 C.F.R. 156.604;~~

(b) Issued a certificate of exemption from the shared responsibility payment by KHBE or HHS; or

(c) Not residing in the service area of at least one (1) QHP offered by the employer.

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

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

(9) A qualified small employer participating in the **[KHBE]** SHOP shall:

(a) Disseminate information to its qualified employees about the process to enroll in a QHP through the **[KHBE]** SHOP;

(b) Make a contribution toward the premium of any qualified employee in accordance with Section 4 of this administrative regulation;

(c) Remit to the KHBE, employer and employee contributions upon receipt of invoice from the KHBE; **and**

(d) Notify the KHBE of a change in eligibility status of an employee or dependent of an employee enrolled in a QHP within thirty (30) days of the event; **and**

(e) Enter into a participation agreement with the KHBE.

(10) A small employer may designate an agent to:

(a) Perform an employer function on behalf of the employer; or

(b) Assist an employee with enrollment and plan selection.

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

Section 3. Employer Selection of Qualified Health Plans. (1) A small employer shall make available to a qualified employee:

(a) A single QHP;

(b) All available QHPs at a single metal level of coverage; or

(c) If metal levels are contiguous, one (1) or more QHPs at more than one (1) metal level of coverage.

(2) A qualified employer may apply for coverage through the **[KHBE]** SHOP for its **qualified employees[small group]** at any time in a year.

(3) The employer's plan year shall consist of the twelve (12)-month period beginning with the qualified employer's effective date of coverage.

Section 4. Minimum Contribution. (1) If a small employer selects one (1) QHP to offer to a qualified employee in accordance with Section 3 of this administrative regulation, the small employer shall:

(a) Define a percentage contribution of at least fifty (50) percent toward a premium for employee-only coverage under the QHP, **except as provided for in 42 C.F.R. 147.104(b)(1)(i);** and

(b) Apply the employer contribution determined in paragraph (a) of this subsection toward a QHP selected by the employee.

(2) If a small employer selects more than one (1) QHP to offer to a qualified employee in accordance with Section 3 of this administrative regulation, the small employer shall:

(a) Select a QHP to serve as a reference plan on which a contribution shall be based;

(b) Make a percentage contribution of at least fifty (50) percent toward a premium for employee-only coverage under the reference plan; and

(c) Apply the employer contribution determined in paragraph (b) of this subsection toward a QHP selected by the employee.

(3) If a small employer elects to provide dependent coverage, the small employer may make a contribution toward a premium for dependent coverage.

Section 5. Annual Employer Election Period. (1) On an annual basis a small employer shall have a thirty (30) day period prior to the completion of the employer's plan year and before the annual open enrollment to change the employer's participation in the **[KHBE]** SHOP for the next plan year.

(2) During the employer annual election period, a small employer may change the:

(a) Method by which the qualified employer makes QHPs available to qualified employees in accordance with Section 3 of this administrative regulation;

(b) Employer contribution towards the premium of a qualified employee made in accordance with Section 4 of this administrative regulation; and

(c) QHP or QHPs offered to qualified employees in accordance with Section 3 of this administrative regulation.

Section 6. Employee Eligibility. (1) An employee shall be eligible to enroll in a QHP through the **[KHBE]** SHOP if the employee receives an offer of coverage from a qualified employer.

(2) An employee shall submit an application to enroll in a QHP:

(a) Via the internet at www.kynect.ky.gov;

(b) By telephone by calling the KHBE customer service center;

(c) By mail; or

(d) In person.

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

(4) A qualified employee may designate an individual or organization as an authorized representative.

(5) An eligible employee who does not want to enroll in a QHP offered by a qualified employer shall waive coverage.

(6) A small employer shall be notified if a qualified employee enrolled in a QHP terminates coverage in the QHP.

Section 7. Enrollment and Effective Dates of Coverage. (1) A qualified employee shall select a QHP or change a QHP offered by a qualified employer in accordance with Section 3 of this administrative regulation during:

(a) The initial open enrollment period;

(b) An annual open enrollment period as set forth in Section 8 of this administrative regulation;

(c) A special enrollment period set forth in Section 9 of this administrative regulation; or

(d) An enrollment period outside of the employer's open enrollment period as set forth in Section 8(3) of this administrative regulation, only for a qualified employee who is newly eligible.

(2) The length of an initial open enrollment period and annual open enrollment period shall be:

(a) Thirty (30) days; and

(b) At the request of a small employer, extended up to a maximum of fifteen (15) additional days.

(3) Coverage in a QHP shall be effective:

(a) If plan selection is made prior to December 15, 2013, during the initial open enrollment period, January 1, 2014;

(b) If open enrollment ends between the first and 15th day of any month, the first day of the following month;

(c) If open enrollment ends between the 16th and the last day of any month, the first day of the second following month; and

(d) Upon receipt of the full first month's premium from a small employer.

(4) For a renewal, the effective date of coverage shall be an

employer's annual renewal date.

(5) For a special enrollment period, the effective date of coverage shall be in accordance with Section 9(5) and (6) of this administrative regulation.

(6)(a) Except for the death of an employee or dependent of an employee, the effective date for cancellation of coverage shall be the last day of the month during which an issuer terminates an employee's or dependent of an employee's coverage.

(b) The effective date for cancellation of coverage for the death of an employee or dependent of an employee shall be the date of death.

(7) Unless an employee changes coverage due to a qualifying event, a premium shall not change until the employer's annual renewal date.

Section 8. Annual Open Enrollment Period. (1) A qualified employee shall select a QHP or change QHPs during an annual open enrollment period that shall be:

(a) No less than thirty (30) days; and

(b) Prior to the end of the employer's plan year.

(2) If a qualified employee enrolled in a QHP remains eligible for coverage, the qualified employee shall remain enrolled in the QHP selected the previous year unless:

(a) The qualified employee enrolls in another QHP; or

(b) The QHP is no longer available to the qualified employee.

(3)(a) A newly added employee who becomes eligible after the beginning of the plan year and prior to the annual enrollment period shall have thirty (30) days prior to the date the newly added employee becomes eligible for employer-sponsored coverage to enroll in a QHP.

(b) The effective date of coverage of a newly added employee is the first day of the month following the month the newly added employee becomes eligible for employer-sponsored coverage.

Section 9. Special Enrollment Period. (1) A qualified employee or dependent of a qualified employee may enroll in a QHP or a qualified employee may change QHPs during a special enrollment period if:

(a) The qualified employee or dependent of a qualified employee loses minimal essential coverage;

(b) The qualified employee gains a dependent through marriage, birth, adoption, or placement for adoption;

(c) The qualified employee or dependent of the qualified employee enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or agent of the KHBE or HHS;

(d) The qualified employee or dependent of the qualified employee demonstrates to the KHBE that the QHP in which the qualified employee or dependent of the qualified employee is enrolled substantially violated a material provision of its contract in relation to the enrollee;

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

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

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

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

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

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

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

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

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

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

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

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

(b) In the case of marriage, or in the case where a qualified employee loses minimum essential coverage as described in subsection (7) and (8) of this section, the effective date of coverage shall be the first day of the following month.

(7) Loss of minimum essential coverage includes those circumstances described in 26 C.F.R. 54.9801-6(a)(3)(i) through (iii).

(8) Loss of minimum essential coverage does not include termination or loss due to:

(a) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage; or

(b) A situation allowing for a rescission as specified in 45 C.F.R. 147.128.

Section 10. Employer Voluntary and Involuntary Termination from [KHBE] SHOP. (1)(a) An employer may terminate its participation in [KHBE] SHOP at any time and for any reason by providing written notice to KHBE.

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

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

(a) Fails to meet the minimum contribution requirements in [pay a premium in accordance with] Section 4 of this administrative regulation;

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

(c) Fails to pay the total premium due within the grace period described in KRS 304.17A-243; or

(d) Commits fraud or misrepresentation.

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

(a) The date of notification of termination for failure to meet minimum contribution requirements under subsection (2)(a) of this section; [for non-payment of premiums, if the condition in subsection (2)(a) of this section is met,]

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

(c) The date premium was due, if the condition in subsection (2)(c) of this section is met; or

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

(4) Coverage terminated under subsection (2)(c) of this section for nonpayment of premium shall be reinstated upon request of the employer one (1) time during a plan year if the employer:

(a) Requests reinstatement by the end of the month following the month of termination; and

(b) Pays all premiums;

1. From the month of termination through the month reinstatement is requested; and

2. For the month following the request for reinstatement.

(5) If coverage is reinstated pursuant to subsection (4) of this section there shall be no lapse in coverage.

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2013

FILED WITH LRC: September 12, 2013 at 2 p.m.

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VOLUME 40, NUMBER 4 – OCTOBER 1, 2013

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

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

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

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

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

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

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

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

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

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

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

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by the entities.

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

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit Exchange existing budget. No new funding will be

needed to implement the provisions of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of the Kentucky Health Benefit Exchange within the Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. § 18031, and 45 C.F.R. Parts 155 and 156.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105. An Exchange must establish a Small Business Health Options Program (SHOP). A SHOP is designed to assist qualified small employers in the state in enrolling their employees in qualified health plans in the

state's small group market.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

(Amended After Comments)

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

RELATES TO: 42 U.S.C. 1320 a-7I

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7I

NECESSITY, FUNCTION, AND COMFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1320a-7I directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. On May 20, 2011, the Commonwealth of Kentucky was the twelfth state to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320a-7I. On the date this amended after comments administrative regulation was filed with the Legislative Research Commission, twenty-four[twenty-three-(23)] states and territories had received an NBCP grant. The Cabinet for Health and Family Services, Office of Inspector General is charged with responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP grant initiative, called the KARES "Kentucky Applicant Registry and Employment Screening" Program. This administrative regulation establishes procedures for the implementation of KARES as a voluntary program. The Cabinet for Health and Family Services encourages long-term care facilities and providers to participate in KARES as the grant program provides employers with an enhanced pre-employment screening mechanism intended to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation. The conditions set forth in this administrative regulation for voluntary KARES program participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with an employer identified in subsection (6) of this section.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Criminal background check" means a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(4) "Disqualifying offense" means:

(a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

1. A misdemeanor offense related to abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4) or child, or a sexual offense;

2. A criminal offense against a victim who is a minor, as defined in KRS 17.500;

3. A felony conviction involving a child victim;

4. A felony offense under:

a. KRS Chapter 209;

b. KRS Chapter 218A;

c. KRS 507.020;

d. KRS 507.030;

e. KRS 507.040;

f. KRS Chapter 508;

g. KRS Chapter 509;

h. KRS Chapter 510;

i. KRS Chapter 511;

j. KRS Chapter 513;

k. KRS 514.030;

l. KRS Chapter 515;

m. KRS 529.100;

n. KRS 529.110;

o. KRS Chapter 530; and

p. KRS Chapter 531;

5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or

6. A[Any] crime described in 42 U.S.C. 1320a-7;

(b) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3 or 1396r;

(c) Registration as a sex offender under federal law or under the law of any state; or

(d) Being listed on a registry as defined in subsection (9) of this section.

(5) "Employee" means an individual who:

(a) Is hired directly or through contract by an employer defined in subsection (6) of this section, and has duties that involve or may involve one-on-one contact with a patient, resident, or client;

(b) Is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client; or

(c) Has access to the personal belongings or funds of a patient, resident, or client[any individual who is hired by an employer defined in subsection (6) of this section through employment or through a contract with the facility or provider, and includes:

(a) Nurses;

(b) Nurse aides;

(c) Housekeepers;

(d) Maintenance personnel;

(e) Dieticians;

(f) Pharmacists;

(g) Administrative staff;

(h) Any staff person who has access to the personal belongings or funds of a patient, resident, or client of the employer; and

(i) Any volunteer who has duties that are equivalent to the duties of an employee providing direct services and those duties involve or may involve one-on-one contact with a patient, resident, or client of an employer without line-of-sight supervision by facility or provider staff].

(6) "Employer" means:

(a) A long-term care facility as defined in KRS 216.510;

(b) A nursing pool as defined in subsection (7)[(8)] of this section providing staff to a long-term care facility or provider;

(c) An adult day health care program as defined in KRS 216B.0441;

(d) An assisted living-community as defined in KRS 194A.700;

(e) A home health agency as defined in KRS 216.935;

(f) A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;

(g) A personal services agency as defined in KRS 216.710;

(h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);

(i) A provider[Providers] of home and community-based services authorized under KRS Chapter 205;

(j) A staffing agency with a contracted relationship to provide one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section; or

(k) Any other health facility or service licensed pursuant to KRS

Chapter 216B that applies to participate voluntarily in the KARES program.

(7) **"Inspector general" means the Office of Inspector General of the Cabinet for Health and Family Services.**

(8) "Nursing pool" means a[any] person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including **[but not limited to]** nurses, nursing assistants, nursing aides, and orderlies.

(8) **[(9)]** "Registry" means the:

(a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R. 483.156;

(b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and required by 42 U.S.C. 671(a)(20); **[and]**

(c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7; **and**

(d) Any available abuse registry, including the abuse and neglect registries of another state if an applicant resided in that state.

(9) [(10)] "State" is defined by KRS 446.010(40).

(10) [(11)] "Violent crime" means a conviction of, or a plea of guilty, **an Alford plea, or a plea of nolo contendere to [the commission of]** a capital offense, Class A felony, or Class B felony involving the death of the victim, **[or]** rape in the first degree or sodomy in the first degree of the victim, **sexual abuse in the first degree**, or serious physical injury to a victim.

Section 2. Applicability and Exceptions. (1) This administrative regulation shall apply to:

(a) Prospective cabinet staff **hired upon the effective date of this administrative regulation** whose duties include conducting inspections of:

1. Health facilities and services licensed pursuant to KRS Chapter 216B; or

2. Services regulated pursuant to KRS 194A.700 through 194A.729, or KRS 216.710 through 216.714;

(b) Prospective employees **hired upon the effective date of this administrative regulation** of state-owned or operated health facilities licensed pursuant to KRS Chapter 216B;

(c) Prospective cabinet staff **hired upon the effective date of this administrative regulation** who have or may have one-on-one contact with a patient or resident of an employer defined by Section 1(6) of this administrative regulation; and

(d) Prospective employees seeking employment with a private employer that participates voluntarily in the KARES Program **hired upon the effective date of this administrative regulation.**

(2) This administrative regulation shall not apply to current cabinet staff or current employees of any employer that participates voluntarily in the KARES program. **As used in this subsection, current means employed on or before the effective date of this administrative regulation.**

(3) A prospective employee shall not include:

(a) An[any] individual who independently contracts with **a KARES-participating[an]** employer to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the employer; **or**

(b) A board certified physician, surgeon, or dentist under contract with a KARES-participating employer.

Section 3. Agreement to Participate. An employer that elects to participate in KARES voluntarily shall complete and submit an Agreement to Participate in the KARES Program.

Section 4. Registry and Criminal Background Checks: Procedures and Payment.

(1) To initiate the process for obtaining a background check on a prospective employee, the employer shall:

(a) Request that the applicant provide a copy of his or her driver's license or government-issued photo identification and verify that the photograph clearly matches the applicant;

(b) Request that the applicant complete a:

1. Disclosure Form; and

2. Consent and Release Form; **and**

(c) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant's demographic information for a check of:

1. Each registry as defined by Section 1 **(8) [(9)]** of this administrative regulation; and

2. Databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, and Kentucky Board of Physical Therapy to validate the applicant's professional licensure status, if applicable.

(2) An applicant who is found on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470 may request a rehabilitation review pursuant to Section 9 of this administrative regulation.

(3)(a) If an applicant is cleared for hire after a check of the registries and databases identified in subsection (1)(c) of this section, the employer shall submit payment via credit or debit card for the criminal background check.

(b)1. Effective until May 19, 2014, or until NBCP grant funds are depleted, **whichever date is later**, employers shall pay the twenty (20) dollar fee charged by the Justice and Public Safety Cabinet pursuant to paragraph (d)1. of this subsection.

2. Effective until May 19, 2014, or until NBCP grant funds are depleted, **whichever date is later**, grant monies shall be used to subsidize:

a. The cost of the national criminal background check charged by the Federal Bureau of Investigation pursuant to paragraph (d)2. of this subsection; and

b. The administrative cost charged by the cabinet pursuant to paragraph (d)3. of this subsection.

(c) Effective until May 19, 2014, or until NBCP grant funds are depleted, **whichever date is later**, the cabinet shall pay all costs identified in paragraph (d) of this subsection if a criminal background check is conducted on behalf of a prospective provider of home and community-based services authorized under KRS Chapter 205. This exemption for providers of home and community-based services is a condition of the NBCP grant.

(d) After May 19, 2014, or after NBCP grant funds are depleted, **whichever date is later**, the total cost of a criminal background check charged to employers shall be sixty-three (63) dollars, divided into the following components:

1. A fee of twenty (20) dollars charged by the Justice and Public Safety Cabinet;

2. A fee of sixteen (16) dollars and fifty (50) cents charged by the Federal Bureau of Investigation; and

3. A fee of twenty-six (26) dollars and fifty (50) cents charged by the cabinet to cover the cost of facilitating the criminal background check.

(4)(a) Upon submission of payment pursuant to subsection (3) of this section, the employer shall print a copy of the Live Scan Fingerprinting Form from the KARES portal and provide the form to the applicant.

(b) The applicant shall:

1. Have thirty (30) calendar days from the date of payment pursuant to subsection (3) of this section to submit his or her fingerprints at an authorized collection site; and

2. Present the Live Scan Fingerprinting Form and driver's license or government-issued photo identification to the designated agent at the authorized collection site prior to fingerprint submission.

(5) Upon completion of a criminal background check, the cabinet shall:

(a) Provide notice to the employer that the applicant is clear to hire, or not clear to hire if the applicant is found by the cabinet to have a disqualifying offense; and

(b) Not disclose the applicant's criminal history to the employer.

Section 5. Provisional Employment. (1) If an applicant is not found on a registry and the individual's license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.

(2) The period of provisional employment shall:

(a) Not commence prior to the date the applicant submitted his or her fingerprints; and

(b) Not exceed sixty (60) days from the date of fingerprint collection.

(3) During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 6. Individuals Ineligible to be Hired. An employer participating in the KARES program, an agency within the cabinet responsible for conducting inspections of any employer, or a state-owned or[and] operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:

(1) The applicant refuses to provide photo identification or complete the Disclosure Form or Consent and Release Form required by Section 4(1)(a) and (b) of this administrative regulation;

(2) The applicant is found on a registry as defined by Section 1(9) of this administrative regulation;

(3) The applicant's professional license is not in good standing, if applicable;

(4) The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 4(3) of this administrative regulation;[or]

(5) Upon completion of the criminal background check, the employer, cabinet agency, or state-owned or operated health facility receives notice that the applicant is not clear for hire based on a cabinet determination that the individual has been found to have a disqualifying offense;or

(6) Final disposition of a criminal charge related to a disqualifying offense is not provided to the cabinet within sixty (60) days of fingerprint submission.

Section 7. Notice of a Disqualifying Offense and Appeals. (1) The cabinet shall notify each applicant determined to have a disqualifying offense.

(2) In addition to the cabinet's notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet's determination within three (3) business days of receipt of the notice.

(3) An applicant who receives notice of a disqualifying offense may:

(a) Request a rehabilitation review pursuant to Section 9 of this administrative regulation; or

(b) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request to the cabinet for an informal review of the cabinet's determination or file an appeal under KRS Chapter 13B within ten (10) days of the date of the notice of the disqualifying offense. An applicant may appeal the results of an informal review **by submitting a written request to the cabinet for appeal under KRS Chapter 13B within five (5) days of notice of the decision from an informal review.**

(4) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(5) If an applicant challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 8. Termination of a Provisional Employee Upon Receipt of Notice of a Disqualifying Offense.

(1) If a provisional employee has not requested an informal review or an appeal pursuant to Section 7(3)(b) of this administrative regulation, the employer shall:

(a) Terminate the employee no later than six (6) business days after receipt of notice of the disqualifying offense; and

(b) Submit a written attestation statement to the cabinet affirm-

ing the employee's dismissal within three (3) business days of termination.

(2) If a provisional employee requests an informal review or an appeal pursuant to Section 7(3)(b) of this administrative regulation, the employer may retain the employee pending resolution of the employee's informal review or appeal under the following conditions:

(a) The employee shall be subject to direct, on-site supervision, or reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the employer;

(b) The employer shall inform the employee that termination shall be immediate if the informal review upholds the cabinet's determination regarding a disqualifying offense, or the employee does not prevail in an appeal requested pursuant to Section 7(3)(b) of this administrative regulation;

(c) The employer shall immediately terminate an employee if the informal review upholds the accuracy of the cabinet's determination regarding a disqualifying offense or the employee does not prevail in an appeal requested pursuant to Section 7(3)(b) of this administrative regulation **upon completion of the appeal;** and

(d) The employer shall submit a written attestation statement to the cabinet affirming the individual's dismissal within three (3) business days of termination.

Section 9. Rehabilitation Review. (1)(a) An applicant found on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470, or found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying offense that occurred **less than[at-least]** seven (7) years prior to the date of the criminal background check;

2. A criminal conviction related to abuse, neglect, or exploitation of an adult or child;

3. Registration as a sex offender under federal law or under the law of any state; or

4. A conviction for a violent crime.

(2) An applicant may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination **issued pursuant to Section 7(1) of this administrative regulation** regarding a finding on the child abuse and neglect central registry or determination of a disqualifying offense.

(3) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each finding on the child abuse and neglect central registry or each disqualifying offense, including:

1. A description of the events related to the registry finding or disqualifying offense;

2. The number of years since the occurrence of the registry finding or disqualifying offense;

3. The identification of any other individuals involved in the offense;

4. The age of the offender at the time of the registry finding or disqualifying offense; and

5. Any other circumstances surrounding the registry finding or offense;

(b) Official documentation showing that all fines, **including court-imposed fines or restitution,** have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, each of whom was not responsible for determining:

(a) The finding of child abuse or neglect that placed the individual on the central registry; or

(b) That the individual has a disqualifying offense.

(5) The committee shall consider the information required un-

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der subsection (3) of this section, and shall also consider mitigating circumstances including~~[that may include but are not limited to]~~:

(a) The amount of time that has elapsed since the child abuse and neglect central registry finding or disqualifying offense, which shall ~~not be~~^[no] less than seven (7) years in the case of a disqualifying offense;

(b) The lack of a relationship between the registry finding or disqualifying offense and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the registry finding or disqualifying offense. The committee shall make a recommendation to the secretary or designee, who shall be responsible for making the final decision.

(6) The secretary or designee may grant a waiver from the prohibition against employment of an applicant with a child abuse and neglect finding or a disqualifying offense upon consideration of the information required under subsection (3) of this section and the committee's recommendation of subsection (5) of this section.

(7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the secretary or designee shall send a written determination on the rehabilitation waiver to the applicant.

(8) The decision of the secretary or designee pursuant to subsection (7) of this section shall be subject to appeal under KRS Chapter 13B.

(9) An individual with a finding on the child abuse and neglect central registry or a disqualifying offense shall not be employed by an employer until the employer receives notification from the cabinet that the individual has been granted a waiver.

(10) An employer is not obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

Section 10. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 11. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 12. Immunity from Civil Liability. ~~A~~^[No] person, including the cabinet, the Justice and Public Safety Cabinet, an employer, or an individual acting on behalf of any of these entities shall not be liable for civil damages or be subject to any claim, demand, cause of action, or proceeding of any nature as a result of actions taken in good faith to comply with this administrative regulation, including the disqualification of an applicant or provisional employee from employment on the basis of a disqualifying offense.

Section 13. Kentucky Applicant Registry and Employment Screening Fund. (1)(a) A trust and agency fund called the Kentucky Applicant Registry and Employment Screening fund shall be administered by the Finance and Administration Cabinet.

(b) The fund shall be funded with moneys collected under Section 4(3) of this administrative regulation.

(2) Moneys in the fund shall be used solely to operate the KARES program.

(3) Moneys remaining in the fund at the close of the fiscal year shall not lapse and shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in subsection (2) of this section.

(4) Interest earned on moneys in the account shall accrue to the account.

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

(a) OIG 1:190-A, "Agreement to Participate in the KARES Program", May 2013^[edition];

(b) OIG 1:190-B, "Disclosure Form", May 2013^[edition];

(c) OIG 1:190-C, "Consent and Release Form", May 2013^[edition]; and

(d) OIG 1:190-D, "Live Scan Fingerprinting Form", May 2013^[edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2013

FILED WITH LRC: September 12, 2013 at 2 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: Mary Reinle Begley

(1) Provide a brief summary of:

(a) What this administrative regulation does: In May 2011, Kentucky was the 12th state to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services. On the date this amended after comments regulation was filed with the Legislative Research Commission, a total of 24 states had received an NBCP grant. The Cabinet for Health and Family Services, Office of Inspector General is charged with responsibility to oversee and coordinate Kentucky's NBCP grant initiative, called the KARES "Kentucky Applicant Registry and Employment Screening" Program. This administrative regulation establishes procedures for the implementation of KARES as a voluntary program in which the Cabinet encourages long-term care facilities and providers to participate in KARES as the grant program provides employers with a mechanism for obtaining fingerprint-supported state and FBI checks on new employees, which will enhance efforts to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation. The conditions set forth in this administrative regulation for voluntary participants are in addition to the name-based, state only criminal background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

(b) The necessity of this administrative regulation: State law under KRS Chapter 216 currently requires that applicants for employment in long-term care facilities submit to a check of the nurse aide abuse registry and a name-based, state only criminal records check at the time of initial hire. Under this administrative regulation, applicants for employment in participating long-term care settings will submit to a check of available abuse registries and a fingerprint-supported, state and FBI criminal background check, thereby limiting the ability of individuals to hide their criminal or abusive actions by crossing state lines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for employers that elect to participate in the KARES program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing employers with an enhanced pre-employment screening mechanism intended to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation.

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

(a) How the amendment will change this existing administrative regulation: This amended after comments regulation clarifies the definition of the term "employee" for purposes of identifying individuals for whom a background check under KARES would be applicable. This amendment further clarifies that the registries queried under the KARES system may include "any available abuse registry, including the abuse and neglect registries of another state if an applicant previously resided in that state". In addition, this amendment includes sexual abuse in the first degree under the

definition of "violent crime", clarifies that final disposition of a criminal charge related to a disqualifying offense is considered an employment disqualifier if the missing disposition is not provided within sixty (60) days of fingerprint submission, and adds a new section creating an interest bearing account necessary to fund operation of the KARES program as well as collect state and FBI fingerprint check fees.

(b) The necessity of the amendment to this administrative regulation: This amended after comments regulation is necessary to add clarity to the regulation and address comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments regulation conforms to the content of the authorizing statutes by establishing requirements for employers that elect to participate in the KARES program.

(d) How the amendment will assist in the effective administration of the statutes: This amended after comments regulation assists in the effective administration of the statutes by providing employers with an enhanced pre-employment screening mechanism intended to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Employers that may apply for participation in the KARES program include long-term care facilities, nursing pools and staffing agencies which provide staff to long-term care facilities, adult day health programs, assisted living facilities, home health agencies, hospice providers (including residential hospice), personal services agencies, long-term care hospitals, providers of home and community based services, or any other licensed health facility that applies to participate in the KARES program voluntarily. Additionally, new Cabinet staff whose duties include inspecting long-term care employers or having one-on-one contact with patients or residents, and new Cabinet staff who work in state-run health facilities will be subject to a background check under KARES.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Using the KARES web application, participating employers will be able to obtain immediate results from available abuse registries and verify the professional licensure status of prospective employees free of charge. "Hits" on an abuse registry or confirmation that an individual's professional license is not in good standing will be used to disqualify the individual from employment in a long-term care setting, thereby eliminating the need for criminal background checks and the costs associated with such checks. If cleared as a result of the registry check, applicants seeking employment with a participating employer would be subject to a fingerprint-supported state and FBI background check. The anticipated response regarding whether an individual is eligible for employment is expected to take 24 – 48 hours from the date of fingerprint collection if the individual does not have a criminal history, and 5 – 7 days from the date of fingerprint collection in most cases in which the individual has a criminal record.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs additional costs will be incurred by voluntarily participating employers initially as employers will continue to pay the twenty (20) dollar fee they are currently accustomed to paying for name based, state-only criminal background checks. However, upon depletion of NBCP grant monies used to subsidize the cost of FBI checks and the Cabinet's administrative cost, a fingerprint-supported state and FBI check will cost a total of sixty-three (63) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participating employers will benefit from an enhanced, pre-employment screening tool intended to limit the ability of individuals to hide their criminal or abusive actions by crossing state lines. Additionally, employers will not be

impacted financially during what the Cabinet estimates will be about the first year and a half of fingerprint collection as grant monies will be used to subsidize the cost of the FBI check and Cabinet's administrative costs for facilitating fingerprint-supported criminal background checks.

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

(a) Initially: This administrative regulation is funded by NBCP grant monies until the end of the grant's project period (May 2014), or later if an extension is necessary and CMS approves such a request to expend any remaining grant monies that may exist.

(b) On a continuing basis: The Cabinet estimates that approximately \$600,000 will be needed on a yearly basis to sustain the KARES program. Such funds will be used to contract with the Department for Workforce Investment to collect fingerprints at Career One Stop Centers, cover costs incurred by the Office of Administrative and Technology Services to maintain the KARES system and database, and support staff salaries.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: NBCP grant funds will be used initially to implement this administrative regulation. Upon conclusion of the grant or depletion of grant monies, continued funding to support KARES will be from fees collected to process fingerprint-supported state and FBI checks on applicants seeking employment with participating long-term care employers.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current charge for a name-based, state only criminal record check currently required by state law for applicants seeking employment in long-term care facilities is twenty (20) dollars. Under KARES, the charge for a fingerprint-supported state and FBI criminal background check will remain twenty (20) dollars initially. However, upon depletion of NBCP grant funds used to subsidize the cost of the FBI checks and administrative costs charged by the cabinet, the total cost of the fee charged for a fingerprint-supported state and FBI criminal background check will be sixty-three (63) dollars, divided into the following components:

1. A fee of twenty (20) dollars charged by the Justice and Public Safety Cabinet;

2. A fee of sixteen (16) dollars and fifty (50) cents charged by FBI; and

3. A fee of twenty-six (26) dollars and fifty (50) cents charged by the cabinet to cover the cost of facilitating the criminal background check.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Please refer to the response for question 7.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities that elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts employers who elect to participate in the KARES program voluntarily, including long-term care facilities, nursing pools and staffing agencies that provide staff to long-term care facilities, adult day health programs, assisted living facilities, home health agencies, hospice providers (including residential hospice), personal services agencies, long-term care hospitals, providers of home and community based services, or any other licensed health facility that applies to participate in the KARES program voluntarily. Additionally, new Cabinet staff whose duties include inspecting long-term care employers and new Cabinet staff who work in state-run health facilities will be subject to a fingerprint-supported state and FBI check under KARES.

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. 1320 a-71

3. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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 current charge for a name-based, state only criminal record check currently required by state law for applicants seeking employment in long-term care facilities is twenty (20) dollars. Under KARES, the charge for a fingerprint-supported state and FBI criminal background check will remain twenty (20) dollars initially. However, upon depletion of NBCP grant funds used to subsidize the cost of the FBI checks and administrative costs charged by the cabinet, the total cost of the fee charged for a fingerprint-supported state and FBI criminal background check will be sixty-three (63) dollars. Therefore, revenue will be based upon a charge of sixty-three (63) dollars per background check, divided between the Kentucky State Police, FBI, and the Cabinet as previously described.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will be based upon a charge of sixty-three (63) dollars per check as previously described.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year as NBCP grant monies will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet estimates that approximately \$600,000 will be needed on a yearly basis to sustain the KARES program. Such funds will be used to contract with the Department for Workforce Investment to collect fingerprints at Career One Stop Centers, cover costs incurred by the Office of Administrative and Technology Services to maintain the KARES system and database, and support staff salaries.

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. 1320 a-7l directs the Secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. As of this date, Kentucky is one of twenty-three (23) states to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320 a-7l to implement a fingerprint-supported state and FBI check program for new employees in long-term care settings.

2. State compliance standards. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that NBCP grantee states such as Kentucky to implement a fingerprint-supported state and FBI background check program for new employees in long-term care settings.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements than those required by the NBCP grant awarded to Kentucky by CMS under 42 U.S.C. 1320 a-7l.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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PROPOSED AMENDMENTS

COUNCIL ON POSTSECONDARY EDUCATION (Amendment)

13 KAR 3:010. GED® Testing Program.

RELATES TO: KRS 164.0064(1)(a)~~[151B.125(1)(a)]~~

STATUTORY AUTHORITY: KRS 164.0064(1)(a),
164.0234~~[151B.125(1)(a), 151B.410]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.0234(1)~~[151B.410(1)]~~ requires the Kentucky Adult Education Program to administer a statewide adult education and literacy system~~[program]~~, and to promulgate administrative regulations to effect this mandate. KRS 164.0064 requires that a high school equivalency diploma be issued upon passage of the test given by the Kentucky Adult Education Program's approved testing centers in conformance with requirements of the GED® Testing Service~~[KRS 151B.125 recognizes the Tests of General Educational Development or GED Tests for high school equivalency purposes in Kentucky]~~ and authorizes Kentucky Adult Education to establish fees for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate transcript~~[score report]~~. This administrative regulation establishes the procedure for testing an adult for the GED® diploma.

Section 1. Test Purpose. The GED® test~~[GED Tests]~~ shall provide a valid means of measuring the educational achievement of an adult who is a nonhigh school graduate and of comparing the adult's competency to that of high school graduates. The test~~[tests]~~ shall cover~~be a high school level battery consisting of five (5) comprehensive examinations covering]~~:

- (1)~~[Language arts,]~~ Writing;
- (2) Social studies;
- (3) Science;
- (4)~~[Language arts,]~~ Reading; and
- (5) Mathematics.

Section 2. Test Centers. Official GED® testing centers shall be established under agreement~~[contract]~~ with the GED® Testing Service. Kentucky Adult Education shall authorize the location of these centers.

Section 3. Test Scores.~~[(1) Kentucky Adult Education shall:~~

- ~~(a) Administer the scoring of the tests;~~
- ~~(b) Accept scores as official if reported by:~~
 1. A state, territorial, or provincial department of education;
 2. A GED testing center;
 3. The GED Testing Service; or
 4. The Defense Activity for Nontraditional Education Support;

~~DANTES (as the repository of score reports issued by the U.S. Armed Forces Institute).~~

~~(2) In order for an applicant to be issued a Commonwealth of Kentucky High School Equivalency Diploma and an official GED® transcript, an applicant shall achieve the minimum passing standard[score on each subtest and the minimum overall average score] on the Official GED® test[GED Tests] as set by GED® Testing Service.~~

Section 4. Commonwealth of Kentucky High School Equivalency Diploma~~[GED Diploma]~~. Kentucky Adult Education shall provide a high school equivalency diploma to an applicant who meets all the provisions of this administrative regulation and the eligibility requirements established by 13 KAR 3:050~~[785 KAR 1:130]~~.

Section 5. Test Fees. (1) The GED® test shall be offered at official GED® testing centers at a fee set and collected by GED® Testing Service~~[For test on or before June 30, 2009, the testing fee shall be a uniform fee of:~~

- ~~(a) Forty (40) dollars, if the applicant is taking all five (5) subtests in a test session; or~~
- ~~(b) Ten (10) dollars per subtest, except as provided in subsection (5) of this section.~~

~~(2) Effective July 1, 2009, The testing fee shall be a uniform fee of:~~

~~(a) Fifty (50) dollars, if the applicant is taking all five (5) subtests in a test session; or~~

~~(b) Twenty-five (25) dollars per subsession, except as provided in subsection (5) of this section.~~

~~(3) Effective July 1, 2010, the testing fee shall be a uniform fee of:~~

~~(a) Fifty-five (55) dollars, if the applicant is taking all five (5) subtests in a test session; or~~

~~(b) Twenty-five (25) dollars per subsession, except as provided in subsection (5) of this section.~~

~~(4) Effective July 1, 2011, the testing fee shall be a uniform fee of:~~

~~(a) Sixty (60) dollars, if the applicant is taking all five (5) subtests in a test session; or~~

~~(b) Thirty (30) dollars per subsession, except as provided in subsection (5) of this section.~~

~~(5) A person who retests shall be assessed the fee established in subsection (1)(b), (2)(b), or (3)(b) of this section as appropriate to the date of the retest, but subject to the limitation that the total amount assessed shall not exceed the limit established in subsection (1)(a), (2)(a), or (3)(a) of this section regardless of the number of subsession retests attempted].~~

~~(2) [(6)] A request for a duplicate transcript or diploma from Kentucky Adult Education shall be in writing and shall carry the signature, birth date, and Social Security number of the test-taker[examinee] and shall be accompanied by the payment of:~~

~~(a) A ten (10) dollar processing fee assessed for the issuance of a duplicate transcript request; or~~

~~(b) A twenty-five (25) dollar fee assessed for the issuance of a duplicate diploma.~~

PAM MILLER, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: September 12, 2013

FIELD WITH LRC: September 13, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2013 at 10:00 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2013.

Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Travis Powell, General Counsel, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555, ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a testing program for the Commonwealth of Kentucky High School Equivalency Diploma, authorizes the creation of testing centers, sets minimum standards for successful completion of the GED® test, and currently establishes a

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fee for the test and for securing duplicate copies of test scores and diplomas.

(b) The necessity of this administrative regulation: KRS 164.0234(1) requires the Kentucky Adult Education Program (KYAE) to administer a statewide adult education and literacy system and to promulgate administrative regulations to effect this mandate. KRS 164.0064 requires that a high school equivalency diploma be issued upon passage of the test given by KYAE's approved testing centers in conformance with requirements of GED® Testing Service and authorizes Kentucky Adult Education to establish fees for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate transcript.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.0234 requires that KYAE promulgate administrative regulations to administer the statewide adult education and literacy system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to students and to testing centers who offer the GED® tests. The GED® tests are administered by approved testing centers who operate through a contract with GED® Testing Service. It also currently sets forth fees to be paid by students.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the testing fee as set by KYAE. It also makes various technical changes for language clarification.

(b) The necessity of the amendment to this administrative regulation: Beginning January 2, 2014, GED® Testing Service will be offering the 2014 GED® test series through official GED® testing centers at a fee set and collected by GED® Testing Service. At that time, the paper-based 2002 GED® test series will no longer be offered.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is within KYAE's regulation promulgation authority and therefore conforms exactly to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make it clear that KYAE no longer sets forth the fee structure for the GED® tests.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The primary individuals and organizations affected by this regulation are the testing centers who administer the GED® tests, the adult education providers who refer students to testing centers, and the GED® test-takers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: GED® Testing Service shall set and collect the fee to take the GED® tests and test-takers will pay said fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Test-takers will pay the base rate fee as prescribed by GED® Testing Service. Currently the fee is set at \$120 for the entire test battery. There should not be an additional cost to the testing centers to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By paying the fee required by GED® Testing Service to take GED® tests and achieving the minimum passing standard, eligible test-takers will obtain a Commonwealth of Kentucky high school equivalency diploma.

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

(a) Initially: There should be no cost to implement this amendment initially.

(b) On a continuing basis: There should be no cost to implement this amendment on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund, federal funds, and transcript fees collected.

(7) Provide an assessment of whether an 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 increased 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 establishes fees for duplicate high school equivalency diplomas and GED® transcripts but will no longer set fees for the GED® test.

(9) TIERING: Is tiering applied? Tiering is 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? KYAE is responsible for implementation. Local adult education providers, which include public universities and community colleges, local school boards, and local educational cooperatives, will be affected in that they will provide their students with this information.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.0234 and 164.0064.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 change will have no impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$173,000

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? See below.

(d) How much will it cost to administer this program for subsequent years? See below.

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 primary purpose of this regulation is to set forth the requirements for issuance of a high school equivalency diploma and to set fees for duplicate transcripts and diplomas. Duplicate transcript and diploma requests are filled by two full time Kentucky Adult Education staff members.

COUNCIL ON POSTSECONDARY EDUCATION (Amendment)

13 KAR 3:050. GED® eligibility requirements.

RELATES TO: KRS[151B.023,—151B.125;] 158.6455, 164.0064(1)(a)

STATUTORY AUTHORITY: KRS 164.0234[151B.023, 151B.410, EO-2005-565]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.0234(1)[151B.410(1)] requires the Kentucky Adult Education Program[Department for Adult Education and Literacy] to promulgate necessary administrative regulations and administer a statewide adult education and literacy system throughout[through] the state. KRS 164.0064(1)(a) requires that a high school equivalency diploma be issued upon passage of the test given by the Kentucky

Adult Education Program's approved testing centers in conformance with requirements of the GED® Testing Service[KRS 151B.023 requires the Department for Adult Education and Literacy to carry out the statewide mission on adult education. KRS 151B.125 recognizes the General Educational Development (GED) Tests for high school equivalency purposes in Kentucky. EO 2005-725 abolished the Department for Adult Education and Literacy and transferred its duties to the Council on Postsecondary Education]. KRS 158.6455 excludes students from a school's dropout rate if the student is enrolled in a district-operated or district-contracted alternative program leading to a certificate of completion of a GED® diploma (known as the secondary GED® program). This administrative regulation establishes the eligibility requirements for taking the GED® test[GED Tests].

Section 1. Eligibility Requirements. The GED® test[GED Tests] shall be administered to an applicant with a Kentucky address who:

- (1) Has reached his or her nineteenth (19th) birthday; or
- (2)(a) Has reached the legal age of withdrawal in the local school district where he or she resides;[Is at least sixteen (16) years of age] and
 - (b)1. Has officially withdrawn from public or private school for at least ninety (90) days as certified by the local school district;
 - 2.[or
 - (3) Is at least sixteen (16) years of age with a Kentucky address, and] Is[-(a)] committed or placed in an adult[a state] correctional facility;
 3. Is[(b)] enrolled in the Jobs Corps Program of Instruction;
 - 4.a. Is[(c)] considered a state agency child, as defined by KRS 158.135(1)(a); and
 - b. Is approved for the GED® test by the local school superintendent upon recommendation from the applicant's service region administrator or designee[receives approval for the GED Tests from his or her interdisciplinary team];
 - 5.a. Is[(d)] detained in a juvenile detention center or juvenile holding facility;[;] and
 - b.[the applicant:
 1. Is at least one (1) year behind academically from his graduating class;
 2. Has a minimum stay in detention of thirty (30) days; and
 - 3.-] Is approved for the GED® test[GED Tests] by the local school superintendent;[;] or
 - 6.a. Is[(e)] enrolled in a Kentucky Department of Education approved Secondary GED® Program under 704 KAR 7:150; and
 - b. Is approved for the GED® test[GED Tests] by the local school superintendent.

Section 2. Superintendent Waiver. The local school superintendent or designee in the district where the applicant currently resides[was last enrolled] may waive the ninety (90) day school withdrawal provision of Section 1(2)(b)1. of this administrative regulation if necessary due to a deadline for postsecondary enrollment, condition of employment, medical reason, [or] family crisis, or other extenuating circumstances.

Section 3. Test Readiness. (1) An applicant shall be certified as test-ready by an entity approved by Kentucky Adult Education.

(2)[(1)] Before taking the GED® test[official GED Tests], an applicant shall[:

- (a)] successfully complete and pass an official readiness test with the same passing scores required to pass the GED® test[the Official GED Practice Test with the same passing scores required for the GED test or present a Kentucky Educational Television GED Connection Voucher; and
 - (b) Complete the Kentucky Adult Education GED Testing Application. This form shall be available from a county adult education provider, school district, or the Kentucky Adult Education.
- (2) Military personnel shall:
- (a) Not be required to complete the GED Test Application prior to taking the test; and
 - (b) Complete the Military GED Application (Form 300-M) before a high school equivalency diploma shall be issued.

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

- (a) Kentucky Adult Education GED Testing Application, June 2005; and
 - (b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)", revised 6/96 edition, GED Testing Service, Washington, D.C.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Adult Education, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].

PAM MILLER, Chair
TRAVIS POWELL, General Counsel

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2013 at 10:00 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Travis Powell, General Counsel, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555, ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation sets forth the eligibility requirements to take the GED® test.
 - (b) The necessity of this administrative regulation: KRS 164.0234(1) requires the Kentucky Adult Education Program (KYAE) to promulgate necessary administrative regulations and administer a statewide adult education and literacy system throughout the state. KRS 164.0064 requires that a high school equivalency diploma be issued upon passage of the test given by KYAE's approved testing centers in conformance with requirements of GED® Testing Service. KRS 158.6455 excludes students from a school's dropout rate if the student is enrolled in a district-operated or district-contracted alternative program leading to a certificate of completion of a GED® diploma (known as the secondary GED® program).
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.0234 requires that KYAE promulgate administrative regulations to administer the statewide adult education and literacy system.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets for the eligibility requirements to take the GED® test so that KYAE may issue a high school equivalency diploma upon successful passage of the test in accordance with KRS 164.0064(1)(a).
- (2) If 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 age at which a person is eligible to take the GED Tests depending on the age a person may withdraw from school as set by the local school board of the district

in which he or she resides. It removes the requirement that a student serving time in juvenile detention or holding facility be one (1) year behind academically and have a minimum stay of thirty (30) days. The amendment also removes the requirement that applicants complete the Kentucky Adult Education GED Testing Application form or the Military GED Application (Form 300-M) for military applicants.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to align with the recent change to the compulsory attendance law. It also is necessary to allow a local school board superintendent the discretion to permit any individual spending time in a juvenile detention or holding facility to take the GED® test based on his or her best judgment without any parameters other than age and test readiness. In addition, in accordance with the new 2014 GED® test, paper application forms have been eliminated and applications are now completed online directly with GED® Testing Service.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms exactly to the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: By aligning the GED® test eligibility with the compulsory attendance statute, it will allow districts to more effectively enforce their compulsory attendance age requirement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The primary individuals and organizations affected by this regulation are the testing centers who administer the GED® test, the adult education providers, and Kentucky residents seeking to obtain a high school equivalency diploma.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Test takers must pass a readiness test in order to take the GED® test. Local adult education providers must provide test takers with the opportunity to take the readiness test.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will conform to compulsory attendance laws.

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

(a) Initially: We estimate that there will be no additional cost in implementing the proposed changes to the regulation.

(b) On a continuing basis: We estimate that there will be no additional costs on a continuing basis to implement the proposed changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KYAE will enforce the requirements with staff compensated out of agency operating 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. Implementation of this amendment does not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No. The proposed amendment to the regulation does not establish any fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering is 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? Local adult educa-

tion providers, which include public universities and community colleges, local school boards, and local educational cooperatives, 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 164.0064 and 164.0234.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 have no impact on expenditures and revenues of any state or local agency.

(a) How much 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 is not a revenue generating 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? See 4(a).

(c) How much will it cost to administer this program for the first year? See below.

(d) How much will it cost to administer this program for subsequent years? See below.

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 primary purpose of this regulation is to set forth eligibility requirements for taking the GED® test in order to obtain a high school equivalency diploma. The GED® test eligibility requirements are verified by one full time Kentucky Adult Education staff person. This person also maintains several other duties.

KENTUCKY STATE BOARD OF ELECTIONS (Amendment)

31 KAR 4:070. Recanvass procedures.

RELATES TO: KRS 117.305, 118.425, 242.120

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.305(2), (3), (4), 242.120(3), (4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.305(2) and KRS 242.120(3) require[requires] the State Board of Elections to prescribe forms to be used by county boards of elections to report all recanvassed votes, KRS 117.305(3) and KRS 242.120(4) require[requires] that the board promulgate administrative regulations to set reporting standards for recanvass reports, and KRS 117.305(4) and KRS 242.120(5) require[requires] that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky. This administrative regulation establishes the reporting ~~forms~~form to be used in the event of a recanvass, reporting standards for an election if a recanvass is requested and received in a timely manner, and establishes the proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky.

Section 1. (1) The Recanvass of Official Count and Record of Election Totals form, SBE 49A, shall be used by the county board of elections to report all recanvassed votes, except for local option elections.

(2) The Recanvass of Official Count and Record of Election Totals for Local Option Election form, SBE 49B, shall be used by the county board of elections to report recanvassed votes for local option elections.

(3) The county board of elections shall state the name of the county in which the recanvass is being conducted, the date of the

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report, the date of the election, the office for which the recanvass is being made, the name of each candidate for the office being recanvassed, and the machine votes, absentee votes, provisional votes and total votes for each candidate. The report shall be signed by each member of the county board of elections.

(4) For a recanvass of a local option election, the county board of elections shall state the name of the county in which the recanvass is being conducted, the date of the report, the date of the local option election, the proposition for which the recanvass is being made, the names of the leaders of the committees favoring or opposing the proposition being recanvassed, and the machine votes, absentee votes, and vote totals for "yes" or "no" votes. The report shall be signed by each member of the county board of elections.

Section 2. (1) The county board of elections shall file its recanvass report, SBE 49A, immediately upon completion of the recanvass for those vote totals reported to the Secretary of State, pursuant to KRS 118.425(3).

(2) The county board of elections shall file its recanvass report, SBE 49A, immediately upon completion of the recanvass for the vote totals reported to the county clerk, pursuant to 118.425(2).

(3) The county board of elections shall file its recanvass report for a local option election, SBE 49B, immediately upon completion of the recanvass for the vote totals reported to the county clerk, pursuant to KRS 242.110.

Section 3. If KRS 117.305(1) or KRS 242.120(2)(a) requires a recanvass, the provisions established in this section shall apply.

(1) In a general election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(2) In a partisan primary election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate of the same political party seeking the same office.

(3) In a nonpartisan election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(4) In a local option election, the county board of elections shall check and tabulate the "yes" and "no" votes.

Section 4. A county board of elections shall recanvass the votes recorded depending on the machine and voting method utilized, as follows:

(1) If an electronic voting system with a central tabulation system is used, the recanvass shall be taken:

(a) By clearing the system, such as by setting the tabulation system to zero and retabulating the votes recorded on the memory cartridges on election day by using the central tabulation system; or

(b) By comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(2) If an electronic voting system without a central tabulation system is used, the recanvass shall be taken by comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(3) Paper ballots, which were judged to be valid by the county board of elections on election day and which were not counted using a central tabulation system but were hand-counted on election day, shall be recanvassed by utilizing the same procedure actually used to count those paper ballots on election day following the procedures for the uniform definition of a vote established by 31 KAR 6:030.

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

(a) "Recanvass of Official Count and Record of Elections Totals", SBE 49A, [December 2003 edition; and

(b) "Recanvass of Official Count and Record of Elections Totals for Local Option Election", SBE 49B, August 2013 edition]}; is incorporated by reference.

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

ject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: September 4, 2013

FILED WITH LRC: September 4, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2013, at 10:00 a.m., at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment. Written comments shall be accepted until October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Maryellen Allen, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen Allen

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 242.120(3) requires the State Board of Elections to prescribe forms to be used by county boards of elections to report recanvassed votes for a local option election; KRS 242.120(4) requires that the board promulgate administrative regulations to set reporting standards for recanvass reports for local option elections; and KRS 242.120(5) requires that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky for local option elections. This administrative regulation establishes the reporting form to be used in the event of a recanvass of a local option election, reporting standards for a local option election if a recanvass is requested and received in a timely manner, and proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky for a local option election.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the requirements of KRS 242.120(3), (4) and (5).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a recanvass reporting form for local option elections, reporting standards, and the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky for a local option election.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements of KRS 242.120(3), (4) and (5).

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

(a) How the amendment will change the existing administrative regulation: This amendment adopts a new reporting form for recanvassed votes for a local option election, amends the procedure to conduct a recanvass when it is for a local option election and amends the reporting requirements when the recanvass is for a local option election.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to establish a reporting form and procedures for conducting a recanvass for a local option election.

(c) How the amendment conforms to the content of the autho-

rizing statutes: This amendment specifically conforms to the provisions of KRS 242.120(3), (4) and (5) by prescribing a recanvass reporting form for local option elections and establishing procedures for conducting a recanvass for local option elections.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will adopt a recanvass reporting form for local option elections and procedures for conducting a recanvass for local option elections under KRS 242.120 (3), (4) and (5).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All county boards of elections and county clerks.

(4) 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 to an existing administrative regulation: The above groups will be furnished the new recanvass reporting form for local option elections and will know the proper recanvass procedures to meet the reporting requirements listed in KRS 242.120(3), (4), and (5).

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' budget.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this amendment to an existing administrative regulation: 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 establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? County boards of elections

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.305 and KRS 242.120

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

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

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

PERSONNEL CABINET Office of the Secretary (Amendment)

101 KAR 2:210. 2014[2013] Plan Year Handbook for the Public Employee Health Insurance Program.

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2014[2013] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2014[2013] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2014[2013] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2014[2013] edition, is incorporated by reference.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: September 6, 2013

FILED WITH LRC: September 9, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2013 at 10:00 a.m. at 501 High Street, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 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: Sharron Burton, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2014 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a

summary of benefits, copays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2014.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2014 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute authorizing the self-insured health plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2014 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2013 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for plan year 2013. This administrative regulation replaces the 2013 plan year handbook with the 2014 plan year handbook. The 2014 plan year handbook contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan for plan year 2014.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees under the Public Employee Health Insurance Program for plan year 2014. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2014 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2014 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 153,860 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation

affects 267,456 members in the self-insured plan including employees, retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by affected entities to comply with the incorporation of the 2014 plan year handbook in the administrative regulation. The 2014 Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health plans offered for the 2014 plan year. Specifically, the 2014 plan year handbook will provide information about the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for the 2014 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will give notice to participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program regarding employer and employee premium contributions for health insurance coverage in 2014. There is no direct cost impact resulting from incorporating the 2014 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2014, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. As a result of health care inflation and federal health care reform mandates effective January 1, 2014, there were necessary employee premium contribution and health benefit modifications for plan year 2014. Also, in plan year 2014, there will be a two percent budgeted employer contribution increase.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees participating in the Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21,105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2014 and each subsequent plan year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT

Kentucky State Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:020. Application forms.

RELATES TO: KRS 322.040, 322.045, 322.070, 322.080, 322.090, 322.120, 322.300

STATUTORY AUTHORITY: KRS 322.070, 322.090, 322.290

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.070 authorizes the board to require the use of forms in the application process and for the applicant to furnish proof of meeting educational requirements. KRS 322.090 requires an applicant who has failed the examination three (3) times to furnish proof of further study. KRS 322.290 authorizes the board to promulgate administrative regulations for the proper performance of its duties. This administrative regulation establishes requirements for forms, transcripts, and additional study.

Section 1. Application Forms. (1)(a) An application by any of the four (4) classes of applicants shall be made on the respective forms issued by the board.

(b) An application made on other than the applicable form shall not be accepted for filing by the board.

(c) An applicant may attach additional sheets to the form if necessary for other evidence, but any attached sheets shall conform to the same size as the printed forms and shall be securely attached thereto.

(d) The board may require clarification or expansion of any of the information on the application in order to evaluate fully applicants' qualifications.

(2) If the board requires a transcript in order to evaluate the qualifying education for licensure or certification, the applicant shall cause the required transcript to be sent directly from the educational institution to the board.

(3) If an applicant fails the same examination three (3) or more times, a new application shall be submitted and shall include evidence satisfactory to the board that the applicant has completed additional coursework. The requirement for this additional coursework may be satisfied by completion of any of the following:

(a) Examination review courses;

(b) College courses; or

(c) Continuing education courses.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Combined Application to take the Principles & Practice of Engineering Examination And For Licensure as a Professional Engineer[Application for Licensure to Practice Professional Engineering]", [(Ed. 2013/8/4/02)];

(b) "Request for Confidential Information - PE", [(Ed. 10/03)];

(c) "Personal Reference - PE", [(Ed. 1/07)];

(d) "Application for Licensure to Practice Professional Land Surveying", [(Ed. 7/1/05)];

(e) "Report of Professional Experience - PLS", [(Ed. 8/1/02)];

(f) "Personal Reference - PLS", [(Ed. 1/04)];

(g) "Personal Reference - LSIT", [(Ed. 1/04)];

(h) "Professional Reference for Reinstatement - PE Applicant", [(Ed. 1/07)];

(i) "Professional Reference for Reinstatement - PLS Applicant", [(Ed. 1/07)];

(j) "Engineering Affidavit", [(Ed. 1/07)];

(k) "Surveying Affidavit", [(Ed. 1/07)];

(l) "Employment Verification - PE Reinstatement", [(Ed. 1/07)];

(m) "Application For Licensure as a Professional Engineer (PE) or Land Surveyor (PLS) By Endorsement", [Certification of Applicant for Licensure - Reciprocity - PE or LS (Ed. 2013/1/07)]; [and]

(n) "Application for Business Entity Permit - PE or LS", [(Ed. 1/07)];

(o) "Application For Land Surveyor-In-Training (LSIT) Certification", ed. 2013; and

(p) "Application For Engineer-In-Training (EIT) Certification", ed. 2013[]].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: September 12, 2013

FILED WITH LRC: September 13, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2013 at 2:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five workdays prior to the date of the hearing. If no written notification of an individual's intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. If the public hearing is held, 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, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the application forms and related materials for licensure.

(b) The necessity of this administrative regulation: KRS 322.070 provides that applications for professional engineer or professional land surveyor licenses shall be on forms prescribed and furnished by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation prescribes the forms necessary for applications for licensure as a professional engineer or land surveyor and certification as a LSIT or EIT.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation prescribes the forms the board will use in evaluating candidates for examination, licensure, and certification.

(2) If 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 deletes two forms that are outdated for their intended purpose, and replaces those forms with ones that more clearly inform applicants for PE licensure by examination, and applicants for PE or PLS licensure by endorsement, of the necessary requirements to achieve licensure status, and enables those applicants to furnish appropriate information to the board. Additionally, the two new forms provide information to applicants for certification as a LSIT or EIT, of what is required to achieve those designations, and enable those applicants to furnish appropriate information to the board. All the forms refine what information the board requires from the applicants to enable the board to evaluate the applicants' compliance with the minimum requirements for certification or licensure as either a LSIT, EIT, PE, or PLS, as appropriate.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary to clarify what information the applicants for certification or licensure as either a LSIT, EIT, PE, or PLS, as appropriate, need to furnish to the board to enable the board to evaluate the applicants' compliance with the minimum requirements for certification or licensure.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation prescribes the forms necessary for licensure or certification in compliance with the requirements of KRS 322.070.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will provide the information necessary for the board to evaluate the qualifications of applicants for licensure or certification as a PE, PLS, EIT, or LSIT, as appropriate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed regulation will not affect businesses, organizations, or state and local governments. It will affect only engineering applicants for licensure by examination, engineers or land surveyors seeking licensure by endorsement, and applicants for certification as a LSIT or EIT to the extent that the amendments provide a means to more clearly present information to the board for evaluation, and will affect the board to the extent that the process of obtaining appropriate information from the applicants is refined.

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

(a) A detailed explanation of the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will continue to fill out applications and the board will continue to evaluate the applications for licensure or certification submitted by applicants for licensure as a PE or PLS, or certification as a LSIT or EIT. No additional actions will be required of either the applicants or the board.

(b) An estimate of the costs imposed on entities identified in question (3) in complying with this administrative regulation or amendment: There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board's evaluation of applications for the PE examination and licensure as a PE, for licensure for endorsement as a PE or PLS, and for certification as a LSIT or EIT will be facilitated by this amendment by providing appropriate information to the board, and the applicants will benefit by supplying appropriate information to the board.

(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: Restricted Agency Funds. The board receives no general or federal 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 funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.070, 322.120

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are no revenue or expenditure effects for any government agency.

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

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no additional cost or revenue generated by this amendment.

**GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)**

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), 314.142, 314.470, 421.500-421.550

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application. On the form ["Application for Initial or Continued SANE Course Approval"], the applicant for approval of a SANE course shall submit evidence of:

(1) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.470, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(2) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided.

(3) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees.

(b) Course outcomes. The outcomes shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner.

(c) Unit objectives. Individual unit objectives shall be stated in operational or behavioral terms with supportive content identified.

(d) Content. The content shall be described in detailed outline format with corresponding lesson plans and time frame. The content shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes.

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3 of this paragraph; and

b. The clinical practice experience required by subparagraph 2 of this paragraph.

2. Clinical practice. The clinical portion of the course shall be a minimum of sixty (60) hours and shall include:

a. Supervised detailed genital inspection, speculum examination, visualization techniques, and equipment - twenty six (26) hours.

b. Supervised mock sexual assault history taking and examination techniques with evaluation - ten (10) hours.

c. Observing relevant civil or criminal trials, meeting with Commonwealth Attorney, or similar legal experience - sixteen (16) hours.

d. Meeting with rape crisis victim advocate or mental health professional with expertise in the treatment of sexual assault individuals - four (4) hours.

e. Meeting with members of law enforcement - four (4) hours.

3. The didactic portion of the course shall include instruction in the following topics related to forensic evaluation of individuals reporting sexual assault:

a. The role and responsibilities of a sexual assault nurse ex-

aminer, health care professional, rape crisis, law enforcement, and judicial system personnel;

b. Application of the statewide medical protocol relating to the forensic and medical examination of individuals reporting sexual assault pursuant to KRS 216B.400(2);

c. Principles and techniques of evidence identification, collection, evaluation, preservation and chain of custody;

d. Assessment of injuries, including injuries of forensic significance;

e. Physician consultation and referral;

f. Medicolegal documentation;

g. Victim's bill of rights, KRS 421.500 through 421.550;

h. Crisis intervention;

i. Dynamics of sexual assault;

j. Testifying in court;

k. Overview of the criminal justice system and related legal issues;

l. Available community resources including rape crisis centers;

m. Historical development of forensic nursing conceptual model;

n. Cultural diversity and special populations;

o. Ethics;

p. Genital anatomy, normal variances, and development stages;

q. Health care implications and interventions; and

r. Developing policies and procedures.

(e) Teaching methods. The activities of both instructor and learner shall be specified in relation to content outline. These activities shall be congruent with stated course objectives and content, and reflect application of adult learning principles.

(f) Evaluation. There shall be clearly defined methods for evaluating the learner's achievement of course outcomes. There shall also be a process for annual course evaluation by students, providers, faculty, and administration.

(g) Instructional or reference materials. All required instructional materials and reference materials shall be identified.

(4) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and

(b) Participant roster, with a minimum of names, Social Security numbers, and license numbers.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date, and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the ["Application for Initial or Continued SANE Course Approval"].

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatis-

fied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.470;

(b) Have completed a board approved SANE educational course or a comparable course. The board or its designee shall evaluate the applicant's course to determine its course comparability. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c) If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(3)(d)3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours to include those topics specified in this paragraph;

(d) Complete the ["]Sexual Assault Nurse Examiner Application for Credential["];

(e) Pay the fee established in 201 KAR 20:240;

(f) Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(g) Provide a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(h) Provide a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(i) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(f) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the ["]SANE Renewal Application["] or ["]Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)["], as applicable, and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, the individual may reinstate the credential by:

(a) Submitting the ["]Application for SANE Credential["];

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(e) Providing a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(f) Providing a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(g) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to adoption by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

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

(a) "Application for Initial or Continued SANE Course Approval", 8/2013[6/97], Kentucky Board of Nursing;

(b) "Sexual Assault Nurse Examiner Application for Credential", 6/2010, Kentucky Board of Nursing;

(c) "SANE Renewal Application", 6/2012, Kentucky Board of Nursing; and

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: August 21, 2013

FILED WITH LRC: September 11, 2013

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2013 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,

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Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for Sexual Assault Nurse Examiner (SANE) programs and credentialing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting 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: It updates an application form.

(b) The necessity of the amendment to this administrative regulation: Application forms require periodic revision.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to revise application forms.

(d) How the amendment will assist in the effective administration of the statutes: By revising this form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for SANE course approval, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will not have to take any additional actions. The revised form will be made available.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will use the revised form.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," August 20, 2013 [December 17, 2012], are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2 News Media (Amended 12/08/09)

1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)

2.1 Inmate Canteen (Amended 10/12/12)

2.12 Abandoned Inmate Funds (Amended 6/12/12)

3.1 Code of Ethics (Amended 8/20/13[07/09/07])

3.5 Sexual Harassment and Anti-Harassment (Amended 8/20/13[5/15/08])

3.9 Student Intern Placement Program (Added 9/13/2010)

3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)

3.11 Drug Free Workplace Employee Drug Testing (Amended 8/20/13[9/13/10])

3.14 Employee Time and Attendance Requirements (Added 9/13/2010)

3.17 Uniformed Employee Dress Code (Amended 8/20/13[4/10/06])

3.22 Staff Sexual Offenses (Added 8/20/13)

3.23 Internal Affairs Investigation (Added 8/25/09)[4.4—Educational Assistance Program (Amended 8/25/09)]

5.1 Research and Survey Projects (Amended 8/20/13[5/15/08])

5.3 Program Evaluation and Measurement (Amended 6/12/12)

6.1 Open Records Law (Amended 5/14/07)

8.2 Fire Safety (Amended 2/15/06)

8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)

9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 12/17/12)

9.6 Contraband (Amended 6/12/12)

9.8 Search Policy (Amended 8/20/13[11/9/10])

9.13 Transport to Court - Civil Action (Amended 07/09/07)

9.18 Informants (Amended 9/13/10)

9.19 Found Lost or Abandoned Property (Amended 10/14/05)

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9.20 Electronic Detection Equipment (Amended 10/14/05)
10.2 Special Management Inmates (Amended 8/20/13[42/47/42])
10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
11.2 Nutritional Adequacy of Inmate Diet (Amended 5/15/08)
11.4 Alternative Dietary Patterns (Amended 5/15/08)
13.1 Pharmacy Policy and Formulary (Amended 8/25/09)
13.2 Health Maintenance Services (Amended 11/9/10)
13.3 Medical Alert System (Amended 10/14/05)
13.5 Advance Healthcare Directives (Added 4/12/05)
13.6 Sex Offender Treatment Program (Amended 5/15/08)
13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
13.8 Substance Abuse Program (Amended 10/12/12)
13.9 Dental Services (Amended 10/14/05)
13.10 Serious Infectious Disease (Amended 12/13/05)
13.11 Do Not Resuscitate Order (Amended 8/9/05)
13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
13.13 Mental Health Services (Added 8/20/13)
14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
14.2 Personal Hygiene Items (Amended 8/20/13[40/42/42])
14.3 Marriage of Inmates (Amended 10/14/05)
14.4 Legal Services Program (Amended 07/09/07)
14.5 Board of Claims (Amended 10/14/05)
14.6 Inmate Grievance Procedure (Amended 8/20/13[6/12/12])
14.7 Sexual Abuse[Assault] Prevention and Intervention Programs (Amended 8/20/13[44/45/06])
15.1 Hair, Grooming and ID Card Standards (Amended 10/12/12)
15.2 Rule Violations and Penalties (Amended 9/13/10)
15.3 Meritorious Good Time (Amended 12/13/05)
15.4 Program Credit (Amended 6/12/12)
15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
15.6 Adjustment Procedures and Programs (Amended 10/14/05)
15.7 Inmate Account Restriction (Amended 11/9/10)
15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
16.1 Inmate Visits (Amended 10/12/12)
16.2 Inmate Correspondence (Amended 8/20/13[40/42/42])
16.3 Inmate Access to Telephones (Amended 10/12/12)
16.4 Inmate Packages (Amended 07/09/07)
17.1 Inmate Personal Property (Amended 8/20/13[6/12/12])
17.2 Assessment Center Operations (Amended 11/15/06)
17.3 Controlled Intake of Inmates (Amended 5/15/08)
17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
18.1 Classification of the Inmate (Amended 07/09/07)
18.2 Central Office Classification Committee (Amended 8/20/13[40/44/05])
18.5 Custody and Security Guidelines (Amended 6/12/12)
18.7 Transfers (Amended 07/09/07)
18.9 Out-of-state Transfers (Amended 2/15/06)
18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
18.13 Population Categories (Amended 07/09/07)
18.15 Protective Custody (Amended 11/15/06)
18.16 Information to the Parole Board (Effective 11/15/06)
18.17 Interstate Agreement on Detainers (Amended 07/09/07)
18.18 International Transfer of Inmates (Amended 5/14/07)
19.1 Governmental Services Program (Amended 10/12/12)
19.2 Sentence Credit for Work (Added 2/13/04)
19.3 Inmate Wage/Time Credit Program (Amended 8/20/13[42/08/09])
20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
22.1 Privilege Trips (Amended 10/14/05)
23.1 Religious Programs (Amended 8/20/13[40/42/42])
25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
25.3 Prerelease Program (Effective 11/15/06)

25.4 Institutional Inmate Furloughs (Amended 07/09/07)
25.6 Community Center Program (Amended 07/09/07)
25.8 Extended Furlough (Amended 4/12/05)
25.10 Administrative Release of Inmates (Amended 11/9/10)
25.11 Victim Services Notification (Amended 8/25/09)
26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12)

(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: August 20, 2013

FILED WITH LRC: August 20, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, 2013 at 9:00 a.m. in the at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 Kentucky Department of Corrections 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 and 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 Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of 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: The amendment brings the Kentucky Department of Corrections into compliance with ACA standards and updates current practices for the department and its institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 28 C.F.R. Ch. I, Pt. 115, Subpart A.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,939 employees, 21,388 inmates, visitors, volunteers, and others who enter state correctional institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation. Others who enter correctional institutions will have to comply with policies and procedures concerning entry, search, contraband and others when they enter an institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(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 state correctional institutions.

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

(a) Initially: No increase in fees is anticipated. All of the PREA costs have not yet been determined and the funding impact is not yet known.

(b) On a continuing basis: No increase in fees is anticipated. All of the PREA costs have not yet been determined and the funding impact is not yet known.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the biennium.

(7) Provide an assessment of whether an 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. All of the PREA costs have not yet been determined and the funding impact is not yet known.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to the regulation do not establish additional fees or increase any existing fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections and each state correctional institution.

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, 28 C.F.R. Ch. I, Pt. 115, Subpart A

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The

amendments to this regulation do not create any revenue for the Kentucky Department of Corrections or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendments to this regulation do not create any revenue for the Kentucky Department of Corrections or other government entity.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The DOC anticipates increases in costs in training, PREA audit costs, staff overtime, medical, transportation and possibly other costs associated with general PREA standards implementation in a currently unknown amount.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The DOC anticipates increases in costs in training, PREA audit costs, staff overtime, medical, transportation and possibly other costs associated with general PREA standards implementation in a currently unknown amount.

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

Revenues (+/-):

Expenditures (+/-): The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The DOC anticipates increases in costs in training, PREA audit costs, staff overtime, medical, transportation and possibly other costs associated with general PREA standards implementation in a currently unknown amount.

Other Explanation:

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 1:100. General advertising practices.

RELATES TO: KRS 244.130, 244.500, 244.590

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.130 authorizes the Department[Office] of Alcoholic Beverage Control to regulate the advertising of alcoholic beverages. This administrative regulation establishes standards for advertising in a manner consistent with modern marketing practices and in conformance with relevant statutory provisions and legislative intent.

Section 1. Definition. "Social media" means all forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.

Section 2. A licensee shall advertise in conformity with the Kentucky Revised Statutes and administrative regulations governing alcoholic beverages.

Section 3[2]. (1) A licensee may use outdoor advertising.

(2) Outdoor advertising by a manufacturer, producer, brewer, winery, distributor, or wholesaler pursuant to this section shall not contain the name or business designation (DBA) or any reference whatsoever to any retail licensee.

Section 4[3]. A licensee may advertise in material directed to the home or business of the consumer if the advertising material is in conformity with the provisions of KRS 244.130 and this administrative regulation.

Section 5[4]. (1) Except as provided by subsection (2) of this section, advertising novelties shall be permitted.

(2) A licensee shall not require, directly or indirectly, the purchase or consumption of any alcoholic beverage as a condition for the sale, gift, or reduction in price of any advertising novelty.

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(3) Except as provided for under KRS 244.590(2)(a), a malt beverage distributor shall not sell, give away, or furnish advertising novelties, in any manner, directly or indirectly, to a retail licensee.

Section 6[5]. A licensee may advertise by means of radio and television.

Section 7. A licensee may advertise by means of the Internet and social media.

Section 8[6]. (1) A licensee may sponsor or cosponsor athletic leagues, tournaments, contests and charitable events provided that the consumption or purchase of alcoholic beverages shall not be a requirement, directly or indirectly, for participation.

(2) A licensee sponsoring or cosponsoring an event described in subsection (1) of this section upon a retail licensed premises shall not require, directly or indirectly, the retail licensee to purchase, sell, or distribute the products of the sponsoring licensee as a condition for participation in or in connection with the event described in this administrative regulation.

Section 9[7]. A licensee shall not use the terms "free", "complementary", or any other terms, which imply or suggest giveaways in the advertising of alcoholic beverages in any advertisement.

Section 10[8]. A licensee shall not advertise any product, service, or activity, which the licensee is prohibited by statute or administrative regulation from selling, providing, or conducting.

FREDERICK A. HIGDON, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 12, 2013

FILED WITH LRC: September 12, 2013 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 2013, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Trey Hieneman, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hieneman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for advertising in a manner consistent with modern marketing practices.

(b) The necessity of this administrative regulation: KRS 244.130 authorizes the Department of Alcoholic Beverage Control to regulate the advertising of alcoholic beverages.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 (1) authorizes the board promulgate administrative regulations governing advertising of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This administrative regulation enables the board to execute its KRS 241.060(1) duty by establishing parameters for advertising of alcoholic beverages.

(2) If 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 to this administrative regulation adds the definition of social media and permits advertising on the Internet and through social media.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to address modern marketing practices. The current regulation does not address advertising on the Internet through websites and social media.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 (1) authorizes the board promulgate administrative regulations governing advertising of alcoholic beverages.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation allows the board to regulate advertisement, pursuant to KRS 241.060 (1).

(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 all licensees who are permitted to advertise by allowing for advertising via the Internet and social media.

(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 previously mentioned businesses will not have to take any actions to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The previously mentioned businesses shall be permitted to advertise via the Internet and social media.

(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 Kentucky Department of Alcoholic Beverage Control is the only government entity affected by this amendment.

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 relative to advertising of alcoholic beverages.

3. Estimate the effect 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 will have no effect on expenditures or revenue of any level of government.

(a) How much 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.

(b) How 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.

(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.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy (Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the Certificate of Need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2013-2015 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2013-2015 State Health Plan", August~~[April]~~ 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 275 East Main Street, 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 24, 2013

FILED WITH LRC: August 30, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2013, at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the

proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until October 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2013-2015 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation revises the 2013-2015 State Health Plan to address the long term care review criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the State Health Plan will assist in the effective administration of KRS 216B.040(2)(a)2.a. The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

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

(a) How the amendment will change this existing administrative regulation: The amendment will revise the long term care review criteria in the State Health Plan.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to comply with the content of the authorizing statutes as the present and future needs of the population are to be addressed in the State Health Plan. The establishment of a nursing facility with more than 250 beds is not desirable from an operational or resident satisfaction standpoint. The amendment would allow a facility with an inventory of at least 250 nursing facility beds to relocate no more than fifty (50) percent of its beds to a county within the same Area Development District which had an increase in the age sixty-five (65) and over population of over fifty (50) percent from 2000-2010 and is projected to experience more than a seventy-five (75) percent growth in the age sixty-five (65) and over population from 2010-2020.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised criteria of the 2013-2015 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the long term care review criteria of the State Health Plan will address the present and future needs of the population and assist in the effective administration of KRS 216B.040(2)(a)2.a.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately ten (10) long term care facilities file certificate of need applications.

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

(a) List 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 which submit certificate of need

applications for long term care services will be subject to the revised criteria set forth in the revised 2013-2015 State Health Plan.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications for long term care services will be subject to the revised criteria set forth in the revised 2013-2015 State Health Plan, which addresses the present and future long term care needs.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed long term care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

910 KAR 1:190. Nutrition program for older persons.

RELATES TO: KRS 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031, 42 U.S.C. 3018, 3025, 3030a to 3030g-22

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(1), (2), 42 U.S.C. 3030e

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3030e authorizes grants to states under approved state plans to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet as the state agency to administer the Older Americans Act in Kentucky and authorizes the cabinet to promulgate administrative regulations necessary to comply with any requirement imposed or required by federal law. This administrative regulation sets forth the standards of operation for the nutrition program for older persons.

Section 1. Definitions. (1) "Area Agencies on Aging and Independent Living" or "AAAIL" means an entity designated by the state to administer, at the local level, the programs funded by the department.

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) Releases funds under contract for the delivery of services within the planning and service area.

(3) "Central kitchen" means an institutional kitchen which is equipped and used for preparing food to be sent to meal sites for service.

(4) "Certified nutritionist" is defined by KRS 310.005 and KRS 310.031.

(5) "Community" means a county designated as urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(6) "Congregate meal" means a meal provided to a qualified individual in a congregate or group setting.

(7) "Congregate nutrition services" means the provision of meals and related nutrition services in a group setting to older individuals that include:

(a) Nutrition education;

(b) Nutrition assessment;

(c) Nutrition counseling;

(d) Nutrition screening;

(e) Opportunities for social engagement at senior centers or on field trips; and

(f) Volunteer roles that contribute to overall health and well-being.

(8) "Congregate setting" means a senior center or a restaurant.

(9) "Cycle menu" means a menu planned for at least five (5) weeks and repeated with modification for seasonal menu items.

(10)(9) "Department" means the Department for Aging and Independent Living.

(11)(40) "Dietary reference intakes" means the nutritional requirements:

(a) Established by the Food and Nutrition Board of the Institute of Medicine of the National Academies; and

(b) Included in DAIL-NP-17.9.8, Meal Planning Nutrient Requirements.

(12)(44) "District" is defined by KRS 205.455(4).

(13)(42) "District nutrition program" means the program approved by the department and administered in each of the fifteen (15) planning and service areas in Kentucky by the districts or other contract agencies.

(14)(43) "Home delivered meal" means a meal provided to a qualified individual in his or her place of residence.

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~~(15)~~~~(14)~~ "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are homebound that include:

- (a) Nutrition screening;
- (b) Nutrition education;
- (c) Nutrition assessment; and
- (d) Nutrition counseling.

~~(16)~~~~(15)~~ "Licensed dietitian" is defined by KRS 310.005(11).

~~(17)~~~~(16)~~ "Meal" means a portion of food that:

~~(a)~~ ~~Consists of a minimum of five (5) dissimilar components;~~
~~(b)~~ Provides the equivalent of one-third (1/3) of the dietary reference intakes;

~~(b)~~~~(e)~~ Meets the requirements of the Dietary Guidelines for Americans; and

~~(c)~~~~(d)~~ Is served with optional condiments to complete the meal as approved by the licensed dietitian or certified nutritionist.

~~(18)~~~~(17)~~ "Modified atmosphere packaging" means the method of extending the shelf life of fresh food products where the atmospheric air inside a package is replaced with a protective gas mix that helps ensure the product stays fresh for as long as possible.

~~(19)~~~~(18)~~ "Nontraditional meal" means a meal approved by the department that is cold, frozen, dried, canned, or modified atmosphere packaging.

~~(20)~~~~(19)~~ "Nutrition counseling" means individualized guidance:

(a) To an individual who is at nutritional risk because of the individual's health or nutritional history, dietary intake, chronic illness, or medications use, or to caregivers; and

(b) Provided one-on-one by a licensed dietitian to address options and methods for improving the individual's nutrition status.

~~(21)~~~~(20)~~ "Nutrition screening" means the identification of those at risk of poor nutrition in accordance with Section 9 of this administrative regulation.

~~(22)~~~~(21)~~ "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

~~(23)~~~~(22)~~ "Nutrition Services Incentive Program" or "NSIP" means federally provided incentives to encourage and reward effective performance by states in the efficient delivery of nutrition meals to older individuals.

~~(24)~~~~(23)~~ "OAA" means the Older Americans Act of 1965, as amended, with the relevant portions of the federal law for purposes of this program codified as 42 U.S.C. 3030a to 3030g-22.

~~(25)~~~~(24)~~ "Rural" means a community with less than 50,000 population living in a rural area as designated by the most current listing from the U.S. Census Bureau.

~~(26)~~~~(25)~~ "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity that specifies the yield and portion size adjusted for the requirements of the nutrition program for older persons.

~~(27)~~~~(26)~~ "State nutrition program for older persons" means the nutrition program administered by the department that includes:

- (a) Meals;
- (b) Nutrition screening and education; and
- (c) Nutrition assessment and counseling.

~~(28)~~~~(27)~~ "Target group" means:

(a) Low-income individuals, including low-income minority older individuals;

(b) Older individuals with limited English proficiency;

(c) Older individuals residing in rural areas; or

(d) Older individuals at risk for institutional placement.

~~(29)~~~~(28)~~ "Traditional meal" means a ready to eat hot meal.

~~(30)~~~~(29)~~ "Urban" means a community with 50,000 or more population living in an urbanized area as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility. (1) Except as provided in subsection (2) of this section, an individual shall be eligible for congregate meals and congregate nutrition services if the individual:

(a) Is aged sixty (60) or older;

(b) Is the spouse of an individual aged sixty (60) or older; or

(c) Has a disability and resides at home with the eligible older individual.

(2) The AAAIL may, in accordance with 42 U.S.C. 3030g-21(2)(H), (I), provide a congregate meal to:

(a) A volunteer providing services during meal hours; or

(b) An individual under age sixty (60) who:

1. Has a disability; and

2. Resides in a housing facility primarily occupied by older individuals at which congregate nutrition services are provided.

(3) An individual shall be eligible for home-delivered meals and home-delivered nutrition services if the individual:

(a) 1. Is a person aged sixty (60) or over, or the spouse of a person aged sixty (60) or over;

2. Is unable to attend a congregate site because of illness or an incapacitating disability; and

3. Does not have a person in the home able to prepare a nutritious meal on a regular basis; or

(b) 1. Is under age sixty (60);

2. Has a disability; and

3. Resides with a homebound individual aged sixty (60) or over.

(4) Eligibility for the Homecare Program home-delivered meals shall be in accordance with 910 KAR 1:180.

Section 3. District Nutrition Funding. The district nutrition program may include meals or nutrition services from the following funding sources:

(1) Congregate or home delivered meals funded by the OAA;

(2) Home delivered meals as specified in 910 KAR 1:180 funded by the State Homecare Program;

(3) A congregate meal as specified in 910 KAR 1:160 funded by the State Adult Day and Alzheimer's Respite Program;

(4) NSIP funding for expansion of meals served in the state; or

(5) Other funds designated in the AAAIL's approved area plan such as United Way or other local funding.

Section 4. Congregate Nutrition Services. (1)(a) Congregate meals shall be provided by a nutrition service provider who, five (5) or more days per week, in each rural or urban community, within the nutrition service provider's service and planning area, provides at least one (1) hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide in a congregate setting.

(b) A waiver may be approved by the department for a rural area to serve less frequently if the budget does not sustain five (5) days per week, pursuant to 42 U.S.C. 3030e.

(2) The requirements established in this subsection shall apply to the transportation of meals to a congregate site.

(a) 1. Bulk foods shall be transported in a stainless steel pan or aluminum disposable pan in an insulated container.

2. Use of plastic shall be restricted to cold foods only.

(b) 1. Hot items shall be transported in a bulk container separated from cold products.

2. A container shall be preheated or prechilled before being loaded.

(3) The order of service shall be as established in this subsection.

(a) Congregate meals shall be served after packaging the home delivered meals.

(b) Nutritional site personnel shall check and record temperatures of congregate meals daily.

(c) Milk or other cold food items shall not be preset on a table prior to meal service.

(d) A table shall not be preset with eating or drinking utensils more than four (4) hours prior to meal service unless each item is individually wrapped.

(e) A preset table shall not be used for activities prior to meal service.

(f) After all participants have been served, volunteers or other staff may be served.

(g) Food items left over at the point of service shall be:

1. Offered as seconds to a participant, if requested by the participant and after all have been served; ~~or~~

2. Donated to a local facility such as a food bank or homeless shelter if overproduced; or

3. Discarded.

(4)(a) Only complete meals shall be claimed for payment.

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(b) Omission of required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement.

(c) Refusal by a participant of specific meal components shall not render that meal incomplete.

~~(5)(a) A participant shall be allowed to carry out left over foods.~~

~~(b) Center staff shall assure that [Each center's carry-out policy shall:~~

~~(a) Prohibit the carryout of potentially hazardous foods in accordance with 902 KAR 45:005;~~

~~(b) Assure] a participant is advised concerning the risks involved if foods are held at unsafe temperatures, [; and]~~

~~(c)[Assure] Staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.~~

~~(6)[A center shall not provide carry-out of unserved or left over meals.~~

~~(7)] A participant shall have an opportunity to complete a satisfaction survey to evaluate meals and service at least annually.~~

~~(7)(8)(a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider or AAAIL and include at a minimum one (1) session per month at each nutrition site.~~

~~(b) The education program shall include a variety of teaching methods on the following topics:~~

- ~~1. Nutrition and its relevance to health promotion and disease prevention;~~
- ~~2. Consumer approaches to food safety and food purchasing;~~
- ~~3. Food fads and diets;~~
- ~~4. Physical activity; and~~
- ~~5. Activities to modify behavior and improve health literacy, including providing information and optimal nutrients.~~

Section 5. Home Delivered Nutrition Services. (1) Home delivered meals shall be provided by a nutrition service provider who, five (5) or more days a week, in each rural or urban community within the nutrition service provider's service and planning area, provides at least one (1) home delivered hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide.

(2)(a) Except as provided in paragraph (b) of this subsection, a meal shall be delivered only to an eligible person in the eligible person's home.

(b) A meal may be left with a designee of the older person if the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.

(c) For a traditional meal, an AAAIL shall train and monitor delivery staff to ensure that the meal participant or designee acknowledges delivery of the meal.

(3) Documentation for the provision of a non-traditional meal shall show:

(a) The participant has expressed a preference for the non-traditional meal or lives off an established route;

(b) Proper storage and heating facilities are available in the home;

(c) The participant is able to prepare and consume the meal alone or with available assistance; and

(d) Cost is no more than a traditional meal.

(4)(a) A provider of home delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures as specified in paragraph (b) of this subsection.

(b) Meals shall be delivered in accordance with the requirements established in this paragraph.

1. Delivery routes shall be established by the nutrition service provider to minimize nutrient loss and to facilitate temperature retention.

2. Meals shall be delivered within four (4) hours from the end of preparation to the final destination.

3. Hot food shall be maintained at or above 135 degrees Fahrenheit.

4. Cold food shall be maintained at or below forty-one (41) degrees Fahrenheit, and ice may be used if the food containers are constructed to prevent water seepage into the food.

5.a. Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route.

b. If the temperatures are not consistent with the requirements of subparagraphs 3. and 4. of this paragraph, the nutrition site personnel shall check and record the meal temperatures daily until the temperatures are consistent with those requirements.

6. Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination.

7.a. Frozen meals shall be maintained in a frozen state during delivery.

b. If the meal has thawed to the extent that ice crystals are not contained in the meal or the temperature is above forty (40) degrees Fahrenheit, the meal shall not be refrozen for later use. The meal shall be either:

(i) Heated and consumed immediately; or

(ii) Discarded.

(5) A participant shall have an opportunity to:

(a) Complete a satisfaction survey developed by the nutrition service provider to evaluate meals and services at least annually; and

(b) Provide ongoing comments for preparation of menus.

(6)(a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider and shall include a minimum of one (1) session each month for the home delivered meal participant.

(b) The program shall include nutrition training as specified in Section 4(8)(b) of this administrative regulation.

(7) A nutrition service provider shall have a contingency plan in place to replace a meal if the meal:

(a) Does not register the correct temperature on delivery; or

(b) Is not delivered.

Section 6. Emergency Meals. (1) Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need.

(2) An emergency meal shall:

(a) Be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these types of meals;

(b) Meet the nutritional requirements of this program;

(c) Follow a menu that has been:

1. Approved by a certified nutritionist or licensed dietitian;

2. Planned for a minimum of three (3) days; and

3. Delivered, reported and billed in the same month; and

(d) Use frozen meals only if the:

1. Participant is able to store, prepare, and consume the meal alone or with available assistance; and

2. Delivery system is arranged so that storage time after delivery is minimal.

(3) Water shall be provided if necessary to prepare a meal.

(4) The menu plan shall include some foods which require no cooking prior to consumption.

(5) One (1) dish meals may be used if the nutritional requirements of the Dietary Guidelines of Americans are met.

(6)(a) Foods may be taken to the nutrition site.

(b) A participant may assist with packaging foods for distribution if the participant is a volunteer at the nutrition site.

(7) An emergency meal package shall be distributed to the eligible homebound client receiving home delivered meals.

(8) Emergency meals may be used for a congregate participant if the center is closed.

Section 7. Nutrition Services Incentive Program (NSIP). (1) Additional funding received from the NSIP for the nutrition program shall be used exclusively to purchase food and shall not be used to pay for another nutrition-related service or for state or agency administrative costs.

(2) The department shall disburse NSIP monies to AAAILs based upon the AAAIL's proportion of the total number of eligible meals served in the state.

(3) The AAAIL shall:

(a) Expend NSIP monies within the fiscal year funds are allocated by the department;

(b) Use the NSIP funds to expand the total number of meals provided in the state;

(c) Not use the NSIP funds to reduce funds from any other grant or contract which the provider may be given;

(d) Maintain records to show the amount of cash received and how it was expended;

(e) Only use the NSIP funds to purchase:

1. Foods approved by the United States Department of Health and Human Services or other foods produced in the United States of America; or

2. Meals if the cost of the meal is quoted as a unit of service cost which includes both food and labor. Ready to serve meals may be purchased on a unit of service cost basis if each meal contains food equivalent in value to the current rate of reimbursement; and

(f) Serve meals through a nutrition service provider under the jurisdiction, control, management, and audit authority of the department and AAAIL and to eligible individuals as described in Section 2 of this administrative regulation.

(4) Financial records kept by the nutrition service provider shall show:

(a) Meals provided are bid without regard to NSIP reimbursement;

(b) NSIP funds are used as a revenue source for expansion of meals served in the state;

(c) The unit of service cost of a meal is not reduced in anticipation of future NSIP reimbursement but is stated as a true cost in both bidding and reporting procedures; and

(d) Monthly financial reports reflect NSIP expenditures.

(5) NSIP funding shall not be used for the following situations:

(a) Meals served to individuals, guests, or staff less than sixty (60) years of age;

(b) Meals served to a person who is paying a set fee for the meal;

(c) Meals that are served to consumers that meet income eligibility criteria under other programs;

(d) Meals used as a non-federal match for other federal program funding;

(e) Alcoholic beverages and vitamin supplements;

(f) Sponsored meals if a set fee or charge is involved; or

(g) Meals served to individuals in nursing homes, adult day care, or assisted living facilities if the meal is a part of the per diem.

Section 8. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with NSIP cash resources;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving, and in direct supervision of employees;

(d) Equipment costs for capital items such as a:

1. Range;

2. Dishwasher;

3. Truck or van;

4. Steam table; or

5. Freezer;

(e) The costs of space, related utility costs, equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, insurance, and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home delivery of meals to a participant;

(b) Mileage and maintenance of vehicle costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services; and

(d) Project management costs, including personnel, equipment, and supply costs.

(3)(a) A food service contract bid shall be structured in accordance with Kentucky's Procurement Code, KRS Chapter 45A.

(b) Meals shall:

1. Be bid without regard to funding source; and

2. Contain both a meal preparation cost and a delivery cost.

Section 9. Responsibilities of AAAIL. (1) An AAAIL shall have written policies and procedures to carry out the AAAIL's responsibilities as established in this subsection. The AAAIL shall:

(a) Solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science or an individual with comparable expertise in the planning of nutritional services pursuant to 42 U.S.C. 3030g-21(1);

(b) Pursuant to 42 U.S.C. 3030g-21(2)(K), encourage individuals who distribute nutrition services to provide homebound older individuals with medical information approved by health care professionals, such as informational brochures on how to get vaccines in the individual's community for:

1. Influenza;

2. Pneumonia; and

3. Shingles;

(c) Provide implementation and management of the state nutrition program for older persons;

(d) Assure that a nutrition service provider provides:

1. At least one (1) meal per day in a congregate nutrition site or provide home delivered meals based upon a determination of a participant's needs;

2. Meals to reach the maximum number of eligible older individuals consistent with the requirement established in 42 U.S.C. 3025(a)(2)(E);

3. Nutrition screening and counseling and nutrition education services to address a participant's assessed needs and ensure that nutrition funds are used to provide these services.

a. Nutrition screening shall be provided for all participants of the nutrition program for older persons as outlined in the state data system at least annually.

b. The results of this screening shall be reported to the department.

c. A participant who receives a nutrition score of six (6) or higher shall have documentation of further action based on a referral to a:

(i) Dietitian for nutrition counseling; or

(ii) Participant's physician;

4. Nutrition services to keep older persons healthy, reduce the older adult's risk of chronic disease and disability, and help the older adult to manage chronic diseases and conditions;

5. An emergency plan for back up food preparation sites, nutrition sites, and meal delivery; and

6. A plan for furnishing emergency meals during an emergency, such as:

a. Inclement weather conditions;

b. Power failure;

c. A disaster that may cause isolation; or

d. A medical emergency;

(e) Use meal contributions to increase the number of meals served and facilitate access to these meals; and

(f) Monitor the nutrition program a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies and central kitchens a minimum of one (1) time per year.

(2) If the AAAIL is the provider of meals and services, the AAAIL shall comply with all responsibilities of the nutrition service provider as specified in Section 12 of this administrative regulation.

Section 10. Nutrition Site Operation. (1)(a) Congregate meal services shall be funded at a site if the site has been approved by the department.

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(b) The services shall not become operational until ~~an on-site visit by~~ the department grants written approval through review of ~~has been~~

1. A completed DAIL-NP-17.96 Kitchen Checklist; and

2. a. Pictures documenting compliance with the checklist; or

b. An on-site visit ~~and approval given~~ by the department ~~office~~, except for an emergency situation].

(2) Prior to approval of any site, ~~it~~ the site shall be inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes; and

(c) The department for compliance with 42 U.S.C. 3027(a)(8).

(3) A site shall:

(a) Be located as near as possible to the target group of individuals;

(b) Comply with the confidentiality and disclosure requirements of KRS 194A.060(2); and

(c) Be clearly identified to the public with a sign.

(4)(a) Selection of a site to offer congregate meal services shall be based on information on older people in its service area and on the advice of public and voluntary agencies serving the elderly.

(b) The following factors shall be given consideration in choosing a site:

1. Demographic information and projections;

2. Accessibility to the maximum number of people who are socially or economically deprived;

3. Proximity to other services and facilities;

4. Convenience to public or private transportation or location within comfortable walking distance for participants;

5. Clear of structural barriers or difficult terrain; and

6. The safety and security of participants and staff.

(5) A site shall:

(a) Take necessary actions to create for handicapped older people barrier-free access and movement within the facility in conformance with the requirements of 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973;

(b) Make arrangements for security of site equipment, furniture, and files;

(c) Have signs visible for exits, entrances, and other areas of importance;

(d) Have safety features appropriate to special uses in a bathroom and kitchen;

(e) Adopt procedures for fire safety, including:

1. Fire drills;

2. Inspection;

3. Maintenance of fire extinguishers; and

4. Training by fire department personnel; and

(f) Maintain and repair the site.

(6) A site that does not meet the requirements of subsection (5) of this section shall comply with a corrective action plan administered by the department.

(7)(a) A site shall have an individual, either volunteer or paid staff, who shall be responsible for the administration of the site.

(b) At least one (1) staff person or trained volunteer shall be present at the site during hours of operation.

(c) A site shall have available the following minimum services:

1. At least one (1) hot meal in accordance with Section 4 of this administrative regulation;

2. Outreach services that may be funded by Title III-B or Title III-C;

3. Information and referral; and

4. Nutrition education.

(d) An optional service may be home-delivered meals.

(e) A congregate meal shall be:

1. Prepared on site;

2. Catered; or

3. Prepared in a central kitchen.

Section 11. Kitchen Approval. (1) A new kitchen preparing a congregate meal or home delivered meal shall not become operational until inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes;

(c) An AAAIL inspector for compliance with DAIL-NP-17.96, Kitchen Checklist; and

(d) The department utilizing the ~~using a~~ DAIL-NP-17.96, Kitchen Checklist, submitted in accordance with Section 10(1)(b)1. and 2. of this administrative regulation, for compliance with:

1. Facility specifications;

2. Food preparation; and

3. ~~Use of equipment~~;

4. ~~Delivery~~; and

5. ~~Clean up~~.

(2) The department shall notify the AAAIL of kitchen operation approval within ten (10) days of the initial on-site visit.

Section 12. Responsibilities of Nutrition Service Providers. (1) The nutrition service provider contracting to provide meals and services shall have written policies and procedures to carry out the responsibilities of the service provider as established in this subsection. The nutrition service provider shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018;

(b) Provide a recipient with an opportunity to voluntarily contribute to the cost of the service. Pursuant to 42 U.S.C. 3030c-2(b), voluntary contributions:

1. May be solicited if the method of solicitation is noncoercive; and

2. Shall be encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level, at contribution levels based on the actual cost of the service;

(c) Assure that an older person shall not be denied service because the older person does not or cannot contribute to the cost of the service;

(d) Protect the privacy of each older person with respect to contributions;

(e) Report to appropriate officials, such as Department for Community Based Services, EMS, local law enforcement, for follow-up, conditions or circumstances which place the older person or his or her household in imminent danger;

(f) Make arrangements for services to older persons in weather-related emergencies;

(g) Assist a participant with access to benefits under other programs;

(h) Employ staff to ensure that the service staff is based on the number of program participants and the type of services provided;

(i) Have a site director, on a paid or volunteer basis, responsible for activities at the site.

1. Congregate and home delivered meals funds shall pay up to a maximum of five (5) hours, per day, of a paid site director's time; and

2. Other funding sources may be used to pay for additional hours;

(j) Permit staff of the AAAIL, the cabinet, and federal representatives to monitor and inspect the operation of the site; and

(k) Attend meetings and training sessions as requested by the AAAIL and the department.

(2) The service provider contracting to provide meals only shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018; and

(b) Abide by the requirements of subsection (1)(i) through (k) of this section.

Section 13. Meal Planning. (1) Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of foods. The use of saturated fats, salt, and sugar shall be restricted to maintain good health, in accordance with the dietary reference intakes and the Dietary Guidelines for Americans.

(2) Menus shall be:

(a) Planned through a formal procedure for soliciting participant comments established in each district;

(b) Planned a minimum of one (1) month in advance or, if a cycle menu is planned, used at least for five (5) weeks;

(c) In compliance with the Dietary Guidelines for Americans;

(d) Provided to each participating older individual and shall include a meal plan to provide:

1. A minimum of thirty-three and one-third (33 1/3) percent of the allowances established in the dietary reference intakes, if the individual is provided one (1) meal per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(I);

2. A minimum of sixty-six and two-third (66 2/3) percent of the allowances established in the dietary reference intakes, if the individual is provided two (2) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(II); or

3. ~~One hundred (100)~~ percent of the allowances established in the dietary reference intakes, if the individual is provided three (3) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(III);

(e) Altered to meet participant dietary needs such as low sugar, low salt, low fat, or low cholesterol;

(f) Certified by the licensed dietitian or certified nutritionist as meeting the nutritional requirements;

(g) Adhered to without substitution, unless a substitution is approved by the licensed dietitian or certified nutritionist. If a substitution is approved, the nutrition service provider shall provide a copy of the revised menu to the AAAIL; and

(h) 1. Posted in a conspicuous location, including at each congregate meal site and each preparation site; or

2. Provided in advance to each participant receiving home delivered meals.

(3) Special menus which allow for religious, ethnic, cultural, or regional dietary practices may be provided if foods and preparations are available.

(4)(a) Additional foods, such as fresh produce, baked items, or donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition but shall not be considered part of the reimbursable program meal.

(b) Home-canned foods shall not be used.

(5)(a) If a potluck meal is served at a particular site, a congregate meal shall not be served at that site for that particular mealtime.

(b) Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

~~Section 14.[Consultation Requirements. A licensed dietitian or certified nutritionist shall provide an AAAIL with a minimum of four (4) hours of consultation per month including:~~

~~(1) Food quality, safety, and service;~~

~~(2) Assessment of employee practices;~~

~~(3) Staff training;~~

~~(4) Menu preparation or review;~~

~~(5) Assurances that nutrition screening, assessment, and counseling is completed;~~

~~(6) Reliable nutrition education is provided to a congregate and home delivered meal participant; and~~

~~(7) Individual diet counseling.~~

~~Section 15.] Food Procurement. (1) Foods purchased for use in the nutrition program shall be obtained from sources which conform to the nutritional requirements of 902 KAR 45:005.~~

~~(2)(a) Term contracts may be used for repetitively purchased items.~~

~~(b) Fixed quantity contracting shall be used if definite items and quantities can be determined for future delivery dates.~~

~~Section 15[46]. Food Preparation. (1)(a) Standardized recipes shall be used in food preparation and yield shall be indicated.~~

~~(b) Recipes shall specify the yield and portion size adjusted for the requirements of the nutrition program for older persons.~~

~~(2) The standards established in this section shall apply for quality control.~~

~~(a) Food production standards.~~

1. Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe.

2. Protein foods shall be cooked completely once the cooking cycle has begun.

3. Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe.

4. Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) The holding time for hot foods shall not exceed four (4) hours after preparation.

(c) Temperature standards.

1. Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 135 degrees Fahrenheit during transportation and service.

2. Cold foods shall not exceed forty-one (41) degrees Fahrenheit during transportation and service.

3. Thermometers used to check food temperatures shall be:

a. Of metal stem-type construction;

b. Numerically scaled;

c. Accurate to plus or minus three (3) degrees Fahrenheit; and

d. Checked periodically to ensure that each thermometer is registering accurately.

4. Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.

(3)(a) Food preparation facilities shall be in compliance with state and local fire, health, sanitation, and safety regulations which apply to food service operations.

(b) A food preparation and service kitchen shall be inspected periodically by state and local health officials and the department dietitian.

(4) Standards for food handling and personal hygiene shall be in accordance with the food service requirements of the Kentucky Food Code governed by 902 KAR 45:005.

Section 16[47]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-NP-17.96 Kitchen Checklist", edition 5/12;

(b) "DAIL-NP-17.9.8, Meal Planning Nutrient Requirements", December 30, 2009; and

(c) "Dietary Guidelines for Americans", 2010, U.S. Department of Agriculture, and U.S. Department of Health and Human Services.

(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.

(3) The Dietary Guidelines for Americans may be accessed online at www.dietaryguidelines.gov.

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 10, 2013

FILED WITH LRC: September 13, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2013 at 9:00 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2013. Send written notification of intent to be heard at the public hearing or written comments to:

VOLUME 40, NUMBER 4 – OCTOBER 1, 2013

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the nutrition program for older persons.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Cabinet to administer the nutrition program for older persons.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 42 U.S.C. 3030e authorizes grants to states under approved state plans to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. This administrative regulation establishes standards with respect to an older person receiving nutritional services such as congregate meals, home-delivered meals, NSIP meals, nutrition screening, assessment, and counseling.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance to affected entities required to provide nutritional services based on the needs of older persons pursuant to 42 U.S.C. 3030e.

(2) If 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 definitions, clarifies that congregate meals can be served at a senior center or restaurant, removes the requirement that a meal consist of a minimum of five (5) dissimilar components, allows for overproduced food to be donated to a local facility, food bank, homeless shelter or allow participants to carry out leftover food.

(b) The necessity of the amendment to this administrative regulation: It is necessary that an Area Agency on Aging and Independent Living (AAAIL) and their nutrition service providers understand the amendments to this regulation to operate the nutrition program for older persons.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies and establishes standards for AAAILs and their service providers to provide the nutritional services in conformity with 42 U.S.C. 3030a through 3030g-22.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide guidance to the AAAIL and AAAIL's service provider to implement the nutrition requirements of 42 U.S.C. 3030a through 3030g-22.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department, fifteen (15) AAAILs and their nutrition service providers (that may include the 15 AAAILs or other nutrition service providers), and older persons receiving nutritional services under 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: DAIL will monitor the AAAILs for compliance of the amendments to this administrative regulation. The AAAIL will comply with the amendments to this administrative regulation and make ready for department monitoring of such amendments. The nutrition providers will comply with the amendments to this administrative regulation and make ready for AAAIL monitoring of such amendments. The older person receiving nutritional services will benefit from the amendments to this administrative regulation because the amendments further clarify better operation of the nutrition program.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DAIL will monitor the AAAIL in implementation of the amendments to this administrative regulation. The AAAIL will monitor their nutrition service provider in implementation of the amendments

to this administrative regulation. The older person receiving nutritional services have no actions to comply with.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All parties will benefit from better operation of the nutrition program for older persons.

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

(a) Initially: FY 2014 - \$7,716,350 Federal and \$1,361,708 State Match.

(b) On a continuing basis: \$7,716,350 Federal and \$1,361,708 State Match.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? FY 2014 - \$7,716,350 Federal, and FY 2014 - \$1,361,708 - State Match.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Aging and Independent Living

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 3030e, KRS 194A.050(1), and KRS 205.204(1) and (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 not generate additional revenue.

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

(c) How much will it cost to administer this program for the first year? FY 2014 \$7,716,350 Federal, and \$1,361,708 State Match.

(d) How much will it cost to administer this program for subsequent years? \$7,716,350 Federal, and \$1,361,708 State Match.

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.3030e

2. State compliance standards. KRS 194A.050(1), KRS 205.204(1) and (2)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 3030e

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. None

NEW ADMINISTRATIVE REGULATIONS

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 4:095. Buying and selling mounted wildlife specimens.

RELATES TO: KRS 150.010, 150.180, 150.411

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.4111(1), 150.4112, 150.4113

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting wildlife. KRS 150.4111 authorizes licensed taxidermists to buy and sell legally taken inedible wildlife parts for the purpose of mounting. KRS 150.4112 authorizes the department to promulgate administrative regulations to allow resident nonprofit 501(c)(3) institutions to sell donated mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. KRS 150.4113 authorizes the department to promulgate administrative regulations to allow the sale and purchase of mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. This administrative regulation establishes the requirements for the buying and selling of mounted wildlife specimens.

Section 1. Definitions. (1) "Deer" means *Odocoileus virginianus*.

(2) "Elk" means *Cervus elaphus nelsoni*.

(3) "Wild turkey" means *Meleagris gallopavo sylvestris*.

Section 2. (1) A mounted wildlife specimen purchased from or sold to a licensed taxidermist under KRS 150.4111 shall be exempt from the requirements of this administrative regulation.

(2) A mounted wildlife specimen may be bought or sold by any person or entity, except as prohibited by federal law.

(3) A nonprofit charitable, religious, or educational institution which has qualified for exemption under Section 501(c)(3) of the Internal Revenue Code may sell mounted wildlife specimens if the mounts have been donated, except as prohibited by federal law.

(4) Prior to selling a mounted wildlife specimen of a species established in paragraphs (a) through (e) of this subsection, any person or entity established in subsection (2) or (3) of this section shall first obtain a registration number from the department for each mounted specimen of:

(a) Black bear;

(b) Bobcat;

(c) Deer;

(d) Elk; or

(e) Wild turkey.

(5) Each person or entity established in subsection (2) or (3) of this section shall obtain a registration number for each specimen of the species established in subsection (4) of this section by completing the online registration process on the department's Web site at fw.ky.gov.

(6) Prior to selling a mounted wildlife specimen of a species established in subsection (4) of this section, a person or entity established in subsection (2) or (3) of this section shall affix the registration number to the mount in a clear and legible manner.

(7) A department registration number shall be required for each sale of a mounted wildlife specimen established in subsection (4) of this section.

(8) A department registration number shall not be required for any mounted wildlife specimen not established in subsection (4) of this section.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: September 11, 2013

FILED WITH LRC: September 12, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 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 October 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the requirements for the buying and selling of mounted wildlife specimens.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to satisfy the requirements of KRS 150.4112 and 150.4113, two recently effective statutes enacted to allow the sale of mounted wildlife specimens.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting wildlife. KRS 150.4111 authorizes licensed taxidermists to buy and sell legally taken inedible wildlife parts for the purpose of mounting. KRS 150.4112 authorizes the department to promulgate administrative regulations to allow resident nonprofit 501(c)(3) institutions to sell donated mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. KRS 150.4113 authorizes the department to promulgate administrative regulations to allow the sale and purchase of mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation establishes the process and recording requirements for the buying and selling of mounted wildlife specimens, as required by KRS 150.4112 and 150.4113.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Those individuals or entities, including nonprofit organizations, who wish to buy or sell mounted wildlife specimens will now have the statutory and regulatory authority to do so.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals or entities, including nonprofit organizations, who wish to buy or sell mounted wildlife specimens will be required to follow the requirements of this administrative regulation. Any person, entity, or nonprofit organization wishing to sell a wildlife mount of a deer, elk, turkey, black bear, or bobcat will be required to obtain a registration number from the department for each specimen.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals and other entities will now be able to legally buy and sell mounted wildlife specimens. Nonprofit organizations will now be able to accept donated mounted wildlife specimens in order to sell them to raise funds.

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

(a) Initially: There will be a minimal cost to the department initially to set up the online registration process.

(b) On a continuing basis: There will be minimal cost on a continuing basis.

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

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied in this administrative regulation, as all individuals and entities 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 Department's Administrative Services Division and Law Enforcement Division will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1)(c), 150.4111, 150.4112, and 150.4113.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There will be a small cost with relation to employees' time in creating an online registration system, and once created, the system will require minimal effort to maintain.

Revenues (+/-):

Expenditures (+/-):

Other Explanation

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 102:005. Definitions for 401 KAR Chapter 102.

RELATES TO: KRS 224.1-415, 224.1-400, 224.1-405

STATUTORY AUTHORITY: KRS 224.1-415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-415 establishes the Brownfield Redevelopment Program and authorizes the cabinet to administer the program. This administrative regulation defines terms used in 401 KAR Chapter 102 Brownfield Redevelopment Program.

Section 1. Definitions. (1) "Applicant" means the person that owns or intends to acquire property and makes certification to the cabinet in accordance with KRS 224.1-415(2) and 401 KAR Chapter 102.

(2) "Cabinet" is defined by KRS 224.1-010(9).

(3) "Hazardous substance" is defined by KRS 224.1-400(1)(a).

(4) "Person" is defined by KRS 224.1-010(17).

(5) "Petroleum" is defined by KRS 224.60-115(15).

(6) "Petroleum storage tank" is defined by KRS 224.60-115(16).

(7) "Pollutant or contaminant" is defined by KRS 224.1-400(1)(f).

(8) "Property" means real property, the expansion, redevelopment, or reuse of which is complicated due to:

(a) A release of petroleum governed by KRS 224.1-405 or a release of a hazardous substance, or pollutant or contaminant governed by KRS 224.1-400 that occurred prior to acquisition of the property by the applicant; or

(b) A potential presence or perceived presence of a release of a hazardous substance, or pollutant or contaminant or petroleum based on an all appropriate inquiry.

(9) "Property management plan" means the plan submitted to the cabinet in accordance with 401 KAR 102:020.

(10) "Release" means:

(a) For a hazardous substance, or pollutant or contaminant, the definition established by KRS 224.1-400(1)(b); or

(b) For petroleum or petroleum product, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing from a source other than a petroleum storage tank into the environment including the abandonment or discarding of barrels, containers, and other closed receptacles, but excludes emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, and the normal application of fertilizer.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2013

FILED WITH LRC: September 13, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2013 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 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: Louanna Aldridge, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 102 Brownfield Redevelopment Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the terms necessary to administer the Brownfield Redevelopment Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.1-415 by defining terms for 401 KAR Chapter 102 Brownfield Redevelopment Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the development of a Brownfield Redevelopment Program as established by KRS 224.1-415 by defining the terms necessary to administer the program.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as 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 entities that participate in the Brownfield Redevelopment Program by providing definitions of terms used in 401 KAR Chapter 102.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation provides definitions of terms for a voluntary program and will require no action on the part 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): This administrative regulation has no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation has no compliance benefits as it only provides definitions of terms.

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

(a) Initially: This administrative regulation will not cost the administrative body to implement as it only provides definitions of terms.

(b) On a continuing basis: This administrative regulation will not cause the administrative body to incur any continuing costs as it only provides definitions of terms.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not require a funding source as it only provides definitions of terms.

(7) Provide an assessment of whether an 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 require an increase in fees or funding to implement as it only provides definitions of terms.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any new fees. Fees are established in 401 KAR 102:010.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation defines terms that are applicable to the 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 provides definitions of terms for a voluntary program and will only impact those who choose to participate.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1-415.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on the expenditures and revenues of a state or local government agency as it only provides definitions of 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? This administrative regulation will not generate revenue as it only provides definitions of terms.

(b) How 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 as it only provides definitions of terms.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms. Costs for administering the program will be addressed in 401 KAR 102:010.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms. Costs for administering the program in subsequent years will be addressed by a fee in 401 KAR 102:010.

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 administrative regulation will have no fiscal impact as it only provides definitions of terms.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 102:010. Brownfield Redevelopment Program.

RELATES TO: KRS 224.1-010, 224.1-400, 224.1-405, 224.1-415, KRS Chapter 322, KRS Chapter 322A, 40 C.F.R. Part 312

STATUTORY AUTHORITY: KRS 224.1-415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-415 establishes the Brownfield Redevelopment Program and authorizes the cabinet to implement the program. This administrative regulation establishes application procedures for a person that owns or intends to acquire property as defined in 401 KAR 102:005, Section 1(8). This administrative regulation also outlines the process and procedures for obtaining the cabinet's determination for the applicability of KRS 224.1-415 for a person that owns or intends to acquire property as defined in 401 KAR 102:005, Section 1(8).

Section 1. Application procedures. An applicant shall submit to the cabinet a complete application that consists of the following:

(1) A completed Brownfield Liability Relief Eligibility Form, DEP

6056. This form shall be signed by the applicant and include a certification of the requirements in KRS 224.1-415(2)(a);

(2) A copy of the most recently recorded deed for the property;

(3) A property management plan as established in 401 KAR 102:020;

(4) A check or money order for \$2,500 made payable to the Kentucky State Treasurer; and

(5) Documentation that the applicant made an all appropriate inquiry into previous ownership and uses of the property prior to the acquisition of the property.

(a) For property acquired after February 1, 2014, documentation that an all appropriate inquiry was conducted in accordance with 40 C.F.R. Part 312 within 180 days prior to submission of the application; or

(b) For property acquired prior to February 1, 2014, documentation that:

1. An all appropriate inquiry was conducted in accordance with generally accepted practices when the property was acquired; and

2. An all appropriate inquiry was conducted in accordance with 40 C.F.R. Part 312 within 180 days prior to submission of the application.

Section 2. Cabinet review and notification. Within thirty (30) days of receipt of an application, the cabinet shall issue in writing to the applicant:

(1) A Notice of Eligibility, in accordance with Section 3 of this administrative regulation;

(2) A Notification of Concurrence, in accordance with Section 4 of this administrative regulation and as provided by KRS 224.1-415(2)(b); or

(3) A notice from the cabinet that:

(a) The application is administratively incomplete; or

(b) A final determination has been made that the application does not meet the provisions of KRS 224.1-415.

Section 3. Notice of Eligibility. (1) An applicant who has met the requirements for the Notification of Concurrence in Section 4(1) of this administrative regulation with the exception of holding legal title to the property shall receive a Notice of Eligibility. The Notice of Eligibility shall serve as documentation that the applicant has met the requirements for the Notification of Concurrence with the exception of holding legal title to the property.

(2) The Notice of Eligibility shall remain in effect for a period of 180 days from the date the all appropriate inquiry, submitted pursuant to Section 1(5)(a) of this administrative regulation, was conducted.

(3) The cabinet may extend the Notice of Eligibility's expiration date upon receipt of an updated all appropriate inquiry conducted pursuant to 40 C.F.R. Part 312. The new expiration date shall not be greater than one (1) year from the date the all appropriate inquiry, submitted pursuant to Section 1(5)(a) of this administrative regulation, was conducted.

(4) The Notice of Eligibility that has not expired shall have the effect of a Notification of Concurrence letter upon the applicant obtaining legal title to the property until the applicant receives from the cabinet a Notification of Concurrence letter or denial of a Notification of Concurrence letter in accordance with subsections (6) and (7) of this section.

(5) The applicant who has a Notice of Eligibility that has not expired shall, upon obtaining legal title to the property, submit to the cabinet a copy of the recorded deed for the property, identifying the applicant as the owner of the property within sixty (60) business days of the deed being filed in the county clerk's office.

(6) The cabinet shall, within fourteen (14) business days of the cabinet's receipt of the documentation required in subsection (5) of this section, issue or deny a Notification of Concurrence as provided in Section 2(2) or (3) of this administrative regulation to an applicant previously issued a Notice of Eligibility letter.

Section 4. Notification of Concurrence. (1) The Notification of Concurrence shall be issued to an applicant who has met the conditions in Section 1 of this administrative regulation and KRS 224.1-415.

(2) The Notification of Concurrence shall state:

(a) The cabinet concurs that the intended future use of the property will not interfere with the remediation of the release of petroleum, a hazardous substance, or pollutant or contaminant as required by the cabinet, increase the impacts of the release of petroleum, a hazardous substance, or pollutant or contaminant on human health or the environment, or expose the public and environment to unacceptable harm; and

(b) The cabinet finds that the applicant shall not be liable for performing characterization, correcting the effects of the release of petroleum, a hazardous substance, or pollutant or contaminant on the environment, or performing corrective action pursuant to KRS 224.1-400 or 224.1-405.

(3) An applicant that has received a Notification of Concurrence shall:

(a) Comply with the provisions of KRS 224.1-415; and

(b) Manage the property in accordance with the cabinet approved property management plan and the most recent amendments to the property management plan approved by the cabinet.

Section 5. Discovered Releases. (1) The Notification of Concurrence shall apply to all releases of petroleum, a hazardous substance, or pollutant or contaminant certified by the applicant in the application and in future notifications submitted pursuant to subsection (2) of this section.

(2) If a release or evidence of a previously suspected release of petroleum, a hazardous substance, or pollutant or contaminant is discovered subsequent to acquisition of the property by an applicant who has been issued a Notice of Eligibility or a Notification of Concurrence, the applicant shall:

(a) Notify the Division of Waste Management in writing of the presence of the release within fourteen (14) business days of the release discovery; and

(b) If the release was not certified in the application and was not caused by the applicant, notify the Division of Waste Management in writing that the certification submitted as part of the application in Section 1(1) of this administrative regulation is also applicable to the discovered release.

(3) If the applicant who was previously issued a Notice of Eligibility receives a letter denying a Notification of Concurrence in accordance with Section 3(7) of this administrative regulation, then the notification requirements in subsection (2) of this section shall no longer be applicable.

(4) All releases of petroleum, hazardous substances, or pollutants or contaminants caused by the applicant shall be addressed by the applicant in accordance with the applicable local, state, or federal law.

Section 6. Change in Property Use. Subsequent to a Notification of Concurrence, the applicant shall provide written notice to the Division of Waste Management if a change in property use is proposed that is different from the property use identified in the approved property management plan.

Section 7. Rescission of Notification. The director of the Division of Waste Management may rescind or modify in writing the Notice of Eligibility and the Notification of Concurrence if the applicant is not in compliance with Section 4(2) of this administrative regulation. The director of the Division of Waste Management shall rescind in writing the Notice of Eligibility and the Notification of Concurrence if the cabinet determines that the applicant submitted a false certification as part of its application package.

Section 8. Compliance with other laws. Nothing in this administrative regulation alters in any way any other legal obligations the applicant would be subject to under any local, state, or federal law.

Section 9. Incorporation by Reference. (1) "Brownfield Liability Relief Eligibility Form", DEP 6056, September 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00a.m. to 4:30p.m.

(3) This material may also be obtained on the division's Web

site at waste.ky.gov.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2013

FILED WITH LRC: September 13, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2013 at 10:00 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 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: Louanna Aldridge, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes application procedures for the Brownfield Redevelopment Program for a person that owns or intends to acquire property, the redevelopment, expansion, or reuse of may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant, or petroleum. This administrative regulation also outlines the process and procedures for an applicant to obtain the cabinet's determination of the applicability of KRS 224.1-415.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish application procedures to implement the Brownfield Redevelopment Program. This administrative regulation is also necessary to outline the process and procedures for an applicant to obtain the cabinet's determination of the applicability of KRS 224.1-415.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines the process through which an applicant will certify their eligibility and the cabinet will find and concur that an applicant is eligible and the future use of the property is considerate of environmental conditions in conformance with KRS 224.1-415.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the development of a Brownfield Redevelopment Program as established by KRS 224.1-415 by establishing application procedures and outlining the process for obtaining the cabinet's determination of the applicability of KRS 224.1-415.

(2) If 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 applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as 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 may impact individuals, businesses, state and local governments, and organizations statewide. The number of individuals or organizations that will be affected will be based on the number of applications submitted as this is a voluntary program. This administrative regulation impacts the Division of Waste Management by creating the Brownfield Redevelopment 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: This administrative regulation will require no action by the individuals, businesses, or local governments as it is a voluntary program. State government is required by KRS 224.1-415 to administer the Brownfield Redevelopment Program. This administrative regulation outlines the process and procedures that the cabinet must follow to review and act upon submittals from the applicants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation has no cost to individuals, businesses, or local governments as it is a voluntary program. However, if an entity chooses to participate in the program, the fee associated will be \$2,500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide entities that choose to participate in a path for redeveloping environmentally impaired Kentucky properties for beneficial re-use without assuming responsibility for cleanup or characterization under KRS 224.1-400 and KRS 224.1-405. The positive effects of redeveloped properties include job creation, economic development, maximizing property value and tax base, and a positive impact on blighted properties. In addition, identification, re-use of a property thought management of environmental issues, and any voluntary remediation effort by participants will increase the protectiveness of human health and the environment.

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

(a) Initially: The effort required for review of the applications will be heavily dependent on the complexity of the property. The personnel costs for review of applications are anticipated to range from \$740 to \$4,000. The exact number of initial applications cannot be determined; however, there is considerable interest in the program.

(b) On a continuing basis: The personnel costs for review of notifications and amendments to property management plans will be heavily dependent on the complexity of the property. The personnel costs for review of notifications, verification of continued compliance, and review of amended property management plans are anticipated to range from \$420-\$1,000 per year for each property that is managed under the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cost associated with the implementation and enforcement of this program will be partially funded by the application fee within this administrative regulation. The additional costs of the program will be funded by the federal and restricted 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: This administrative regulation establishes a fee to partially fund the program, however there could be a need for additional funding which would be heavily dependent on the number of applications and the complexity of the projects received.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee that will only apply to entities that voluntarily apply to the Brownfield Redevelopment Program. The fee is \$2,500 per application.

(9) TIERING: Is tiering applied? Tiering will not be applied. This administrative regulation treats all applicants 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? Redevelopment of impaired properties in Kentucky will benefit state and local governments by creating jobs, tax revenues, responsible management, and positively impacting blighted properties. The Division of Waste Management will have an increased workload to administer the Brownfield Redevelopment Program as required by KRS 224.1-415.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1-415

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 \$2,500 per application for the Division of Waste Management. This administrative regulation will also benefit state and local governments by creating increased tax revenues due to the redevelopment of properties within their jurisdiction. The amount of revenues generated will depend on the number of applications received and cannot be determined at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenues generated will depend on the number of applications received and cannot be determined at this time.

(c) How much will it cost to administer this program for the first year? The cost to administer the program will depend on the number of applications received and cannot be determined at this time. However, there is considerable interest in the program. It is anticipated that the average personnel costs to review each application received in the first year will be \$1,066. The application management, notification reviews, and amended property management plan reviews, if applicable during the first year, will depend on the complexity of the property and are unable to be determined at this time.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program in subsequent years will depend on the number of applications received and number of applications with ongoing oversight and cannot be determined at this time. However, there is considerable interest in the program. It is anticipated that each property that has been approved for the program will have average personnel costs of \$420 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The exact fiscal impact will be dependent on the number of applications received and the complexity of the properties. The fiscal benefit to state and local governments will be increased jobs and tax revenues as a result of redevelopment. There will be an increased cost to state government to administer the program that will be partially funded by the fee proposed in this administrative regulation.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 102:020. General requirements for a Property Management Plan for Brownfield Redevelopment Program.

RELATES TO: KRS 224.1-400, 224.1-405, 224.1-415, 224.80, 40 C.F.R. Part 312

STATUTORY AUTHORITY: KRS 224.1-415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-415 establishes the Brownfield Redevelopment Program and authorizes the cabinet to administer the program. This administrative regulation establishes the general requirements for the property management plan required so that the cabinet may concur in writing that the future use of the property is in accordance with KRS 224.1-415(2)(b) as part of the Brownfield Redevelopment Program.

Section 1. Property Management Plan. A property management plan shall include:

A description of the historical and current use of the property;

(2) A description of the intended future use of the property;

(3) All available information related to:

(a) Known releases of petroleum governed by KRS 224.1-405;

(b) Known releases of a hazardous substance, or pollutant or contaminant governed by KRS 224.1-400; and

(c) The potential presence or perceived presence of a release of a hazardous substance, or pollutant or contaminant or petroleum that occurred prior to acquisition of the property;

(4) A map that identifies the location of all known hazardous substances, or pollutants or contaminants, or petroleum on the property;

(5) A map that identifies known locations on the property where usage, processes, or activities, that occurred prior to acquisition, indicate the potential presence or perceived presence of a release of a hazardous substance, or pollutant or contaminant or petroleum;

(6) A description of all engineering controls, institutional controls, site characterization activities or remedial actions, if any, currently in place or proposed, by the applicant or a responsible party, to enable the cabinet to make a determination in accordance with KRS 224.1-415(2)(b).

(a) A schedule to submit to the cabinet, information and documents related to the implementation of engineering controls, institutional controls, site characterization activities or remedial actions, implemented by the applicant subsequent to the cabinet's issuance of a Notification of Concurrence; and

(b) A schedule to periodically inspect and verify to the cabinet that engineering controls and institutional controls, remain in place and are effective;

(7) A description of the methods employed and data collected to ensure that the property use shall not:

(a) Interfere with the remediation of the release as required by the cabinet;

(b) Increase the impacts of the release on human health and the environment; or

(c) Expose the public and environment to unacceptable harm; and

(8) A certification statement from a professional engineer or professional geologist, licensed in accordance with KRS Chapter 322 or KRS Chapter 322A, that the property management plan meets the requirements of subsection (7) of this section.

Section 2. Amendments to the property management plan. (1) The applicant shall submit an amended property management plan if the methods employed in the currently approved property management plan are inadequate to ensure that the use of the property shall not:

(a) Interfere with the remediation of the release as required by the cabinet;

(b) Increase the impacts of the release on human health and the environment; or

(c) Expose the public and environment to unacceptable harm.

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(2) The amended property management plan shall include:

(a) A description of any change to the intended future use of the property;

(b) All available information related to releases not previously identified in the currently approved property management plan and all approved amended property management plans;

(c) A revised schedule to periodically inspect and verify to the cabinet that engineering controls and institutional controls, remain in place and are effective;

(d) A description of the methods employed and data collected to ensure that the property use shall not:

1. Interfere with the remediation of the release as required by the cabinet;

2. Increase the impacts of the release on human health and the environment; or

3. Expose the public and environment to unacceptable harm; and

(e) A certification statement from a professional engineer or professional geologist, licensed in accordance with KRS Chapter 322 or KRS Chapter 322A, that the property management plan meets the requirements of Section 1(7) of this administrative regulation.

(3) Within sixty (60) days of receipt of an amended property management plan, the cabinet shall:

(a) Issue a letter of approval if the cabinet determines the amended property management plan meets the requirements of Section 1(7) of this administrative regulation; or

(b) Notify the applicant of required changes for approval.

(4) The applicant shall implement the amended property management plan upon approval of the cabinet. Implementation of the amended property management plan shall not occur until cabinet approval is obtained.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2013

FILED WITH LRC: September 13, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2013 at 10:00 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 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: Louanna Aldridge, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general requirements for the property management plan and procedures for the cabinet to concur in writing that the future use of the property is in accordance with KRS 224.1-415(2)(b) as part of the Brownfield Redevelopment Program. The positive effects of the Property Management Plan include protection of human health and the environment, clarifying appropriate care of an environmentally impacted property and enabling a flexible approach that maximizes property value.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the general requirements for the property management plan and procedures for the

cabinet to concur in writing that the future use of the property is in accordance with KRS 224.1-415(2)(b) as part of the Brownfield Redevelopment Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the requirements of the property management plan as part of the Brownfield Redevelopment Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the development of a Brownfield Redevelopment Program as established by KRS 224.1-415 by establishing the general requirements for the property management plan and the cabinet's concurrence as outlined in KRS 224.1-415(2)(b).

(2) If 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 applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as 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 may impact individuals, businesses, and organizations statewide. The number of individuals or organizations that will be affected will be based on the number of applications received and complexity of the property management plans submitted as this is a voluntary program. This administrative regulation impacts the Division of Waste Management by creating the Brownfield Redevelopment 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: This administrative regulation will require no action by the individuals, businesses, or local governments as it is a voluntary program. The cabinet is required by KRS 224.1-415 to administer the Brownfield Redevelopment Program. This administrative regulation outlines the general requirements of a property management plan and the cabinet's basis for concurrence.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation has no cost to individuals, businesses, or local governments as it is a voluntary program. Fees are established in another administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide entities that choose to participate in a path for re-use in beneficially redeveloping environmentally impaired Kentucky without assuming responsibility for cleanup or characterization under KRS 224.1-400 and KRS 224.1-405. The positive effects of redeveloped properties include job creation, economic development, maximizing property value and tax base, and a positive impact on blighted properties. In addition, identification, re-use of a property thought management of environmental issues, and any voluntary remediation effort by participants will increase the protectiveness of human health and the environment.

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

(a) Initially: The effort required for review of the application and property management plan will heavily dependent on the complexity of the property. The personnel costs for review of applications and property management plans are anticipated to range from \$740 to \$4,000. The exact number of initial applications and property management plans cannot be determined; however, there is

considerable interest in the program.

(b) On a continuing basis: The personnel costs for review of notifications and compliant property management will be heavily dependent on the complexity of the property. The personnel costs for review of notifications, verification of continued compliance, and review of amended property management plans are anticipated to range from \$420-\$1,000 per year for each property that is managed under the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cost associated with the implementation and enforcement of this program will be partially funded by the application fee established in 401 KAR 102:010. The additional costs of the program will be funded by restricted and federal 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 funding will be necessary to implement this administrative regulation. The application fee established in 401 KAR 102:010 is considered of the costs to the agency 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 a fee.

(9) TIERING: Is tiering applied? Tiering will not be applied. This administrative regulation treats all applicants 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? Cities, counties, fire departments and school districts will not be impacted directly by this administrative regulation. Redevelopment of impaired properties in Kentucky will benefit these entities with the creation of jobs, tax revenues, responsible management, and improved aesthetics. The Division of Waste Management will have an increased workload to administer the Brownfield Redevelopment Program as required by KRS 224.1-415.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1-415.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 benefit state and local governments by creating increased tax revenues due to the redevelopment of properties within their jurisdiction. The amount of revenues generated will depend on the number of applications and property management plans received and cannot be determined at this time.

(b) How 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 benefit state and local governments by creating increased tax revenues due to the redevelopment of properties within their jurisdiction. The amount of revenues generated will depend on the number of applications and property management plans received and cannot be determined at this time.

(c) How much will it cost to administer this program for the first year? The cost to administer the program will depend on the number of applications and property management plans received and cannot be determined at this time. However, there is considerable interest in the program. It is anticipated that the average personnel costs to review each application received in the first year will be \$1,066. The application management, notification reviews, and property management plan reviews or amendments, if applicable during the first year, will depend on the complexity of the property and are unable to be determined at this time.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program in subsequent

years will depend on the number of applications and property management plans received and the complexity of the properties which cannot be determined at this time. However, there is considerable interest in the program. It is anticipated that each property that has been approved for the program will have average personnel costs of \$420 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The exact fiscal impact will be dependent on the number of applications and property management plans received along with the complexity of the properties. The fiscal benefit to state and local governments will be increased jobs and tax revenues as a result of redevelopment. There will be an increased cost to state government to administer the program that will be partially funded by the fee proposed in another administrative regulation.

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

900 KAR 10:030. Kentucky Health Benefit Exchange Eligibility and Enrollment in a Qualified Health Plan.

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 eligibility and enrollment in a qualified health plan in the individual market 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) "Advance payments of the premium tax credit" or "APTC" means payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange in accordance with section 1412 of the Affordable Care Act.

(2) "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) "Annual open enrollment period", except for the initial open enrollment period, is defined by 45 C.F.R. 155.410(e).

(4) "Applicant" is defined by 45 C.F.R. 155.20.

(5) "Application filer" is defined by 45 C.F.R. 155.20.

(6) "Benefit year" means a calendar year for which a health plan provides coverage for health benefits.

(7) "Catastrophic plan" means a health plan that meets the conditions of 45 C.F.R. 156.155.

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

(9) "Cost sharing" is defined by 45 C.F.R. 155.20.

(10) "Cost sharing reduction" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in the KHBE or for an individual who is an Indian enrolled in a qualified health plan in the KHBE.

(11) "Date of the notice" means the date on the notice plus five

(5) calendar days.

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

(13) "Dependent" is defined by 26 C.F.R. 54.9801-2.

(14) "Enrollee" means an eligible individual enrolled in a qualified health plan.

(15) "Family size" means the number of individuals in a family for whom a taxpayer properly claims a deduction for a personal exemption under 151 of the Internal Revenue Code for the taxable year.

(16) "Federal poverty level" or "FPL" means the most recently published federal poverty level, updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as of the first day of the annual open enrollment period for coverage in a qualified health plan through the Kentucky Health Benefit Exchange.

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

(18) "Household income" is defined by 26 C.F.R. 1.36B-1(e).

(19) "Indian" is defined by 25 U.S.C. 450b(d).

(20) "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 a qualified health plan through an exchange for the 2014 benefit year.

(21) "Insurance affordability program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act;

(b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act.

(22) "Internal Revenue Code" or "Code" means the Internal Revenue Code of 1986.

(23) "Issuer" is defined by 45 C.F.R. 144.103.

(24) "Kentucky Children's Health Insurance Program" or "KCHIP" means the separate child health program established by the Commonwealth of Kentucky under title XXI of the Social Security Act in accordance with implementing regulations at 42 C.F.R. 457.

(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, that includes an:

(a) Individual exchange; and

(b) Small Business Health Options Program.

(26) "Lawfully present" is defined by 45 C.F.R. 155.2.

(27) "MAGI-based income" is defined by 42 C.F.R. 435.603(e).

(28) "Medicaid" means the program established under title XIX of the Social Security Act in accordance with implementing regulations at 42 C.F.R. parts 430 through 456.

(29) "Minimum essential coverage" is defined by 26 U.S.C. 5000A(f).

(30) "Non-citizen" is defined by 8 U.S.C. 1101(a)(3).

(31) "Personal exemption deduction" means an amount that can be deducted from taxable income based on the exemption given to any tax filer who cannot be claimed as a dependent by another tax filer.

(32) "Public insurance program" means an insurance program that is paid for by a governmental entity and provided to consumers, including Medicare, Medicaid, or Children's Health Insurance Program.

(33) "Qualified Health Plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification issued by the OKHBE.

(34) "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market.

(35) "Qualifying coverage in an eligible employer-sponsored

plan" means coverage in an eligible employer-sponsored plan that meets the affordability and minimum value standards specified in 26 U.S.C. 36B(c)(2)(C).

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

(37) "Silver-level" is defined by 42 U.S.C. 18022(d)(1)(B).

(38) "Special enrollment period" as described in 45 C.F.R. 155.420 means a period during which a qualified individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP through the KHBE outside the initial and annual open enrollment periods.

(39) "Tax filer" is defined by 45 C.F.R. 155.300.

Section 2. Eligibility Standards to Enroll in a Qualified Health Plan. (1) An applicant shall be eligible to enroll in a QHP through the KHBE if the applicant:

(a) 1. Is a citizen or national of the United States;

2. Is a non-citizen who is lawfully present in the United States and is reasonably expected to become a citizen or national; or

3. Is a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(b) Except for an incarceration pending a disposition of a charge, is not incarcerated; and

(c) Meets a residency requirement in 45 C.F.R. 155.305(a)(3).

(2) An applicant may submit an application as described in 45 C.F.R. 155.405 for a determination of eligibility at any time during a year; however, the applicant shall only enroll during open enrollment or special enrollment periods.

(3) An applicant determined eligible for enrollment in a QHP as set forth in subsection (1) of this section shall be eligible to enroll in a QHP during:

(a) An initial open enrollment period as set forth in Section 6(2) of this administrative regulation;

(b) An annual open enrollment period as set forth in Section 6(3) of this administrative regulation; or

(c) A special enrollment period as set forth in Sections 6(4) and 7 of this administrative regulation.

(4) An applicant determined eligible to enroll in a QHP who does not select a QHP within the applicable enrollment period as set forth in Sections 6 and 7 or is not eligible for an enrollment period, who seeks a new enrollment period prior to the date on which the applicant's eligibility is redetermined as set forth in Section 9 of this administrative regulation, shall attest to whether or not information affecting the applicant's eligibility has changed since the most recent eligibility determination.

(5) An applicant shall submit an application for enrollment in a QHP:

(a) Via the KHBE Web site at www.kynect.ky.gov;

(b) By telephone by contacting the KHBE contact center at 1-800-459-6328;

(c) By mail; or

(d) In person.

(6)(a) An applicant who has a Social Security number shall provide the number to the KHBE.

(b) An individual who is not seeking coverage for himself or herself shall not be required to provide a Social Security number, except as specified in Section 3(8) of this administrative regulation.

(7) In accordance with 45 C.F.R. 155.310(a)(2), an individual who is not seeking coverage for himself or herself on any application or any supplemental form shall not be required to provide information regarding:

(a) Citizenship;

(b) Status as a national; or

(c) Immigration status of an individual who is not seeking coverage for himself or herself on an application or supplemental form.

(8)(a) Except as specified in Section 11(2) of this administrative regulation, an applicant who requests an eligibility determination for an insurance affordability program shall have an eligibility determination for all insurance affordability programs.

(b) An applicant who requests an eligibility determination for a QHP only shall not have an eligibility determination for an insurance affordability program.

(9) An applicant shall not provide information beyond the mini-

amount necessary to determine eligibility and enrollment through the KHBE.

Section 3. Eligibility Standards for Advanced Payments of the Premium Tax Credit. (1) A tax filer shall be eligible for APTC if:

(a) The tax filer is expected to have a household income greater than or equal to 100 percent of the FPL but not more than 400 percent of the FPL for the benefit year for which coverage is requested; and

(b) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year:

1. Meets the requirements for eligibility for enrollment in a QHP through the KHBE as specified in Section 2 of this administrative regulation; and

2. Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-2(a)(2) and (c).

(2) A tax filer who is a non-citizen and lawfully present and ineligible for Medicaid for reason of immigration status shall be eligible for APTC if:

(a) The tax filer meets the requirement in subsection (1)(b) of this section;

(b) The tax filer is expected to have a household income of less than 100 percent of the FPL for the benefit year for which coverage is requested; and

(c) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year is:

1. A non-citizen who is lawfully present; and

2. Not eligible for Medicaid for reason of immigration status.

(3) A tax filer shall attest that one (1) or more applicants for whom the tax filer attests that a personal exemption deduction for the benefit year shall be claimed is enrolled in a QHP that is not a catastrophic plan.

(4) A tax filer shall not be eligible for APTC if HHS notifies the KHBE that APTCs were made on behalf of the tax filer or tax filer's spouse for a year in accordance with 45 C.F.R. 155.305(f)(4).

(5) An APTC amount shall be:

(a) Calculated in accordance with 26 C.F.R. 1.36B-3; and

(b) Allocated between QHPs and stand-alone dental policies in accordance with 45 C.F.R. 155.340(e).

(6) An applicant for APTC may accept less than the full amount of APTC for which the applicant is determined eligible.

(7) An APTC shall be authorized by the KHBE on behalf of a tax filer only if the KHBE obtains necessary attestations from the tax filer that:

(a) The tax filer shall file an income tax return for the benefit year in accordance with 26 U.S.C. 6011 and 6012;

(b) If the tax filer is married, a joint tax return shall be filed for the benefit year;

(c) No other taxpayer shall be able to claim the tax filer as a dependent for the benefit year; and

(d) The tax filer shall claim a personal exemption deduction on the tax filer's return for the applicants identified as members of the tax filer's family, including the tax filer and the spouse of the tax filer, in accordance with 45 C.F.R. 155.305(f)(4).

(8) An application filer who is not an applicant shall provide the Social Security number of a tax filer only if the applicant attests that the tax filer:

(a) Has a Social Security number; and

(b) Filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(9) The effective date for APTC shall be:

(a) For an initial eligibility determination, in accordance with the dates specified in Section 6 (1), (2), (3) and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates specified in 45 C.F.R. 155.330(f) and 155.335(i), as applicable.

(10) An employer shall be notified of an employee's eligibility for APTC in accordance with 45 C.F.R. 155.310(h).

Section 4. Eligibility Standards for Cost-sharing Reductions. (1) An applicant shall be eligible for cost-sharing reductions if the ap-

plicant:

(a) Meets the eligibility requirements for enrollment in a QHP as set forth in Section 2 of this administrative regulation;

(b) Meets the requirements for APTC as set forth in Section 3 of this administrative regulation;

(c) Is expected to have a household income that does not exceed 250 percent of the FPL for the benefit year for which coverage is requested; and

(d) Except for an enrollee who is an Indian, enrolls in a silver-level QHP through the KHBE.

(2) An eligibility determination for cost-sharing reductions shall be based on the following categories:

(a) 1. An individual who is expected to have a household income greater than or equal to 100 percent of the FPL and less than or equal to 150 percent of the FPL for the benefit year for which coverage is requested; or

2. An individual who is eligible for APTC as set forth in Section 3(2) of this administrative regulation, a household income less than 100 percent of the FPL;

(b) An individual who is expected to have a household income greater than 150 percent of the FPL and less than or equal to 200 percent of the FPL for the benefit year for which coverage is requested; and

(c) An individual who is expected to have a household income greater than 200 percent of the FPL and less than or equal to 250 percent of the FPL for the benefit year for which coverage is requested.

(3)(a) If two (2) or more individuals enrolled in the individual market under a single policy would be eligible for different cost sharing amounts if enrolled in separate policies, the individuals under the single policy shall be deemed by the KHBE to be collectively eligible only for the last category listed in paragraph (b) of this subsection for which all the individuals covered by the policy would be eligible.

(b) The categories of eligibility shall be an individual:

1. Not eligible for changes to cost sharing;

2. Described in 45 C.F.R. 155.350(b);

3. Described in subsection (2)(c) of this section;

4. Described in subsection (2)(b) of this section;

5. Described in subsection (2)(a) of this section; and

6. Described in 45 C.F.R. 155.350(a).

(4) The effective date for cost-sharing reductions shall be:

(a) For an initial eligibility determination, in accordance with the dates specified in Section 6(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates specified in 45 C.F.R. 155.330(f) and 45 C.F.R. 155.335(i), as applicable.

(5) An employer shall be notified of an employee's eligibility for cost-sharing reductions in accordance with 45 C.F.R. 155.310(h).

Section 5. Verification processes. (1) Verification of eligibility for an applicant seeking enrollment in a QHP shall be performed in accordance with:

(a) 45 C.F.R. 155.315; and

(b) Kentucky QHP/APTC Eligibility Verification Plan as incorporated by reference in this administrative regulation.

(2) Verification of eligibility for an applicant or tax filer who requests an eligibility determination for an insurance affordability program shall be in accordance with:

(a) 45 C.F.R. 155.320; and

(b) Kentucky QHP/APTC Eligibility Verification Plan as incorporated by reference in this administrative regulation.

Section 6. QHP Enrollment Periods and Effective Dates of Coverage. (1) A qualified individual shall enroll in a QHP or an enrollee shall change from one (1) QHP to another QHP during the initial open enrollment period.

(2) A qualified individual or enrollee who selects a QHP during the initial open enrollment period shall have an effective date of coverage of:

(a) January 1, 2014, if the QHP selection is received on or before December 15, 2013;

(b) The first day of the following month, if the QHP selection is

received between the first and fifteenth day of the month for any month between January, 2014, and March 31, 2014; or

(c) The first day of the second following month, if the QHP selection is received between the sixteenth and last day of the month for any month between December, 2013, and March 31, 2014.

(3)(a) For a benefit year beginning on or after January 1, 2015, a qualified individual shall be able to enroll in a QHP or an enrollee shall be able to change from one (1) QHP to another QHP during an annual open enrollment period that:

1. Begins October 15 of the preceding calendar year; and
2. Extends through December 7 of the preceding calendar year.

(b) A qualified individual or enrollee who selects a QHP during an annual open enrollment period shall have an effective date of coverage of January 1 of the following benefit year.

(4)(a) A qualified individual shall enroll in a QHP or an enrollee shall change from one (1) QHP to another QHP during a special enrollment period as specified in Section 7 of this administrative regulation.

(b) A qualified individual or an enrollee who selects a QHP during a special enrollment period shall have an effective date of coverage as set forth in Section 7 of this administrative regulation.

(5)(a) An initial enrollment in a QHP shall not be effective until the first month's premium is received by the QHP issuer.

(b) The first month's premium shall be received by a QHP issuer no later than seven (7) days after an effective date of coverage as set forth in subsection (1)(b) of this section.

Section 7. Special Enrollment Periods. (1) Except as specified in subsection (3) of this section, a qualified individual or enrollee shall have sixty (60) days from the date of a qualifying event as set forth in subsection (2) of this section to select a QHP.

(2) A qualified individual may enroll in a QHP or an enrollee or a dependent of an enrollee may change QHPs during a special enrollment period if:

(a) The qualified individual or a dependent of the qualified individual loses minimum essential coverage;

(b) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, or placement for adoption;

(c) The qualified individual who was not previously a citizen, national, or lawfully present gains status as a citizen, national, or lawfully present;

(d) The qualified individual or dependent of the qualified individual enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or agent of the OKHBE or HHS;

(e) The enrollee or dependent of the enrollee demonstrates to the KHBE that the QHP in which the enrollee or the dependent of the enrollee is enrolled substantially violated a provision of its contract in relation to the enrollee;

(f) The enrollee is determined newly eligible or newly ineligible for APTC or has a change in eligibility for CSR;

(g) The qualified individual or a dependent of the qualified individual who is enrolled in qualifying coverage in an employer-sponsored plan is determined newly eligible for APTC in part on a finding that the individual will no longer be eligible for qualifying coverage in the employer-sponsored plan in the next sixty (60) days and is allowed to terminate existing coverage;

(h) The qualified individual or enrollee or a dependent of the qualified individual or the enrollee gains access to new QHPs as a result of a change in residence;

(i) The qualified individual is an Indian who may enroll in a QHP or change from one (1) QHP to another QHP one (1) time per month; or

(j) The qualified individual or a dependent of the qualified individual demonstrates to the OKHBE that the individual meets other exceptional circumstances.

(3) The qualified individual or dependent of the qualified individual described in subsection (2)(g) of this section may access this special enrollment period sixty (60) days prior to the end of the individual's qualifying coverage in an eligible employer-sponsored plan.

(4) The date of the triggering event for the loss of minimum essential coverage shall be:

(a) In the case of a decertification of a QHP as set forth in 900 KAR 10:010, the date of the notice of decertification; or

(b) For all other cases, the date the qualified individual or dependent of the qualified individual loses eligibility for minimum essential coverage.

(5) Loss of minimum essential coverage shall include those circumstances described in 26 C.F.R. 54.9801–6(a)(3)(i) through (iii).

(6) Loss of minimum essential coverage shall not include termination or loss due to:

(a) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage; or

(b) A situation allowing for a rescission as specified in 45 C.F.R. 147.128.

(7) Except as specified in subsection (8) of this section, a qualified individual or enrollee who selects a QHP during a special enrollment period shall have an effective date of coverage of:

(a) The first day of the following month for a selection made between the first and the fifteenth day of any month; or

(b) The first day of the second following month for a selection made between the sixteenth and last day of any month.

(8) A qualified individual or enrollee who selects a QHP:

(a) For a birth, adoption, or placement for an adoption, shall have an effective date of coverage of the date of the birth, adoption, or placement for adoption; or

(b) For a marriage or loss of minimum essential coverage, shall have an effective date of coverage of the first day of the month following the marriage or loss of minimum essential coverage.

(9) An individual described in subsection (2)(g) of this section:

(a) May access a special enrollment period sixty (60) days prior to the end of the individual's qualifying coverage in the employer-sponsored plan; and

(b) Who accesses a special enrollment as set forth in paragraph (a) of this subsection shall not be eligible for APTCs until the end of the individual's qualifying coverage through the eligible employer-sponsored plan.

Section 8. Eligibility Redetermination During a Benefit Year. (1) Eligibility shall be redetermined for an enrollee during a benefit year if the KHBE receives and verifies:

(a) New information reported by an enrollee; or

(b) Updated information obtained in accordance with 45 C.F.R. 155.315(b)(1) and 45 C.F.R. 155.320(b) that identifies a:

1. Death; or

2. For an enrollee who is receiving APTCs or CSRs, a change in eligibility for a public insurance program.

(2) Except as specified in subsection (3) of this section, an enrollee or an application filer, on behalf of an enrollee, shall report within thirty (30) days:

(a) A change related to an eligibility standard in Section 2, 3, 4, 10, or 11 of this administrative regulation; and

(b) Via a method described in Section 2(5) of this administrative regulation.

(3) An enrollee who did not request an eligibility determination for an insurance affordability program shall not report a change related to income.

(4) If new information provided by an enrollee in accordance with subsection (1)(a) of this section is verified:

(a) Eligibility shall be redetermined in accordance with the standards in Section 2, 3, 4, 10, or 11 of this administrative regulation;

(b) The enrollee shall be notified of the redetermination in accordance with the requirements in 45 C.F.R. 155.310(g); and

(c) If applicable, the enrollee's employer shall be notified in accordance with the requirement specified in 45 C.F.R. 155.310(h).

(5) If updated information obtained in accordance with subsection (1)(b) of this section regarding death or related to eligibility not regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information; and

2. The projected enrollee's eligibility determination after con-

sideration of the information; and

(b) Have thirty (30) days from the date of the notice in paragraph (a) of this subsection to notify the KHBE if the information is inaccurate.

(6) If an enrollee responds to the notice in subsection (4)(a) of this section, contesting the updated information in the notice, the KHBE shall proceed in accordance with 45 C.F.R. 155.315(f).

(7) If an enrollee does not respond to the notice in subsection (4)(a) of this section within the thirty (30) day timeframe specified in subsection (4)(b) of this section, the KHBE shall:

(a) Redetermine eligibility in accordance with the standard in Section 2, 3, 4, 10, or 11 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements specified in 45 C.F.R. 155.310(g).

(8) With the exception of information regarding death, if updated information regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information regarding income, family size, and family composition obtained in accordance with subsection (1)(b) of this section; and

2. The projected eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice to:

1. Confirm the updated information; or

2. Provide additional information.

(9) If the enrollee responds to the notice in subsection (8)(a) of this section by confirming the updated information, the KHBE shall:

(a) Redetermine the enrollee's eligibility in accordance with Section 2, 3, 4, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements specified in 45 C.F.R. 155.310(g).

(10) If the enrollee does not respond to the notice in subsection (8)(a) of this section within the thirty (30) day timeframe specified in subsection (8)(b) of the section, the KHBE shall maintain the enrollee's existing eligibility determination without considering the updated information in subsection (8)(a) of this section.

(11) If the enrollee responds with more updated information, the KHBE shall verify the updated information in accordance with 45 C.F.R. 155.315 and 155.320.

(12) The effective date of a change resulting from a redetermination pursuant to this section shall be in accordance with 45 C.F.R. 155.330(f).

(13) The amount of an APTC or eligibility for a cost-sharing reduction as a result of an eligibility redetermination in accordance with this section shall be recalculated in accordance with 45 C.F.R. 155.330(g).

Section 9. Annual Eligibility Redetermination. (1) A qualified individual shall:

(a) Have an annual redetermination of eligibility; and

(b) Be sent a notice of the annual redetermination that includes:

1. The data obtained under subsection (2) of this section;

2. The data used in the qualified individual's most recent eligibility determination; and

3. The projected eligibility determination for the following year, after considering the information in subparagraph 1. of this paragraph.

(2)(a) A qualified individual requesting an eligibility determination for an insurance affordability program shall authorize the release of updated tax return information, data regarding Social Security benefits, and data regarding MAGI-based incomes as described in 45 C.F.R. 155.320(c)(1) for use in the qualified individual's eligibility redetermination.

(b) Eligibility shall not be redetermined for a qualified individual requesting an eligibility determination for an insurance affordability program who does not authorize the release of updated tax return information.

(3) A qualified individual may authorize the release of tax return information for a period of no more than five (5) years based on a single authorization, provided the authorization permits the qualified individual to:

(a) 1. Decline to authorize the release of updated tax return

information; or

2. Authorize the release of updated tax return information for fewer than five (5) years; and

(b) Discontinue, change, or renew the authorization at any time.

(4) A qualified individual, an application filer, or an authorized representative, on behalf of the enrollee, shall:

(a) Report any changes with respect to the information listed in the notice described in subsection (1)(b) of this section:

1. Within thirty (30) days from the date of the notice; and

2. Via a method listed in Section 2(5) of this administrative regulation; and

(b) Sign and return the notice described in subsection (1)(b) of this section within thirty (30) days of the date of the notice.

(5) Any information reported by a qualified individual under subsection (4) of this section shall be verified as set forth in Section 5 of this administrative regulation.

(6) For a qualified individual who fails to sign and return the notice described in subsection (1)(b) of this section within the thirty (30) day period specified in subsection (4) of this section, eligibility shall be redetermined as set forth in subsection (7)(a) of this section.

(7)(a) After the thirty (30) day period specified in subsection (4) of this section:

1. Eligibility of a qualified individual shall be redetermined in accordance with the standards in Section 2, 3, 4, 10, or 11 of this administrative regulation using the information provided in the notice, as supplemented with any information reported by the qualified individual verified in accordance with Section 5 of this administrative regulation;

2. The qualified individual shall be notified in accordance with the requirements in 45 C.F.R. 155.310(g); and

3. If applicable, the qualified individual's employer shall be notified in accordance with 45 C.F.R. 155.310(h).

(b) If a qualified individual reports a change with respect to the information provided in the notice specified in subsection (1)(b) of this section that has not been verified by the KHBE as of the end of the thirty (30) day period specified in subsection (4) of this section, eligibility shall be redetermined after verification in accordance with Section 5 of this administrative regulation.

(8) The effective date of a redetermination in accordance with this section shall be the later of:

(a) The first day of the coverage year following the year in which the notice in subsection (1)(b) of this section is issued to the qualified individual; or

(b) In accordance with 45 C.F.R. 155.330(f).

(9) If an enrollee remains eligible for coverage in a QHP upon annual redetermination, the enrollee shall remain in the QHP selected the previous year unless the enrollee terminates coverage from the QHP in accordance with Section 13 of this administrative regulation.

(10) Eligibility shall not be redetermined if a qualified individual was redetermined eligible in accordance with this section during the prior year, and the qualified individual was not enrolled in a QHP at the time of the redetermination and has not enrolled in a QHP since the redetermination.

Section 10. Eligibility to Enroll in a QHP that is a Catastrophic Plan. (1) In addition to the requirements in Section 2 of this administrative regulation, to enroll in a QHP that is a catastrophic plan, an applicant shall:

(a) Not have attained the age of thirty (30) before the beginning of the plan year; or

(b) Have a certificate of exemption from the shared responsibility payment issued by the KHBE or HHS for a plan year in accordance with:

1. 26 U.S.C. 5000A(e)(1); or

2. 26 U.S.C. 5000A(e)(5).

(2) Verification related to eligibility for enrollment in a QHP that is a catastrophic plan shall be in accordance with 45 C.F.R. 155.315(j).

Section 11. Special Eligibility Standards and Processes for Indians. (1) An applicant who is an Indian shall be eligible for the

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special cost-sharing described in section 1402(d)(2) of the ACA if the applicant:

(a) Meets the requirements specified in 45 C.F.R. 155.305(a) and (f);

(b) Is expected to have a household income that does not exceed 300 percent of the FPL for the benefit year for which coverage is requested; and

(c) Enrolls in a QHP through the KHBE.

(2) An applicant who is an Indian shall have an eligibility determination for the special cost-sharing described in section 1402(d)(2) of the ACA without requesting an eligibility determination for an insurance affordability program.

Section 12. Eligibility Determination and Notification Standards.

(1) Eligibility shall be determined in accordance with 45 C.F.R. 155.310(e).

(2) Notifications regarding eligibility determinations shall be made in accordance with 45 C.F.R. 155.310(g).

Section 13. Termination of Coverage. (1) An enrollee, including an enrollee who has obtained other minimum essential coverage, may terminate coverage in a QHP by submitting a request:

(a) Via the KHBE Web site at www.kynect.ky.gov;

(b) By telephone by contacting the KHBE contact center at 1-800-459-6328;

(c) To the QHP issuer;

(d) By mail; or

(e) In person.

(2) At the time of QHP selection, an enrollee in a QHP may choose to remain in a QHP if the enrollee:

(a) Has been identified as eligible for other minimum essential coverage through the data matching described in 45 C.F.R. 155.330(d); and

(b) Does not request termination in accordance with subsection (1) of this section.

(3) The last day of coverage of an enrollee who terminates coverage in accordance with subsection (1) of this section shall be:

(a) The termination date requested by the enrollee if the enrollee provides reasonable notice in accordance with subsection (7) of this section;

(b) Fourteen (14) days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice in accordance with subsection (7) of this section;

(c) A date determined by the issuer of an enrollee's QHP if the issuer is able to terminate coverage in fewer than fourteen (14) days and the enrollee requests an earlier termination effective date; or

(d) If the enrollee is newly eligible for Medicaid or KCHIP, the day before coverage in Medicaid or KCHIP begins.

(4) An enrollee's health coverage shall be terminated by an issuer if:

(a) The enrollee is no longer eligible for coverage in a QHP through the KHBE;

(b)1. The enrollee has failed to pay a premium; and

2.a. A three (3) month grace period required for an individual receiving an APTC has been exhausted as described in 45 C.F.R. 156.270(g); or

b. A thirty (30) day grace period required by KRS 304.17A-243 for an individual not receiving an APTC has been exhausted;

(c) The enrollee's coverage is rescinded in accordance with 45 C.F.R. 147.128 or KRS 304.14-110;

(d) The enrollee is enrolled in a QHP that:

1. Has been decertified pursuant to 900 KAR 10:010; or

2. Has withdrawn from participation in the KHBE; or

(e) The enrollee changes from one (1) QHP to another during an open enrollment period or special enrollment period in accordance with Section 6 or 7 of this administrative regulation.

(5) The last day of coverage of an enrollee shall be:

(a) If terminated in accordance with subsection (4)(a) of this section, the last day of the month following the month in which the notice described in subsection (7) of this section is sent by KHBE, unless the enrollee requests an earlier termination date in accordance with subsection (3) of this section;

(b) If terminated in accordance with subsection (4)(b)2.a. of

this section, the last day of the first month of the three (3) month grace period; or

(c) If terminated in accordance with subsection (4)(b)2.b. of this section, in accordance with KRS 304.17A-245.

(6) For an enrollee who is terminated in accordance with subsection (4)(e) of this section, the last day of coverage in an enrollee's prior QHP shall be the day before the effective date of coverage in the enrollee's new QHP.

(7) Reasonable notice shall be fourteen (14) calendar days from the requested date of termination of coverage.

Section 14. Authorized Representative. (1) An individual or employee may designate an individual or organization as an authorized representative:

(a) 1. At the time of application; or

2. At another time chosen by the individual or employee;

(b) Through a method described in 45 C.F.R. 155.405(c)(2);

(c) In writing with a signature or other legally binding format; and

(d) Through a method described in Section 2(5) of this administrative regulation.

(2) An authorized representative shall comply with state and federal laws regarding:

(a) Conflict of interest; and

(b) Confidentiality of information.

(3) An applicant may authorize a representative to:

(a) Sign an application on behalf of the applicant;

(b) Submit an update or respond to a redetermination of eligibility for the applicant in accordance with Section 8 or 9 of this administrative regulation;

(c) Receive a copy of a notice or communication from the KHBE;

(d) Make an appeal request on behalf of an appellant; and

(e) Act on behalf of the individual or employee in a matter with the KHBE.

(4) An authorized representative shall be valid until:

(a) An applicant or employee:

1. Changes the authorization; or

2. Notifies the KHBE and the authorized representative, through a method described in 45 C.F.R. 155.405(c), that the authorized representative is no longer authorized to act on behalf of the individual or employee; or

(b) The authorized representative informs the KHBE and the individual or employee that the authorized representative is no longer acting as the authorized representative.

Section 15. Appeals. (1) An applicant, a qualified individual, or an enrollee shall have the right to appeal an adverse determination.

(2) An applicant shall have the right to appeal an exemption of the shared responsibility payment.

(3) An applicant, qualified individual, or enrollee shall have the right to appeal an eligibility determination for Medicaid or KCHIP in accordance with 907 KAR 1:560.

(4) An employer shall have the right to appeal a determination of an employee's eligibility for APTC or CSR.

Section 16. Incorporation by Reference. (1) "Kentucky QHP/APTC Eligibility Verification Plan", June 2013, is incorporated by reference.

(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 12, 2013

FILED WITH LRC: August 22, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2013, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frank-

fort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until October 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market 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.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so the Kentucky Health Benefit may timely determine eligibility and facilitate enrollment in qualified health plans. Eligibility determination and enrollment in qualified health plans is necessary for the provision of health care services provided in the Commonwealth through the Exchange. Additionally, individuals must enroll through the Exchange for the purchase of health insurance to receive advanced payments of the premium tax credit and cost sharing deductions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that individuals are aware of the eligibility and enrollment requirements to participate in the Kentucky Health Benefit Exchange.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for enrollment and eligibility on the Kentucky Health Benefit Exchange.

2. If 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 300,000 individuals that may apply for health insurance in a qualified health 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 make an application for a qualified health plan in the individual market offered on the Exchange. An application may be submitted via the KHBE website, by telephone, by mail, or in person.

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

tion (3): There will be no cost to an individual or small employer that wishes to make an application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual as individuals that enroll in a qualified health plan through the Exchange may be able to receive advanced payments of the premium tax credit and cost sharing deductions for the purchase of health insurance.

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 eligibility and enrollment in a qualified health plan in the individual market 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.

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 establish eligibility and enrollment criteria for individuals wishing to enroll in qualified health plans offered on the Exchange.

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 Medicaid Services
Division of Community Alternatives
(New Administrative Regulation)**

907 KAR 7:005. Certified waiver provider requirements.

RELATES TO: KRS Chapter 13B, 194A.515, 42 C.F.R. 447.90, 455, 1002, 1003, 42 U.S.C. 1320a-3, 1320a-5, 1320a-7, 1395y(o), 2000d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.6318, 205.8467, 42 C.F.R. 1002.1-230, 1003.105, 42 U.S.C. 1320a-7, 1396b(q), 1396m, 1396n(c)(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.8451 through KRS 205.8483 establish that the Cabinet for Health and Family Services and the Department for Medicaid Services shall be responsible for the control of Medicaid provider fraud and abuse. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the certification requirements and provisions regarding 1915(c) home and community based service waiver providers who are required to be certified.

Section 1. Definitions. (1) "1915(c) home and community based service" means a service available or provided via a 1915(c) home and community based services waiver program.

(2) "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).

(3) Applicant" means an individual or entity applying to be a certified waiver provider.

(4) "Certification period" means a period of time that a provider has been certified or approved by the department to provide, and be reimbursed for, 1915(c) home and community based services.

(5) "Certified waiver provider" means a provider who:

(a) Is currently enrolled in the Medicaid program in accordance with 907 KAR 1:672;

(b) Is currently participating in the Medicaid program in accordance with 907 KAR 1:671;

(c) Provides Kentucky Medicaid program covered services to a recipient in a 1915(c) home and community based services waiver

program; and

(d) Has been determined by the department to have met the certified waiver provider requirements established in this administrative regulation.

(6) "Citation" means a written document:

(a) Issued by the department to a certified waiver provider; and

(b) Addressing a certified waiver provider's failure to comply with:

1. This administrative regulation; or

2. Any other administrative regulation within Title 907 of the Kentucky Administrative Regulations which establishes provisions and requirements regarding a 1915(c) home and community based services waiver program.

(7) "Contingency" means certification benchmarks which the provider shall meet within the timeframe established by the department before the department renews a provider's certification.

(8) "Corrective action plan" means a document submitted by a certified waiver provider to the department that:

(a) States the system changes, processes, or other actions that the provider shall take to prevent a future occurrence of a violation stated in a citation or findings report;

(b) States the timeframe in which the provider shall successfully implement or perform a system change, process, or other action required by the corrective action plan; and

(c) Is not valid or effective until approved by the department.

(9) "Credible allegation of fraud" is defined by 42 C.F.R. 405.370.

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

(11) "Fraud" is defined by KRS 205.8451(2).

(12) "Moratorium" means the department's prohibition against a provider providing services to a new 1915(c) home and community based services waiver participant.

(13) "New 1915(c) home and community based services waiver participant" means an individual who has never received 1915(c) home and community based services from a given provider though the individual may have previously received 1915(c) home and community based services from another provider.

(14) "Provider abuse" is defined by KRS 205.8451(8).

(15) "Repeat citation" means a citation that was previously issued by the department within the past two (2) years that did not result in a sustainable correction.

(16) "Restriction" means a limitation or condition placed on a provider by:

(a) The professional board governing the provider's profession;

(b) A court of competent jurisdiction;

(c) A federal agency with jurisdiction over the:

1. Medicaid program; or

2. Provider; or

(d) The department in accordance with this administrative regulation.

(17) "Sanction" means an administrative action taken by the department which:

(a) 1. Limits or bars an individual's, agency's, entity's, or organization's participation in the Medicaid program; or

2. Imposes a fiscal penalty against the provider, including the:

a. Imposition of civil penalties or interest imposed at the department's discretion; or

b. Withholding of future payments; and

(b) Does not include:

1. A voluntary moratorium;

2. Not renewing a certification;

3. A citation; or

4. Not approving an initial application for certification.

(18) "Unacceptable practice" means conduct which constitutes:

(a) Fraud;

(b) Provider abuse;

(c) Neglect;

(d) Exploitation;

(e) Willful misrepresentation;

(f) An action resulting in an exclusion, sanction, finding of fact, moratorium, suspension, or termination by:

1. The licensing entity with jurisdiction over the provider's license;

2. The certifying entity with jurisdiction over the provider's certification; or
3. The department;
- (g) Failure to disclose required information in accordance with 907 KAR 1:671, 907 KAR 1:672, or this administrative regulation;
- (h) Making, causing to be made, inducing, or seeking to induce a false, fictitious, or fraudulent statement or misrepresentation of material fact when providing information to the department; or
- (i) A restriction.

Section 2. Certified Waiver Provider Enrollment. (1) The provisions and requirements established in 907 KAR 1:672 regarding a Medicaid provider or person or entity who applies for enrollment as a participating Medicaid provider shall apply to a certified waiver provider or applicant.

(2) To enroll in the Medicaid program as a certified waiver provider, an applicant shall:

(a) Meet and comply with the Medicaid provider enrollment requirements, terms, and conditions established in:

1. 907 KAR 1:672; and
2. The administrative regulation or regulations located in Title 907 of the Kentucky Administrative Regulations which establish the requirements for the respective type of 1915(c) home and community based service waiver provider to which that the applicant is applying to be (for example, the requirements, terms, and conditions for Supports for Community Living waiver providers if the applicant is applying to be a Supports for Community Living waiver service provider); and

(b) Submit to the department:

1. A valid professional license, registration, certificate, or letter of certification or approval from a certifying entity that allows the applicant to provide services within the applicant's scope of practice; or

2. An application to be a certified waiver provider.

(3) The department shall deny enrollment if an applicant:

(a) Does not provide requested information to the department within the time period specified in the department's:

1. Notice of omitted information; or

2. Questionnaire;

(b) Fails to:

1. Provide correct, accurate, complete, and truthful information requested by the department at any time during the application or enrollment process;

2. Update the department of any change in information previously submitted during the application or enrollment process; or

3. Demonstrate the capacity to:

a. Execute necessary administrative competency as required by the department;

b. Develop a system of care which has an infrastructure necessary to provide coordinated services, supports, treatment, and care; or

c. Follow direction provided by the department; or

(c) Is eligible for exclusion under Section 6 of this administrative regulation.

Section 3. Certified Waiver Provider Participation Requirements. (1) To participate in the Medicaid program, a provider shall:

(a) Comply with the Medicaid provider participation requirements, terms, and conditions established in 907 KAR 1:671; and

(b) Meet and comply with the Medicaid provider enrollment requirements, terms, and conditions established in the administrative regulation or regulations located in Title 907 of the Kentucky Administrative Regulations which establish the requirements for the respective type of 1915(c) home and community based service waiver provider that the applicant is applying to be (for example, the requirements, terms, and conditions for Supports for Community Living waiver providers if the applicant is applying to be a Supports for Community Living waiver service provider.)

(2) The provisions and requirements established in 907 KAR 1:671 regarding Medicaid providers shall apply to a certified waiver provider.

Section 4. Citations Resulting in a Corrective Action Plan.

(1)(a) If the department issues a citation or citations to a certified

waiver provider, the provider shall submit to the department a corrective action plan.

(b)1. A certified waiver provider shall implement a corrective action plan unless the department notifies the certified waiver provider:

- a. That it does not approve the corrective action plan; and
- b. Of the revisions that need to be made to the corrective action plan.

2. If a certified waiver provider is notified by the department that a corrective action plan was not approved, the certified waiver provider shall submit a revised corrective action plan to the department that is revised pursuant to the department's direction.

(c) The certified waiver provider shall successfully perform everything required in the approved corrective action plan within the timeframe or timeframes established in the corrective action plan.

(d) If a certified waiver provider:

1. Fails to successfully perform everything required in an approved corrective action plan within the timeframe or timeframes established in the corrective action plan, the department shall:

a. Extend the timeframe for corrective action plan compliance if the department determines that the provider's progress in complying with the corrective action plan warrants an extension; or

b. Terminate the certified waiver provider; or

2. Refuses to submit a corrective action plan to the department or modify a corrective action plan in response to the department's instruction to modify the corrective action plan, the department shall terminate the provider.

(2) If the department terminates a provider, the:

(a) Department shall notify the provider in writing of the:

1. Reason for termination; and

2. Provider's right to appeal the termination.

(b) Provider shall have the right to appeal the termination in accordance with 907 KAR 1:671.

Section 5. Voluntary Moratorium Pending Investigation. (1)(a) If the department has reliable evidence that leads it to believe that a certified waiver provider has committed a violation that threatens the health, safety, or welfare of a recipient, the department shall offer the provider an opportunity to undergo a voluntary moratorium while the department conducts an investigation of the matter.

(b) If the certified waiver provider refuses to undergo a voluntary moratorium while the department conducts an investigation, the department shall terminate the provider in accordance with Section 4(2) of this administrative regulation.

(c)1. Within thirty (30) days of completing an investigation referenced in paragraphs (a) and (b) of this subsection, the department shall issue a findings report to the certified waiver provider.

2. If the findings report indicates that the certified waiver provider did not commit a violation that threatened the health, safety, or welfare of a recipient, the moratorium shall immediately be lifted.

3. If the findings report indicates that the certified waiver provider committed a violation that threatened the health, safety, or welfare of a recipient, but the department does not initiate termination, the department shall:

a. Offer the provider an opportunity to continue the voluntary moratorium in which the provider creates and submits a corrective action plan to the department; or

b. Initiate termination of the certified waiver provider if the provider chooses to not continue the voluntary moratorium.

4. If the findings report indicates that the certified waiver provider committed a violation that threatened the health, safety, or welfare of a recipient that warrants termination, the department shall terminate the provider in accordance with Section 4(2) of this administrative regulation.

(d)1. If a certified waiver provider undergoes a voluntary moratorium, the provider shall not accept any new 1915(c) home and community based waiver services participant to their program until the department determines that the provider has completed all of the actions required within the timeframe established pursuant to the corrective action plan referenced in paragraph (c)3.a. of this subsection.

2. If a certified waiver provider that agreed to undergo a voluntary moratorium fails to complete all of the actions required within

the timeframe established in the corrective action plan, the department shall:

a. Extend the timeframe for corrective action plan compliance if the department determines that the provider's progress in complying with the corrective action plan warrants an extension; or

b. Terminate the provider in accordance with Section 4(2) of this administrative regulation.

3. If the department determines that the certified waiver provider successfully implemented the corrective action plan, the department shall lift the moratorium.

(2)(a) If during a recertification or follow-up of an investigation or complaint, a repeat citation is warranted regarding a system or process which creates a deficiency regarding more than one (1) requirement in this administrative regulation or any administrative regulation within Title 907 of the Kentucky Administrative Regulations which establishes requirements regarding a 1915(c) home and community based services waiver program, the department shall:

1. Offer the certified waiver provider an opportunity to undergo a voluntary moratorium in which the provider creates and submits a corrective action plan to the department; or

2. Terminate the provider in accordance with Section 4(2) of this administrative regulation if the provider chooses to not undergo a voluntary moratorium.

(b) If the certified waiver provider agrees to undergo a voluntary moratorium, the provisions and requirements established in subsection (1)(d) of this section shall apply.

Section 6. Exclusion Due to Employee, Volunteer, or Contractor. (1) Except as established in subsection (2) of this section, the department shall exclude an applicant or provider from Medicaid program participation:

(a) If an individual who is an employee, contractor, or volunteer with the applicant or provider has:

1. Engaged in an unacceptable practice; or

2. Acted in a way which resulted in the individual or any entity with whom the individual previously worked, volunteered, or had a contractual relationship or currently works, volunteers, or has a contractual relationship being excluded from Medicaid program participation at any time; or

(b) If the department determines that enrolling the applicant or provider would not be in the best interest of:

1. Current or future recipients; or

2. The department.

(2)(a) The department shall not exclude an applicant or provider from Medicaid program participation as a result of the actions of an individual referenced in subsection (1)(a) of this section if the department determines that the individual's actions were unforeseen by the applicant or provider.

(b) To demonstrate to the department that an individual's actions, as referenced in subsection (1)(a) of this section, were unforeseen, the applicant or provider shall prove that the applicant or provider:

1. Did not know of the individual's actions;

2. Had work rules in place designed to prevent the actions from occurring;

3. Communicated the work rules referenced in subparagraph 2 of this paragraph to all of its employees;

4. Took steps to discover the actions which violated the work rules; and

5. Consistently enforced the standard when a violation of the work rules occurred.

Section 7. Suspension of Payment Due to a Credible Allegation of Fraud. (1)(a) In accordance with 42 C.F.R. 455.23, 42 U.S.C. 1395y(o), 42 U.S.C. 1396b(i)(2)(C), and 42 C.F.R. 447.90, the department shall suspend payment to any provider if a credible allegation of fraud regarding the provider exists except as established in paragraph (b) of this subsection.

(b) The department shall not suspend payment to a provider if a credible allegation of fraud regarding the provider exists if the:

1. Payment is for an emergency item or service that was not furnished in the emergency room of a hospital; or

2. Department determines that good cause not to suspend

payment exists in accordance with 42 C.F.R. 455.23.

(2) In accordance with 42 C.F.R. 455.23, the department shall suspend payment to a provider only in part if good cause to suspend payment only in part exists in accordance with 42 C.F.R. 455.23(f).

(3) The department shall comply with the notice of suspension of payment requirements established in 42 C.F.R. 455.23(b).

(4) The duration of a suspension of payment shall be in accordance with 42 C.F.R. 455.23(c).

Section 8. Additional Actions Regarding a Certified Waiver Provider. (1) In addition to an action established in 907 KAR 1:671 regarding a Medicaid provider, the department may impose or do the following regarding a certified waiver provider:

(a) Impose a contingency;

(b) Terminate a provider's participation in the Medicaid program;

(c) Establish liability for a civil payment in accordance with KRS 205.8467;

(d) Procure restitution of:

1. Departmental costs in accordance with KRS 205.8467; or

2. An overpayment; or

(e) Impose a lien in accordance with KRS 205.8471.

(2) The department shall impose a contingency if during a recertification more than one (1) deficiency is found which requires immediate correction in order for the certified waiver provider to be recertified.

(3) In addition to the reasons for terminating a provider's participation in the Medicaid program established in 907 KAR 1:671, the department may terminate a certified waiver provider's participation in the Medicaid program if:

(a) The provider engages in an unacceptable practice;

(b) The department continues to impose an exclusion or sanction after twelve (12) months of an exclusion or sanction occurring; or

(c) During a recertification or follow-up of an investigation or complaint, a repeat citation is warranted regarding:

1. A recipient's health, safety, or welfare; or

2. A system or process which creates a deficiency regarding more than one (1) requirement in:

a. This administrative regulation; or

b. Any administrative regulation within Title 907 of the Kentucky Administrative Regulations which establishes requirements regarding a 1915(c) home and community based services waiver program.

(4) If the department terminates a certified waiver provider's participation in the Medicaid program, the department shall terminate in accordance with Section 4(2) of this administrative regulation.

Section 9. Not Renewing a Provider's Participation and Not Enrolling an Applicant. (1) The department shall not renew a certified waiver provider's participation in the Medicaid Program for any reason except for a reason which is prohibited by state or federal law.

(2) The department shall not enroll an applicant as a provider in the Medicaid Program for any reason except for a reason which is prohibited by state or federal law.

Section 10. Applicability of Actions to 1915(c) Home and Community Based Services Waiver Programs. If the department acts, as established in this administrative regulation, regarding a certified waiver provider due to the provider's behavior in one (1) 1915(c) home and community based services waiver program, the action regarding the certified waiver provider shall apply in every 1915(c) home and community based services waiver program in which the provider is participating. For example, if the department terminates a certified waiver provider in the supports for community living program, the provider shall be terminated from every 1915(c) home and community based services waiver program in which the provider is participating.

(2) If a certified waiver provider volunteers to undergo a moratorium, the voluntary moratorium shall apply to each 1915(c) home and community based services waiver program in which the pro-

vider is participating during the time of the voluntary moratorium.

Section 11. Licensed Provider Exemption. If a 1915(c) home and community based service provider is licensed and is not required to be certified pursuant to the administrative regulation governing the 1915(c) home and community based waiver program by which the individual or entity provides services, the certified waiver provider provisions and requirements established in this administrative regulation shall not apply to the provider.

Section 12. Reapplying after Termination. The department shall not accept an application for enrollment from an individual or entity that has been terminated until at least five (5) years have lapsed since the termination.

Section 13. Appeals. (1) A certified waiver provider's appeal shall be in accordance with 907 KAR 1:671.

(2) The following shall not be considered a sanction and shall not be appealable:

- (a) A voluntary moratorium;
- (b) Not renewing a certification;
- (c) A citation; or
- (d) Not approving an initial certification.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 10, 2013

FILED WITH LRC: September 12, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing October 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until October 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 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 certified waiver provider requirements and policies. These providers provide services to 1915(c) home and community based waiver program participants. 1915(c) home and community based waiver programs enable individuals who have nursing facility level of care needs (or needs that can be served in an intermediate care facility for individuals with an intellectual disability) to remain in and receive care in their homes or in a community setting rather than in an institutional setting. Some 1915(c) home and community based waiver program providers are licensed and do not require certification in order to provide services in the given 1915(c) home and community based waiver program in which they participate; thus, the requirements and policies in this administrative regulation do not apply to those entities.

Among the requirements or provisions are: that if the Department for Medicaid Services (DMS) - or its agent which is the Department for Behavioral Health, Intellectual and Developmental Disabilities (DBHDID) - issues a citation to a provider, the provider must prepare and submit a corrective action plan (to correct the deficiency)

as well as satisfy all requirements of the corrective action plan or face possible termination from the Medicaid program; that if DMS or DBHDID determine that a provider has reliable evidence that a provider has committed a violation that threatens the health, safety, or welfare of a recipient, the provider may undergo a voluntary termination (in which it cannot accept any new recipients under its care), while DMS/DBHDID completes an investigation and if the investigation corroborates the initial evidence, the provider must submit a corrective action plan and satisfy all requirements of the corrective action plan within the timeframe established in the corrective action plan or face termination from the Medicaid program; that DMS will exclude a potential provider or existing provider from Medicaid program participation if the provider has any staff that in the past that engaged in an unacceptable practice (which is defined) or in any way that would have resulted in the provider being excluded (unless DMS determines that the individual's actions were unforeseen by the applicant or provider); that DMS may exclude a provider from participation if it determines that enrolling the provider would not be in the interest of recipients; that DMS may suspend a provider from Medicaid program participation if a credible allegation of fraud exists; that DMS won't renew a provider's participation - during the provider's recertification period - until/unless the provider resolves deficiencies (by meeting certain benchmarks within an established time frame) discovered during the recertification process; that any action regarding a provider in one (1) home and community based waiver program shall apply to all home and community based waiver programs in which the provider participates; and that if DMS terminates a provider from Medicaid program participation it won't accept an application for enrollment from the provider until at least five (5) years have lapsed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform Medicaid certified waiver provider requirements and policies in order to enhance DMS's ability protect the health, safety, and welfare of home and community based waiver participants.

(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 uniform Medicaid certified waiver provider requirements and policies in order to enhance DMS's ability protect the health, safety, and welfare of home and community based waiver participants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing uniform Medicaid certified waiver provider requirements and policies in order to enhance DMS's ability to protect the health, safety, and welfare of home and community based waiver participants.

(2) If 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 government affected by this administrative regulation: Providers of 1915(c) home and community based services will be affected by this administrative regulation. Currently, there are roughly 340 such providers enrolled in the Kentucky Medicaid 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: Regulated entities will have to comply with Medicaid participation requirements, not commit unacceptable practices, and successfully perform corrective action plans subse-

quent to receiving a citation or to undergoing a voluntary moratorium due to an action which threatened the health, safety, or welfare of a recipient.

(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, but providers may experience costs in establishing safeguards necessary to protect the health, safety, and welfare of recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). By complying with the administrative regulation, regulated entities will be able to be reimbursed by the Kentucky Medicaid program for providing services to Medicaid recipients served in a 1915(c) home and community based service waiver program.

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

(a) Initially: DMS anticipates that the administrative regulation will be budget neutral for DMS.

(b) On a continuing basis: DMS anticipates that the administrative regulation will be budget neutral for DMS.

(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 state matching funds of general fund appropriations.

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply uniformly to providers governed by this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Medicaid home and community based waiver programs are not mandated by federal law or regulation; however, 42 U.S.C. 1396n(c) establishes home and community based waiver requirements. 42 U.S.C. 1396n(c)(2) establishes requirements germane to this administrative regulation.

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 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." KRS 205.8451 through KRS 205.8483 require the Department for Medicaid Services to establish measures and safeguards to control Medicaid program fraud and abuse as well as includes various related requirements. KRS 205.6318(8) requires the Cabinet for Health and Family Services to "Review penalties for deterrent value for medical providers that are found to have abused Medicaid regulations and statutes."

3. Minimum or uniform standards contained in the federal mandate. Medicaid waiver programs are not mandated by federal law or regulation. Medicaid home and community based waiver programs are not mandated by federal law or regulation; however, 42 U.S.C. 1396n(c) establishes home and community based waiver requirements. A key requirement of 42 U.S.C. 1396n(c) – addressed by this administrative regulation – is the following located in 42 U.S.C. 1396n(c)(2): "(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that — (A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such 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 administrative regulation does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation. No.

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.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates that the administrative regulation will be budget neutral for DMS.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the administrative regulation will be budget neutral for DMS.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of September 11, 2013

Call to Order and Roll Call

The September 2013 meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, September 11, 2013, at 1:00 p.m., in Room 154 of the Capitol Annex. Senator Ernie Harris, Co-chair, called the meeting to order, the roll call was taken. The minutes of the August 2013 meeting were approved.

Present were:

Members: Senators Joe Bowen, Perry Clark, Sara Beth Gregory, and Ernie Harris; and Representatives Johnny Bell, Jimmie Lee and Tommy Turner.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Laura Napier, and Betsy Cupp.

Guests: Darrell Johnson, Stephen McMurry, Timothy West, UK College of Agriculture Regulatory Services; Noel Caldwell, John McGarvey, Office of Secretary of State; Jeff Boler, Mark Johnson, Jim Oliver, Melissa Russell, Department of Revenue; Mike Rodman, Julie Swindler, Lloyd Vest, Kentucky Board of Medical Licensure; Angela Evans, Shelly Saffran, Ky Real Estate Commission; Robin Harris, Michael West, Kentucky Board of Speech Language Pathology and Audiology; Matt James, Larry Smith, Licensed Diabetes Educators; Tina Brunjes, Steven Dober, Benjy Kinman, David Wicker, Kentucky Fish and Wildlife; Richard K Kessley, Zeb Weese, Department for Natural Resources; Amber Arnett, Department of Corrections; Dana M. Todd, Justice and Public Safety Cabinet; Ann D'Angelo, Kim Jenkins, Todd Shipp, Transportation Cabinet; Chad Collins, Julian Tackett, Kentucky High School Athletic Association; Kevin C. Brown, Kim Kidwell, Amy Peabody David Wickersham, Kentucky Board of Education; Dustin R. Adams, Clay Lamb, Department of Workforce Investment; Trey Hieneman, Steve Humphress, Department of Alcoholic Beverage Control; Stephanie Bell, Daniel Hinton, Dennis Brent Kirtley, Jerry Wuetcher, Public Service Commission; Michael Davis, George Tokarchick, Department of Housing, Buildings and Construction; Julie Brooks, Robert Cotton, Elizabeth Caywood, Carlene Egbert, Paula Goff, Fran Hawkins, Stuart Owen, Cabinet for Health and Family Services; Robert Bevins, Kentuckians for Science Education; Martin Brock, Eastern Kentucky University; Rick Clewett, Climate Parents; Martin Cothron, The Family Foundation, Terry Donoghue, Northern Kentucky Tea Party; Blaine Ferrell, Kentucky Academy of Sciences; Adrienne Gilbert, Constituents-Take Back Kentucky; Trent Garrison, American Institute of Professional Geologists; Edwin Hensley, Kentucky Secular Society; Richard Innes, Bluegrass Institute; Mike Mangrell, MoveOn.Org; Daniel Phelps, Kentucky Paleontological Society; Maureen Carman, Cindy Rusah, Paul Vincelli; Private Citizens.

The Administrative Regulation Review Subcommittee met on Wednesday, September 11, 2013, and submits this report:

The Subcommittee determined that the following administrative regulation did not comply with statutory requirements and was deficient:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Board of Education: Department of Education: Office of Instruction**

704 KAR 3:303. Required core academic standards. Kevin C. Brown, general counsel; Karen Kidwell, division director; and David Wickersham, assistant general counsel, represented the department. Robert Bevins, PhD, Kentuckians for Science Education, appeared in support of this administrative regulation. Martin Cothran, senior policy analyst, The Family Foundation, and Richard Innes, staff education analyst, The Bluegrass Institute, appeared in opposition to this administrative regulation.

Dr. Bevins stated that Kentuckians for Science Education affirmed the science standards established in this administrative regulation. As an educator, Dr. Bevins witnessed graduates who

had lost interest in science because of curriculum shortcomings. Too much of the curriculum was memorization, rather than hands-on experience. The average college or university student needed approximately forty-five (45) hours of remedial science education to prepare for college-level science classes. Many students had not been exposed to issues such as evolution, and most knew very little about global warming. Every school of note taught evolution and global warming. The science standards were open and flexible. The standards were formed with the input of many stakeholders, but some stakeholders still disagreed with the standards established in this administrative regulation. Dr. Bevins stated that those stakeholders overdramatized the curriculum's emphasis on global warming. Many referenced instances of the use of global warming were actually references to basic weather. Dr. Bevins expected Kentucky and its students to be ridiculed if Kentucky was the first state to reject these standards. Kentucky students would be disadvantaged regarding out-of-state schools and careers. The economy would be hurt because business interests would then expect Kentucky employees to be unprepared, especially in areas of technology.

In response to questions by Senator Bowen, Dr. Bevins agreed that Northwestern University was a school of distinction. Senator Bowen stated that his son graduated from Northwestern University and was never criticized based on his Kentucky education.

In response to questions by Representative Lee, Dr. Bevins stated that the study of global warming required an understanding of basic scientific concepts, which were not being taught. When Kansas removed evolution from the state science standards, out-of-state schools viewed Kansas students negatively as a result. A scientific theory required a tremendous amount of supportive evidence. Evolution was taught as a scientific theory. Even if evolution was included in a curriculum, it was often at the end of the class syllabus and omitted due to time constraints.

In response to questions by Senator Clark, Dr. Bevins stated that the Next Generation Science Standards were not deficient in the areas of chemistry and physics. In fact, more physics concepts were included than in the past standards. Experts in chemistry and physics were involved with educators to develop these standards. Of the twenty-six (26) states involved in developing the standards, Kentucky generated some of the most comments.

In response to questions by Representative Graham, Ms. Kidwell recited a long list of prestigious academic institutions and scholars who were involved in developing these standards, including one (1) nobel laureate in chemistry. She stated that the standards consisted of a conceptual framework, rather than a specific curriculum. The standards were developed so that they could be updated as needed. It had been a decade since these standards had last been updated, and, since that time, there had been a plethora of research indicating better ways to teach science in the classroom, including promoting more hands-on experiences.

Mr. Innes stated that The Bluegrass Institute considered these standards to be sorely lacking because they taught to the lowest level of nontechnical science. The standards did not adequately prepare students for careers in technological fields. The Web site for the standards admitted that advanced chemistry and physics were not included. Only a foundation was provided for these higher areas of science. Every student should have the opportunity to learn high level chemistry or physics at the high school level. These standards did not include subjects not included in standardized testing.

Mr. Cothran stated that The Family Foundation was concerned about the emphasis on evolution and global warming in these science standards, while at the same time deemphasizing science basics, such as classification. Half of the field of science was omitted by these standards, including the basics of natural science. It was a mistake for Kentucky to adopt standards without fully reviewing them. During the public input process, these standards were not amended in response to public concerns.

In response to a question by Co-Chair Bell, Mr. Brown stated that the cabinet did not agree to defer consideration of this administrative regulation to the October meeting of the Subcommittee.

Senator Bowen stated that these standards did not have the overwhelming support of the citizens of the Commonwealth. There had been a groundswell of dissent regarding these standards. The responsibility of a legislator was to support the will of the citizens.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a typographical error; (2) to amend Section 2 to change the date of the material incorporated by reference; and (3) to amend the material incorporated by reference to: (a) change the edition date to September 2013; (b) change the summary of 704 KAR 3:305 in three (3) places to accurately describe the requirements of this administrative regulation; and (c) correct pagination errors in the document's introductory pages. Without objection, and with agreement of the agency, the amendments were approved.

Senator Bowen made a motion, seconded by Representative Turner, to find 704 KAR 3:303 as amended deficient. On a roll call vote, the administrative regulation as amended was found deficient with Co-Chairs Bell and Harris, Senators Bowen and Gregory, and Representative Turner voting in favor of the finding of deficiency.

Administrative Regulations Reviewed by the Subcommittee:

AGRICULTURAL EXPERIMENT STATION: Seed

12 KAR 1:116. Sampling, analyzing, testing, and tolerances. Darrell Johnson, director; Stephen McMurry, director of fertilizer and seed programs; and Timothy West, director of business administration, represented the Agricultural Experiment Station.

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

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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

In response to a question by Co-Chair Harris, Mr. McMurry stated that the fee structure was revised to address issues of seasonality.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 4 to delay the effective date of the fee changes until January 1, 2014; and (2) to amend Section 2 to clarify reporting requirements. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to insert additional relevant citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY 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.

12 KAR 1:150. Stop sale orders.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to delete provisions that repeated statutory provisions. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments to Section 1: (1) to delay the effective date of the fee

changes until January 1, 2014; (2) for clarity; and (3) to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with objection of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 1 to: (a) specify that muskmelon has a germination standard of seventy-five (75) percent; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

SECRETARY OF STATE: Implementation of Revised Article 9

30 KAR 5:010 & E. Definitions for 30 KAR Chapter 5. Noel Caldwell, general counsel, and John McGarvey, commissioner, represented the office of the Secretary of State.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

30 KAR 5:020 & E. General provisions.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 for clarity 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.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 6 for clarity 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.

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 17 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 18 to incorporate by reference the Financing Form. Without objection, and with agreement of the agency, the amendments were approved.

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

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.

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to specify a five (5) dollar fee for search requests. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Inheritance Tax

103 KAR 2:005. Life expectancy table. Jeff Boler, tax policy consultant; Mark Johnson, tax policy consultant; and Jim Oliver, director, Division of Miscellaneous Taxes, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs 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.

Income Tax; Corporations

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Cigarettes

103 KAR 41:120. Retention of records.

In response to questions by Co-Chair Bell, Mr. Johnson stated that some non-stamped cigarettes were stored by wholesalers until sold to retailers. Changes to the retention of record requirements were for compliance with the authorizing statute.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct an effective date; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 41:200. Manufacturers report.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Medical Licensure: Board

201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances. Mike Rodman, executive director; Julie Swindler, MD, bariatric expert; and Lloyd Vest, general counsel, represented the board.

In response to a question by Senator Bowman, Dr. Swindler stated that body fat of thirty (30) percent or more for women and twenty-five (25) percent or more for men constituted obesity pursuant to current national guidelines. Ethnicity and gender were also factors in determining the percentages.

A motion was made and seconded to approve the following amendments to Section 4: (1) to clarify what percentage of body fat is considered normal; and (2) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Commission: Board

201 KAR 11:220. Errors and omissions insurance requirements. Angela Evans, assistant attorney general, and Shelly Saffran, administrative director, represented the board.

In response to questions by Co-Chair Harris, Ms. Saffran stated that approximately 12,000 active licensees were affected by this administrative regulation. Insurance fees would be covered by the real estate agent or broker. Ms. Saffran stated that the real estate industry supported this administrative regulation, which protected consumers. The amendment clarified board procedures.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 for clarity; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 through 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.

Board of Speech-Language Pathology and Audiology: Board

201 KAR 17:012. Requirements for licensure. Robin Harris, board member, and Michael West, assistant attorney general, represented the board.

In response to a question by Senator Bowen, Mr. West stated that these administrative regulations clarified questions on the form incorporated by reference.

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.

Board of Licensed Diabetes Educators: Board

201 KAR 45:001. Definitions for 201 KAR Chapter 45. Matt James, assistant attorney general, and Larry Smith, board member, represented the board.

In response to a question by Co-Chair Harris, Mr. Smith stated that these administrative regulations established a new diabetes educator licensure program, provided for different types of diabetes educators, and established a fee structure for the program.

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.

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

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 45:100. Fees.

In response to a question by Co-Chair Harris, Mr. Smith stated that this administrative regulation established fees lower than the maximums allowed by the authorizing statute.

201 KAR 45:110. Supervision and work experience.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 45:130. Continuing education.

In response to a question by Co-Chair Harris, Mr. Smith stated that Kentucky was the first state to establish this program; therefore, comparison with other states' requirements was not possible. Some national associations required more continuing education hours than those established in this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 45:140. Code of ethics.

201 KAR 45:150. Complaint procedures.

A motion was made and seconded to approve the following amendments: (1) to establish a definitions section for clarity; and (2) to amend Sections 1 through 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 45:160. Scope of practice.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a relevant statutory citation; and (2) to amend Section 1 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: Fish

301 KAR 1:150. Waters open to commercial fishing. Steven Dobey, program coordinator, bear program; Benjy Kinman, deputy commissioner; and David Wicker, counsel, represented the department.

In response to a question by Co-Chair Harris, Mr. Kinman stated that Lake Nolan and Rough River were not included in this amendment because commercial fishing was not taking place on those waterbodies.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:201. Recreational fishing limits.

In response to a question by Co-Chair Harris, Mr. Kinman stated that each waterbody was having fishing requirements changed for different reasons. The department's intent was to promote and maintain recreational fishing.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 5, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

In response to a question by Co-Chair Bell, Mr. Kinman stated that elk licenses in the expanded Knott County EMU were entered in the late draw. A redraw would be done from that subset.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, 6, 8, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:300. Black bear seasons and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 13 for consistency. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Technical and Administrative Support: General Administrative Procedures

418 KAR 1:010. Definitions for 418 KAR Chapter 1. Richard K. Kessler, PhD, chair, and Zeb Weese, environmental biology consultant, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:040. Grant applications.

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.

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

A motion was made and seconded to approve the following amendments: to amend Section 3 to establish that, if the requirements of an agreed upon Memorandum of Agreement have been met, then an extension of the deadline for acquisition may be granted by the board. Without objection, and with agreement of the

agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:999 & E. Corrections secured policies and procedures. Amber Arnett, staff attorney, represented the department.

This administrative regulation was reviewed and amended, without objection and with agreement of the agency, by the Subcommittee in closed session pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6).

Kentucky Law Enforcement Council: Council

503 KAR 1:161. Repeal of 503 KAR 1:160. Dana M. Todd, assistant general counsel, represented the council.

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. Ann D'Angelo, assistant attorney general; Kim Jenkins, legislative liaison; and Todd Shipp, senior counsel, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 4, 6, 7, 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.

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. Chad Collins, general counsel; Amy Peabody, assistant general counsel; and Julian Tackett, commissioner, represented the Kentucky High School Athletic Association.

In response to a question by Senator Bowen, Mr. Tackett stated that the amendments to this administrative regulation would be implemented in 2014. Schools had a year to prepare for the new requirements. Stakeholders had been informed of the changes, which were well-received by school administrators.

In response to a question by Co-Chair Bell, Mr. Tackett stated that the association worked with stakeholders to develop the committee amendment to this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend Section 2 to specify that a student who has participated at the high school level prior to the 2014-2015 school year is exempt from the requirement to be enrolled in at least grade seven (7); (3) to amend Section 6 to add and update forms; (4) to amend Sections 2, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend Section 3 to: (a) add relevant citations to KRS 156.070 and 160.380; (b) establish sports medicine requirements for the middle school level; (c) establish that the Middle School Athletics Advisory Committee shall be comprised of at least three (3) middle school representatives from each supreme court district, as well as three (3) at-large representatives; (d) require recommendation for improvements to and participation in middle school interscholastic activities; (e) require the provision of educational materials; (f) establish scrimmage and contest requirements; (g) establish that limitation requirements shall not apply to post-season activities; (h) establish that middle schools may compete against combined elementary or middle school teams, if done in accordance with this administrative regulation; (i) clarify that these requirements shall not prohibit a school or school district from choosing to join a con-

ference or association that has developed rules for a sport to satisfy the requirements of this administrative regulation; (j) clarify provisions; and (k) specify that the Middle School Athletics Advisory Committee is to report "not less than annually" to the commissioner of the KHSAA. Without objection, and with agreement of the agency, the amendments were approved.

Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance

787 KAR 1:090. Unemployed worker's reporting requirements. Dustin R. Adams, director, Division of Unemployment, and Clay Lamb, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:400 & E. ABC basic application form incorporated by reference. Trey Hieneman, legislative liaison, and Steve Humphress, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to change the edition date of the material incorporated by reference; and (2) to amend the basic application form to: (a) add input and review dates for ABC staff; (b) add a question relating to application for a Transitional License; (c) clarify basic contact information to require a home address (and also an employer identification number (EIN) if the applicant is not a U.S. citizen); (d) add signature lines for administrators issuing a transitional license; and (e) require the applicant to submit the applicant's name and address upon applying for local ABC approval. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:410 & E. Special applications and registration forms incorporated by reference.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to change the edition dates of the material incorporated by reference; (2) to amend the Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application form to delete a question about registering with the Revenue Cabinet because it was already addressed by statute; (3) to amend the Special Temporary License Application to: (a) clarify basic contact information to require a home address (and also an employer identification number (EIN) if the applicant is not a U.S. citizen); (b) add input and review dates for ABC staff; and (c) require the applicant to submit the applicant's name and address upon applying for local ABC approval; and (4) to amend the Supplemental License Application to: (a) add input and review dates for ABC staff; and (b) require the applicant to submit the applicant's name and address upon applying for local ABC approval. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:009. Repeal of 807 KAR 5:003. Stephanie Bell, deputy executive director, and Jerry Wuetcher, staff attorney, represented the commission.

In response to a question by Senator Bowen, Ms. Bell stated that changes to these administrative regulations were to revise procedures. The program itself was not new.

807 KAR 5:011. Tariffs.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, 6, 8, 10, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 5, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Elevator Safety

815 KAR 4:030 & E. Elevator contractor licensing requirements. Michael Davis, general counsel, and George Tokarchick, elevator inspector, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 for clarity; and (2) to amend Section 8 and the Elevator Contractor License Application to: (a) change the edition date; (b) conform the form's photograph requirements to those established in this administrative regulation; and (c) to update the agency's address. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 4:040 & E. Elevator mechanic licensing requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Maternal and Child Health: WIC Program

902 KAR 18:011. Definitions for 902 KAR Chapter 18. Carlene Egbert, program investigator officer, and Fran Hawkins, branch manager, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify what constitutes sufficient proof of residence, identity, and household income; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 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.

902 KAR 18:031. Participant abuse.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 for clarity; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 18:050. Vendor authorization criteria.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to require retailers to comply with the Kentucky WIC Manual for Applying Retailers; (2) to amend Section 2 to require authorized vendors to comply with the Manual for Contracted WIC Vendors; and (3) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs 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.

902 KAR 18:061. Vendor violations and sanctions.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 for clarity; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs 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.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 18:090. High risk criteria.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Early Intervention System

902 KAR 30:001. Definitions for 902 KAR Chapter 30. Julie Brooks, health program administrator, and Paula Goff, Part C coordinator, represented the cabinet.

902 KAR 30:110. Point of entry and service coordination.

A motion was made and seconded to approve the following amendments: to amend Section 2 for clarity. Without objection, and

with agreement of the agency, the amendments were approved.

902 KAR 30:120. Evaluation and eligibility.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 to incorporate by reference the "established risk conditions." Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:130. Assessment, service planning, and assistive technology.

902 KAR 30:150. Personnel qualifications.

902 KAR 30:160. Covered services.

902 KAR 30:180. Procedural safeguards.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:200. Coverage and payment for services.

Department for Medicaid Services: Payment and Services

907 KAR 3:225 & E. Specialty intermediate care (IC) clinic service and coverage policies and requirements. Stuart Owen, regulation coordinator, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add definitions of "intellectual disability" and "mental illness"; (2) to amend Section 3 to specify pursuant to what conditions a recipient is eligible to receive specified services; (3) to amend Section 6 to: (a) prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, or any procedure that denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility; (b) clarify what services an advanced practice registered nurse may provide in a specialty IC clinic; (c) establish which services shall be reimbursed by the department, rather than a managed care organization; and (d) establish which services shall be included in the scope of physician services; and (4) to amend Sections 1 and 3 through 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.

907 KAR 3:230 & E. Reimbursement policies and requirements for specialty intermediate care (IC) clinic services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Elizabeth Caywood, internal policy analyst, represented the cabinet.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with the agreement of the agency, the amendment was approved.

921 KAR 2:046. Adverse action; conditions.

A motion was made and seconded to approve the following amendments: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with

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agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 for clarity 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.

Division of Protection and Permanency: Child Welfare

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

The following administrative regulations were deferred to the October 8, 2013, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: 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 12:088. 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 12:176. 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.

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 Mine Reports: Bond and Insurance Requirements

405 KAR 10:090 & E. Production fees.

405 KAR 10:201E. Repeal of 405 KAR 10:200.

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.

900 KAR 10:050 & E. Individual Agent or Business Entity Participation with the Kentucky Health Benefit Exchange.

Department for Medicaid Services: Medicaid Services

907 KAR 1:563. Medicaid covered services appeals and hear-

ings unrelated to managed care.

The Subcommittee adjourned at 3 p.m. until October 8, 2013 at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of August 21, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of August 21, 2013, having been referred to the Committee on August 7, 2013, pursuant to KRS 13A.290(6):

201 KAR 2:020
201 KAR 2:030
201 KAR 20:400
202 KAR 7:330
202 KAR 7:540

The following administrative regulation was withdrawn on August 21, 2013 by the Kentucky Board of Nursing:

201 KAR 20:400

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 21, 2013 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of September 5, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of September 5, 2013, having been referred to the Committee on August 7, 2013, pursuant to KRS 13A.290(6):

401 KAR 5:320

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of September 5, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of September 5, 2013, having been referred to the Committee on September 4, 2013, pursuant to KRS 13A.290(6):

301 KAR 2:251

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 5, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of September 9, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of September 9, 2013, having been referred to the Committee on September 4, 2013, pursuant to KRS 13A.290(6):

11 KAR 3:100
11 KAR 5:001
11 KAR 5:140
11 KAR 8:030
11 KAR 15:040
11 KAR 15:090
11 KAR 16:001
11 KAR 16:010
11 KAR 16:040
11 KAR 16:050
11 KAR 16:060

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

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The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 9, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of September 18, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of September 18, 2013, having been referred to the Committee on September 4, 2013, pursuant to KRS 13A.290(6):

201 KAR 22:045
201 KAR 22:055E
201 KAR 22:130
900 KAR 6:030
900 KAR 6:120
900 KAR 6:125
906 KAR 1:200
922 KAR 1:130 & E
922 KAR 1:140 & E
922 KAR 1:320 & E
922 KAR 1:400 & E
922 KAR 2:020
922 KAR 2:090 & E
922 KAR 2:100
922 KAR 2:110
922 KAR 2:120
922 KAR 2:160 & E
922 KAR 2:180

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 18, 2013 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

D - 2

The Locator Index lists all administrative regulations published in VOLUME 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

D - 9

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 40 of the *Administrative Register of Kentucky*.

Technical Amendment Index

D - 15

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

D - 16

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.

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VOLUME 39

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 but had not yet gone into effect when the 12 bound Volumes were published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn before being printed in Register

**** Emergency expired after 180 days

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

103 KAR 3:040	1862	1-15-13
301 KAR 2:195E	1574	12-28-12
900 KAR 10:010E	2296	5-13-13
907 KAR 1:055E	1987	3-1-13
Replaced	299	9-6-13
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

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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		
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201 KAR 2:030		
Amended	2378	9-6-13
201 KAR 2:074		
Amended	1753	

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201 KAR 18:040		
Amended	2380	9-6-13
201 KAR 18:072		
Amended	2382	9-6-13
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	
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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	
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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		
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503 KAR 1:170		
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505 KAR 1:160		
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As Amended	2173	
601 KAR 9:135		
Amended	1953	
702 KAR 3:130		
Amended	1321	
Amended	1891	

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702 KAR 4:160			907 KAR 1:320		
Amended	2073	(See 40 Ky.R.)	Repealed	2448	9-6-13
703 KAR 5:121(r)	2098		907 KAR 10:017		
Withdrawn		6-11-13	Repealed	2448	
703 KAR 5:250	2099		907 KAR 10:372		
Withdrawn		6-11-13	Repealed	2448	
787 KAR 1:010			907 KAR 10:376		
Amended	2400	9-6-13	Repealed	2448	
787 KAR 1:290			907 KAR 1:563		
Amended	2401	9-6-13	Amended	2434	(See 40 Ky.R.)
804 KAR 9:040			907 KAR 1:595		
Amended	1958		Amended	2438	
Amended	2178		907 KAR 3:225	2449	(See 40 Ky.R.)
Withdrawn		7-10-13	907 KAR 3:230	2454	
804 KAR 9:050			907 KAR 3:015	2284	(See 40 Ky.R.)
Amended	1961	(See 40 Ky.R.)	907 KAR 17:005		
815 KAR 4:027	1970		Amended	1792	
As Amended	2174		As Amended	2322	9-19-13
815 KAR 7:120			907 KAR 17:010	1822	
Amended	1506	(See 40 Ky.R.)	Amended	2181	
815 KAR 20:020			As Amended	2343	6-27-13
Amended	2203	8-2-13	907 KAR 17:015	1831	
815 KAR 20:034			As Amended	2350	6-27-13
Amended	2208	(See 40 Ky.R.)	907 KAR 17:020	1836	
815 KAR 20:120			As Amended	2353	6-27-13
Amended	2210	8-2-13	907 KAR 17:025	1841	
900 KAR 5:020			As Amended	2356	6-27-13
Amended	1322		907 KAR 17:030	1846	6-27-13
Amended	1895		921 KAR 2:015		
As Amended	2174		Amended	1813	6-19-13
900 KAR 10:010	2443	(See 40 Ky.R.)	921 KAR 3:090		
902 KAR 30:001			Amended	2218	(See 40 Ky.R.)
Amended	2403	(See 40 Ky.R.)	922 KAR 1:130		
902 KAR 30:120			Amended	2220	(See 40 Ky.R.)
Amended	2410	(See 40 Ky.R.)	922 KAR 1:140		
902 KAR 30:130			Amended	2225	(See 40 Ky.R.)
Amended	2413	(See 40 Ky.R.)	922 KAR 1:320		
902 KAR 30:150			Amended	2228	(See 40 Ky.R.)
Amended	2419		922 KAR 1:400		
902 KAR 30:160			Amended	2233	(See 40 Ky.R.)
Amended	2422		922 KAR 2:020		
902 KAR 30:180			Amended	2236	(See 40 Ky.R.)
Amended	2425	(See 40 Ky.R.)	922 KAR 2:090		
902 KAR 30:200			Amended	2241	(See 40 Ky.R.)
Amended	2428		922 KAR 2:100		
902 KAR 55:110			Amended	2247	(See 40 Ky.R.)
Amended	629		922 KAR 2:110		
Amended	1218		Amended	2256	(See 40 Ky.R.)
As Amended	1413		922 KAR 2:120		
As Amended	2033		Amended	2261	(See 40 Ky.R.)
906 KAR 1:160			922 KAR 2:160		
Amended	335		Amended	2269	(See 40 Ky.R.)
As Amended	632		922 KAR 2:180		
Amended	1221		Amended	2278	
907 KAR 1:055			-----		
Amended	2084	(See 40 Ky.R.)	SYMBOL KEY:		
907 KAR 1:070			* Statement of Consideration not filed by deadline		
Repealed	2448	9-6-13	** Withdrawn before being printed in Register		
907 KAR 1:071(r)	2448	9-6-13	(r) Repealer regulation: KRS 13A.310 - on the effective date		
907 KAR 1:072			of an administrative regulation that repeals another, the		
Repealed	2448	9-6-13	regulations compiler shall delete the repealed administrative		
907 KAR 1:090			regulation and the repealing administrative regulation		
Repealed	2448	9-6-13			
907 KAR 1:092					

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SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

30 KAR 5:010E	219	6-28-2013
30 KAR 5:020E	220	6-28-2013
30 KAR 5:030E	223	6-28-2013
30 KAR 5:040E	225	6-28-2013
30 KAR 5:050E	228	6-28-2013
30 KAR 5:060E	230	6-28-2013
31 KAR 4:070E	755	9-4-2013
101 KAR 2:210E	756	9-9-2013
105 KAR 1:140E	233	7-01-2013
201 KAR 22:055E	4	5-15-2013
Withdrawn		9-17-2013
301 KAR 2:225E	524	8-14-2013
405 KAR 10:001E	236	7-03-2013
405 KAR 10:070E	240	7-03-2013
405 KAR 10:080E	243	7-03-2013
405 KAR 10:090E	245	7-03-2013
405 KAR 10:201E	246	7-03-2013
501 KAR 6:020E	759	8-20-2013
804 KAR 4:390E	5	6-14-2013
804 KAR 4:400E	247	6-25-2013
804 KAR 4:410E	249	6-25-2013
804 KAR 4:430E	7	6-14-2013
815 KAR 4:030E	250	6-25-2013
815 KAR 4:040E	253	6-25-2013
900 KAR 5:020E	761	8-30-2013
900 KAR 10:020E	8	6-07-2013
900 KAR 10:030E	762	8-22-2013
900 KAR 10:050E	255	7-10-2013

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11 KAR 3:100		
Amended	58	9-9-13
11 KAR 5:001		
Amended	72	
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11 KAR 5:140		
Amended	75	9-9-13
11 KAR 5:145		
Amended	76	9-9-13
11 KAR 8:030		
Amended	78	
As Amended	528	9-9-13
11 KAR 15:040		
Amended	82	
As Amended	531	9-9-13
11 KAR 15:090		
Amended	84	9-9-13
11 KAR 16:001		
Amended	88	9-9-13
11 KAR 16:010		
Amended	90	9-9-13
11 KAR 16:040		
Amended	92	9-9-13
11 KAR 16:050		
Amended	94	9-9-13
11 KAR 16:060		
Amended	95	9-9-13

12 KAR 1:116		
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12 KAR 1:135		
Amended	98	
As Amended	770	
12 KAR 1:140		
Amended	100	
Amended	580	
As Amended	770	
12 KAR 1:145		
Amended	101	
As Amended	771	
12 KAR 1:150		
Amended	103	
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12 KAR 1:155		
Amended	104	
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12 KAR 1:165		
Amended	106	
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13 KAR 1:020		
Amended	334	
Amended	854	
13 KAR 3:010		
Amended	879	
13 KAR 3:050		
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16 KAR 3:080		
Amended	621	
16 KAR 9:080		
Amended	623	
30 KAR 5:010		
Amended	342	
As Amended	775	
30 KAR 5:020		
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As Amended	775	
30 KAR 5:030		
Amended	346	
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30 KAR 5:040		
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As Amended	777	
30 KAR 5:050		
Amended	351	
As Amended	780	
30 KAR 5:060		
Amended	353	
As Amended	781	
31 KAR 4:070		
Amended	882	
101 KAR 2:076		(See 39 Ky.R.)
As Amended	259	9-6-13
101 KAR 2:095		(See 39 Ky.R.)
As Amended	259	9-6-13
101 KAR 2:102		(See 39 Ky.R.)
As Amended	261	9-6-13
101 KAR 2:210		
Amended	884	
101 KAR 3:015		(See 39 Ky.R.)
As Amended	265	9-6-13
101 KAR 3:050		(See 39 Ky.R.)
As Amended	269	9-6-13
103 KAR 2:005		
Amended	355	
As Amended	782	
103 KAR 16:230		
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103 KAR 41:120		
Amended	359	
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103 KAR 41:200	476		201 KAR 18:142		(See 39 Ky.R.)
As Amended	785		As Amended	270	9-6-13
105 KAR 1:140			201 KAR 20:057		(See 39 Ky.R.)
Amended	360		As Amended	13	7-17-2013
201 KAR 6:020			201 KAR 20:070		(See 39 Ky.R.)
Amended	628		As Amended	16	7-17-2013
201 KAR 6:030			201 KAR 20:400		(See 39 Ky.R.)
Amended	629		Amended	23	
201 KAR 6:040			As Amended	272	
Amended	631		Withdrawn		8-21-13
201 KAR 6:050			201 KAR 20:411		
Amended	632		Amended	888	
201 KAR 6:060			201 KAR 22:045		
Amended	633		Amended	110	
201 KAR 6:070			As Amended	531	
Amended	635		201 KAR 22:130		
201 KAR 6:080			Amended	112	
Amended	637		201 KAR 22:220		
201 KAR 6:090			201 KAR 30:040		
Amended	639		Amended	113	
201 KAR 9:016			Amended	862	
Amended	108		201 KAR 30:120		
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201 KAR 11:220			As Amended	533	
Amended	365		201 KAR 30:125		
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201 KAR 12:020			As Amended	534	
Amended	367		201 KAR 30:150		
201 KAR 12:040			Amended	118	
Amended	368		As Amended	534	
201 KAR 12:045			201 KAR 30:200	182	
Amended	369		As Amended	536	
201 KAR 12:050			201 KAR 31:010		(See 39 Ky.R.)
Amended	371		As Amended	536	
201 KAR 12:060			201 KAR 31:040		(See 39 Ky.R.)
Amended	372		As Amended	537	
201 KAR 12:065			201 KAR 31:050		(See 39 Ky.R.)
Amended	373		As Amended	537	
201 KAR 12:082			201 KAR 31:060		(See 39 Ky.R.)
Amended	374		As Amended	538	
201 KAR 12:083			201 KAR 31:080		(See 39 Ky.R.)
Amended	378		As Amended	540	
201 KAR 12:088			201 KAR 31:090		(See 39 Ky.R.)
Amended	379		As Amended	540	
201 KAR 12:100			201 KAR 30:360		
Amended	382		Amended	120	
201 KAR 12:101			Withdrawn		9-13-13
Amended	384		201 KAR 39:040		
201 KAR 12:120			Amended	641	
Amended	386		201 KAR 43:010		
201 KAR 12:125			Amended	122	
Amended	387		As Amended	541	
201 KAR 12:150			201 KAR 45:001	183	
Amended	389		Amended	581	
201 KAR 12:176(r)	477		As Amended	788	
201 KAR 12:180			201 KAR 45:070	184	
Amended	390		Amended	582	
201 KAR 12:190			As Amended	789	
Amended	392		201 KAR 45:100	185	
201 KAR 12:260			Amended	583	
Amended	393		201 KAR 45:110	187	
201 KAR 12:270	478		Amended	584	
201 KAR 17:012			As Amended	789	
Amended	394		201 KAR 45:120	188	
201 KAR 17:030			Amended	586	
Amended	395		As Amended	789	
201 KAR 17:034			201 KAR 45:130	189	
Amended	397		Amended	587	
201 KAR 17:036			As Amended	790	
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201 KAR 18:020			Amended	588	
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Amended	590		Amended	125	
As Amended	790		418 KAR 1:050		
201 KAR 45:160	194		Amended	127	
Amended	591		Amended	592	
As Amended	791		As Amended	803	
202 KAR 7:330		(See 39 Ky.R.)	501 KAR 6:020		
Amended	25		Amended	890	
As Amended	273	8-21-13	501 KAR 6:050		
202 KAR 7:520		(See 39 Ky.R.)	Amended	658	
As Amended	278	8-21-13	501 KAR 6:110		
202 KAR 7:540		(See 39 Ky.R.)	Amended	660	
Amended	30		503 KAR 1:161(r)	485	
As Amended	281	8-21-13	503 KAR 1:180		
301 KAR 1:122		(See 39 Ky.R.)	Amended	662	
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Amended	642		Amended	128	
301 KAR 1:132			601 KAR 9:200		
Amended	644		Amended	130	
301 KAR 1:150			Amended	863	
Amended	400		601 KAR 13:025		
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301 KAR 1:152			As Amended	804	
Amended	647		605 KAR 1:050		
301 KAR 1:201			Amended	664	
Amended	402		605 KAR 1:060		
As Amended	793		Amended	665	
301 KAR 2:049			605 KAR 1:070		
Amended	649		Amended	668	
301 KAR 2:132			605 KAR 1:090		
Amended	407		Amended	669	
As Amended	797		605 KAR 1:130		
301 KAR 2:225			Amended	670	
Amended	653		605 KAR 1:190		
301 KAR 2:251		(See 39 Ky.R.)	Amended	673	
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302 KAR 21:060	736		704 KAR 3:303		
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405 KAR 8:010			803 KAR 2:307		
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405 KAR 10:001			As Amended	544	
Amended	428		803 KAR 2:308		
405 KAR 10:015			Amended	142	
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405 KAR 10:070	479		Amended	144	
405 KAR 10:080	482		As Amended	544	
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803 KAR 2:407			Amended	700	
Amended	157		807 KAR 5:075	488	
As Amended	545		As Amended	822	
803 KAR 2:411			807 KAR 5:076		
Amended	159		Amended	704	
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Amended	161		Amended	709	
803 KAR 2:419			811 KAR 1:220		
Amended	163		Amended	714	
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803 KAR 2:425			Amended	461	
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803 KAR 2:500			815 KAR 4:040		
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804 KAR 1:100			As Amended	825	
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804 KAR 4:020			815 KAR 7:125		
Repealed	197		Amended	173	
804 KAR 4:030			As Amended	546	
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804 KAR 4:130			As Amended	297	9-6-13
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804 KAR 4:140			Amended		
Repealed	197		900 KAR 5:020		
804 KAR 4:160			Amended	894	
Repealed	197		900 KAR 6:030		
804 KAR 4:170			Amended	175	
Repealed	197		900 KAR 6:120		
804 KAR 4:180			Amended	176	
Repealed	197		900 KAR 6:125		
804 KAR 4:200			Amended	179	
Repealed	197		As Amended	547	
804 KAR 4:220			900 KAR 10:010		(See 39 Ky.R.)
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804 KAR 4:250			900 KAR 10:020	199	
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804 KAR 4:390			900 KAR 10:050	491	
Amended	170		902 KAR 18:011	493	
804 KAR 4:400			As Amended	827	
Amended	444		902 KAR 18:021	496	
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804 KAR 4:410			902 KAR 18:031	497	
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804 KAR 8:011(r)	198		As Amended	830	
804 KAR 8:010			902 KAR 18:050	501	
Repealed	198		As Amended	832	
804 KAR 8:020			902 KAR 18:061	503	
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804 KAR 8:030			902 KAR 18:071	505	
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804 KAR 9:010			902 KAR 18:081	507	
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807 KAR 5:068			Amended		

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902 KAR 30:130		(See 39 Ky.R.)	SYMBOL KEY:		
Amended	605		* Statement of Consideration not filed by deadline		
902 KAR 30:180			** Withdrawn, not in effect within 1 year of publication		
Amended	2425	(See 39 Ky.R.)	*** Withdrawn before being printed in Register		
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906 KAR 1:190	203		of an administrative regulation that repeals another, the		
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906 KAR 1:200	209		regulation and the repealing administrative regulation.		
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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2013 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections 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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