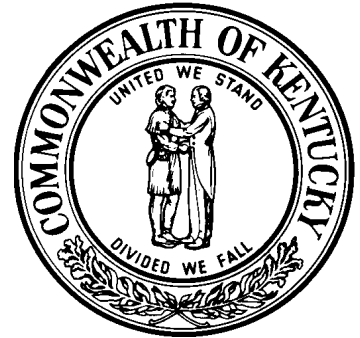


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 40, NUMBER 6
SUNDAY, DECEMBER 1, 2013

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

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet December 10, 2013 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1229-1230** of this Administrative Register.

EAARS MEETING NOTICE

The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet at 1:00 p.m., Tuesday, December 10, 2013 in room 129, Capitol Annex, Frankfort, Kentucky.

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

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

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

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VOLUME 40, NUMBER 6 – DECEMBER 1, 2013

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, DECEMBER 10, 2013, at 1:00 p.m., Room 149 Capitol Annex**

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

Commonwealth Merit Scholarship Program
11 KAR 15:020. Student eligibility report.

COUNCIL ON POSTSECONDARY EDUCATION

Adult Education and Literacy
13 KAR 3:050. GED® eligibility requirements. (Not Amended After Comments)

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems**

General Rules
105 KAR 1:140 & E. Employer's administrative duties. ("E" expires 12/28/2013) (Amended After Comments) (Deferred from November)

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure**

Board
201 KAR 9:081. Disciplinary proceedings.

Kentucky Real Estate Appraisers Board

Board
201 KAR 30:315 & E. Renewal and reinstatement. ("E" expires 4/8/2014)

Board of Interpreters for the Deaf and Hard of Hearing

Board
201 KAR 39:040. Fees. (Not Amended After Comments)

**Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services**

Livestock
302 KAR 21:001. Definitions for 302 KAR Chapter 21. (Not Amended After Comments)
302 KAR 21:020. General livestock and poultry provisions. (Not Amended After Comments)
302 KAR 21:030. Beef cattle, bison, and veal specific provisions. (Not Amended After Comments)
302 KAR 21:040. Dairy cattle specific provisions. (Not Amended After Comments)
302 KAR 21:050. Equine specific provisions. (Not Amended After Comments)
302 KAR 21:060. Swine specific provisions. (Not Amended After Comments)
302 KAR 21:070. Ovine, caprine, camelid and cervid specific provisions. (Not Amended After Comments)
302 KAR 21:080. Poultry specific provisions. (Not Amended After Comments)

Organic Agricultural Product Certification
302 KAR 40:010. Certification of organic production, processing, or handling operations.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

Brownfield's Redevelopment
401 KAR 102:005. Definitions for 401 KAR Chapter 102. (Not Amended After Comments)
401 KAR 102:010. Brownfield Redevelopment Program. (Amended After Comments)
401 KAR 102:020. General requirements for a Property Management Plan for Brownfield Redevelopment Program. (Amended After Comments)

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections**

Office of the Secretary
501 KAR 6:020 & E. Corrections policies and procedures. ("E" expires 2/16/2014) (Deferred from November)
Department of Juvenile Justice

Child Welfare
505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.
505 KAR 1:170 & E. Department of Juvenile Justice Policies and Procedures: Prison Rape Elimination Act of 2003 (PREA). ("E" expires 4/12/2014)

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Education
Kentucky Board of Education**

Food Service Programs
702 KAR 6:101. Repeal of 702 KAR 6:100.

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

Office of Learning Support Services
704 KAR 7:151. Repeal of 704 KAR 7:150.

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**PUBLIC PROTECTION CABINET
Kentucky Department of Insurance
Property and Casualty Division**

Motor Vehicle Reparations (No-fault)

806 KAR 39:070. Proof of motor vehicle insurance.

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

State Health Plan

900 KAR 5:020 & E. State Health Plan for facilities and services. ("E" expires 2/26/2014) (Deferred from November)

**Office of Inspector General
Division of Health Care**

Health Services and Facilities

902 KAR 20:058. Operation and services; primary care center.

**Department for Medicaid Services
Commissioner's Office
Division of Healthcare Facilities Management**

Medicaid Services

907 KAR 1:180. Freestanding birth center services. (Amended After Comments)

907 KAR 1:190. Payments for freestanding birth center services. (Amended After Comments)

Medicaid Eligibility

907 KAR 20:001 & E. Definitions for 907 KAR Chapter 20. ("E" expires 3/29/2014)

907 KAR 20:005 & E. Medicaid technical eligibility requirements not related to a modified adjusted gross income standard or former foster care individuals. ("E" expires 3/29/2014)

907 KAR 20:010 & E. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals. ("E" expires 3/29/2014)

907 KAR 20:015 & E. Medicaid right to apply and reapply for individuals whose Medicaid eligibility is not based on a modified adjusted gross income eligibility standard or who are not former foster care individuals. ("E" expires 3/29/2014)

907 KAR 20:020 & E. Income Standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals. ("E" expires 3/29/2014)

907 KAR 20:025 & E. Resource standards for Medicaid. ("E" expires 3/29/2014)

907 KAR 20:030 & E. Trust and transferred resource requirements for Medicaid. ("E" expires 3/29/2014)

907 KAR 20:035 & E. Spousal impoverishment and nursing facility requirements for Medicaid. ("E" expires 3/29/2014)

907 KAR 20:040 & E. Relative responsibility requirements for Medicaid. ("E" expires 3/29/2014)

907 KAR 20:045 & E. Special income requirements for hospice and home and community based services. ("E" expires 3/29/2014)

907 KAR 20:050 & E. Presumptive eligibility. ("E" expires 3/29/2014)

907 KAR 20:060 & E. Medicaid adverse action and conditions for recipients. ("E" expires 3/29/2014)

907 KAR 20:075 & E. Eligibility provisions and requirements regarding former foster care individuals. ("E" expires 3/29/2014)

907 KAR 20:100 & E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards. ("E" expires 3/29/2014)

REMOVED FROM DECEMBER 2013 AGENDA

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water**

Water Quality Standards

~~401 KAR 10:030. Antidegradation policy implementation methodology. (Not Amended After Comments) (Deferred from December) (Withdrawn, KRS 13A.300(4) & 13A.315(1)(d))~~

**CABINET FOR HEALTH AND FAMILY SERVICES
Division of Community Alternatives**

Certified Provider Requirements

907 KAR 7:005. Certified waiver provider requirements. (Comments Received; SOC ext.)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
301 KAR 2:221E

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

BENJY KINMAN, Deputy Commissioner
STEVEN L. BESHEAR, Governor

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

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

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

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

EFFECTIVE: October 21, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

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

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

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser:

(a) Beginning on Thanksgiving Day for four (4) consecutive days; and

(b) For fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose:

(a) Eastern, Pennyriple, and Western Goose Zones, beginning on Thanksgiving Day and continuing until the last day in January.

(b) Northeast Goose Zone:

1. Beginning on January 1 for thirty-one (31) consecutive days.

(3) White-fronted and brant geese, beginning on Thanksgiving Day and continuing until the last day in January.

(4) Light goose:

(a) Beginning on Thanksgiving Day and continuing until the last

day in January; and

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through March 31, except:

a. The season shall be closed during the first full weekend in February; and

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

2. Eastern Duck Zone from February 1 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Zone that is established in 301 KAR 2:224:

(1) A person hunting waterfowl shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks: The daily limit shall be six (6), that shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) One (1) black duck;

(e) Two (2) redheads;

(f) Two (2) pintails;

(g) ~~Three (3)~~~~[Four (4)]~~ scaup;

(h) One (1) mottled duck; or

(i) ~~Two (2)~~~~[One (1)]~~ canvasback.

(2) Coot: Daily limit fifteen (15).

(3) Merganser: Daily limit five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose: Daily limit five (5), that shall not include more than:

(a) ~~Three (3)~~~~[Two (2)]~~ Canada geese;

(b) Two (2) white-fronted geese; or

(c) One (1) brant.

(5) Light goose: Daily limit twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be ~~triple~~~~[double]~~ the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. if hunting geese in the Northeast Goose Zone during a Canada goose season;

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or

(3) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) Season dates:

(a) Light goose: November 5 through January 31;

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through March 31, except:

a. The season shall be closed during the first full weekend in February; and

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

2. Remainder of state: from February 1 through March 31; and
(c) Other waterfowl: November 5 through January 31.
(2) Daily limit: three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

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

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

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

BENJY KINMAN, Deputy Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 2, 2013

FILED WITH LRC: October 21, 2013 at 2 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

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

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2013-2014 waterfowl hunting seasons in accordance with the USFWS.

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

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation manages waterfowl populations and hunting opportunity consistent with national and international management goals.

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

(a) How the amendment will change the existing administrative regulation: This amendment will increase the daily bag limit for Canada geese from two (2) to three (3), which is consistent with population management objectives recommended by the Mississippi Flyway Council and adopted by the USFWS. In addition these regulations will adjust waterfowl daily bag and possession limits to reflect that permitted by federal waterfowl season frameworks under the current season structure.

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

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

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

administration of this program in subsequent years.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

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

STATEMENT OF EMERGENCY
301 KAR 2:222E

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

BENJY KINMAN, Deputy Commissioner
STEVEN L. BESHEAR, Governor

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

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

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

150.340(1), (3), 150.990

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

EFFECTIVE: October 21, 2013

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

- (a) Concealed enclosure;
- (b) Pit; or
- (c) Boat.

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

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

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

(5) "Party" means:

- (a) A person hunting alone; or
- (b) Two (2) to four (4) people who share a department blind or hunt site.

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

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

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

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

- (a) Controlled by the department through ownership, lease, license, or cooperative agreement; and
- (b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Shot requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing:
 - (a) Lead shot;
 - (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
 - (c) Shot larger than size "T".

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

- (a) A person hunting waterfowl shall not:
 - 1. Establish or hunt from a permanent waterfowl blind;
 - 2. Hunt within 200 yards of:
 - a. Another occupied hunt site;
 - b. Another legal waterfowl hunting party; or
 - c. An area closed to waterfowl hunting;
 - (b) A person shall not hunt in a designated recreation area or access point;
 - (c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and
 - (d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

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

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

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

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

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

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

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

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

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

(b) Not lock a waterfowl blind; and

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

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

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

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

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

(3) A person shall not:

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

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

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

(4) On Wildlife Management Areas in Ballard County:

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

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

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

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

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be the first Wednesday in December[5] through the last Sunday in January[27];

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

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

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

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

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

(a) A party shall:

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

2. Obtain a daily check-in card by 8 a.m. before entering the area from the first Wednesday in December[5] through the last Sunday in January[27]; and

3. Check out the same day by:

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

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

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

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;[27-]

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

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

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

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

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

(g) A party shall only hunt waterfowl:

1. From a department blind; or

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

(h) On the Peal unit:

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

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

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

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

(i) On the Swan Lake Unit:

1. A person shall not hunt waterfowl from Thanksgiving Day[November 22] through the first Tuesday in December [4];

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

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

(7) Lake Barkley WMA.

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

(b) Waterfowl refuge areas shall be:

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

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

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

1. On Duck Island; or

2. Within 200 yards of Duck Island.

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

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

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

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

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

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

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

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

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

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

(12) Doug Travis WMA.

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

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

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

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

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

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

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

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

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; ~~or~~[and]

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

(14) Green River Lake WMA.

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

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

(15) Kaler Bottoms WMA.

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

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

(16) Land Between the Lakes National Recreation Area.

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

1. Long Creek Pond;

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

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

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

1. The Environmental Education Center; and

2. Energy Lake.

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

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

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

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

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

1. On an inland area; or

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

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

(17) Obion Creek WMA.

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

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

(18) Ohio River Islands WMA.

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

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

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

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

(19) Peabody WMA.

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

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

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

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

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

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

(21) Sloughs WMA.

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

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

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

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

1. Shall hunt:

a. From a department blind; or

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

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

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

1. Shall hunt:

a. From a department blind;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

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

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

(22) South Shore WMA.

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

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(23) Taylorsville Lake WMA.

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

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

(24) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

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

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

(26) Cedar Creek WMA.

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

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

(27) Dix River WMA.

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

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

(28) J.C. Williams WMA.

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

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

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

(a) Apply ~~(through the vendor supplied by the department)~~ by:

1. ~~Calling[calling]~~ 1-877-598-2401 ~~and completing the telephone application process[;] or[by]~~

2. ~~Completing[completing]~~ the online application process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

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

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

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

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

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

(a) Barren River[;]

(b) Grayson Lake[;]

(c) Greenbo Lake[;]

(d) Lake Barkley[;]

(e) Lincoln Homestead[;]

(f) Nolin Lake[;]

(g) Paintsville Lake[;]

(h) Pennyriple Lake[;]

(i) Rough River Lake[;] and

(j) Yatesville Lake[State Parks].

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

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

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

(5) Statewide waterfowl hunting requirements shall apply.

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

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

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

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

impaired access permit.

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

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

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

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

(9) A person:

(a) Shall hunt from an established blind; and

(b) Shall not change blinds.

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

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

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

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

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

(15) A hunter shall:

(a) Cease hunting by[~~Hunting shall end at~~] noon[;] and

(b) Exit[~~hunters shall exit~~] the area by 1 p.m.

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

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

BENJY KINMAN, Deputy Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 2, 2013

FILED WITH LRC: October 21, 2013 at 2 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

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

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2013-2014 waterfowl hunting requirements in accordance with the USFWS and Kentucky Department of Fish and Wildlife Resources management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state, national and international management goals.

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

(a) How the amendment will change the existing administrative regulation: This amendment sets hunting dates on Ballard and the Swan Lake Unit of Boatwright WMAs and sets daily stop times for waterfowl hunting on Cedar Creek, Dix River and J.C. Williams WMA.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide adequate

public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity for quality waterfowl hunting on public areas.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation amendment for the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

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

STATEMENT OF EMERGENCY 921 KAR 2:015E

This emergency administrative regulation is necessary to support the health and welfare of individuals with serious mental illness pursuant to the terms of the interim settlement agreement entered between the Cabinet for Health and Family Services and the Division of Protection and Advocacy to avoid federal suit. The new living arrangement category is one of many steps negotiated between the agencies in effort to achieve the goals of community integration and self-determination for individuals with serious mental illness who are living in, or at risk of living in, a personal care home. In addition, this amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to pass along the cost of living adjustment in Supplemental Security Income (SSI) benefits to State Supplementation Program recipients. Failure to

comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration announced the amount of the Supplemental Security Income (SSI) cost of living adjustment on October 30, 2013. The announcement was delayed due to the federal government shutdown. An ordinary administrative regulation would not allow the agency sufficient time to comply with the terms of the interim settlement agreement and implement the mandated provisions of 20 C.F.R. 416.2099 by January 1, 2014, to prevent the loss of federal Medicaid funds. This emergency administrative regulation will be replaced by an ordinary administrative regulation. 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
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 209.020(4), 216.530, 216.557(1), 216.750(2), 216.765(2), [216B.040-216B.131,] Chapter 216B, 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

EFFECTIVE: November 14, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(3) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(4) "Department" means the Department for Community Based Services or its designee.

(5)[(4)] "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(7)[(5)] "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907

KAR 1:011.

(8) "Qualified mental health professional" is defined by KRS 202A.011(12).

(9) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(10)[(6)] "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(11)[(7)] "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b) 1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9[6, 7, and 8] of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(7), (8), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(9); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9[8] of this administrative regulation; and

(c) 1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);[or]

3. Receives caretaker services and is at least eighteen (18) years of age; or

4. a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;[or]

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10[9] of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10[9] of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a

caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), fourth (4th) edition or edition currently in use;

(c) Impair or impede the individual's functioning in at least one (1) major area of living; and

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant or recipient's care coordinator to establish how:

(a) Often services are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) \$2000 for an individual; or

(b) \$3000 for a couple.

Section 8.[7-] Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

- (c) 907 KAR 1:650, Section 1(9); and
- (d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).
- (2) The optional supplementation payment shall be determined by:
 - (a) Adding:
 - 1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
 - 2. A payment made to a third party on behalf of an applicant or recipient; and
 - (b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 9[8] of this administrative regulation.
 - (3) Income of an ineligible spouse shall be:
 - (a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
 - (b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:
 - 1. The applicant or recipient; and
 - 2. Each minor dependent child.
 - (4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.
 - (5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.
 - (6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.
 - (7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.
 - (8) The SSI twenty (20) ~~dollar[dollars]~~ general exclusion shall not be an allowable deduction from income.

Section 9[8.] Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

- (a) For a resident of a personal care home on or after:
 - 1. January 1, 2013, \$1,230; or
 - 2. January 1, 2014, \$1,241;
- (b) For a resident of a family care home on or after:
 - 1. January 1, 2013, \$882; or
 - 2. January 1, 2014, \$893;
- (c) For individuals who receive caretaker services:
 - 1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after:
 - a. January 1, 2013, \$772; or
 - b. January 1, 2014, \$783;
 - 2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after:
 - a. January 1, 2013, \$1,127; or
 - b. January 1, 2014, \$1,143; or
 - 3. An eligible couple, both aged, blind or have a disability and both requiring care on or after:
 - a. January 1, 2013, \$1,181; or
 - b. January 1, 2014, \$1,197; or
 - (d) For an individual who resides in a private residence and has SMI on or after:
 - 1. November 1, 2013, \$1,230; or
 - 2. January 1, 2014, \$1,241.
- (2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.
- (b) One-half (1/2) of the deficit shall be payable to each.
- (3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) ~~dollar[dollars]~~ personal needs allowance that shall be retained by the client.
- (4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) ~~dollar[dollars]~~ personal needs allowance that shall be retained by the client.

Section 10[9.] Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state

supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

- (a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;
- (b) Social Security Administration notifies the department that the admission shall be temporary; and
- (c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.
- (2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:
 - (a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;
 - (b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and
 - (c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:
 - 1. Notification of the temporary admission; and
 - 2. The physician statement specified in paragraph (b) of this subsection.
- (3) A temporary admission shall be limited to the following health care facilities:
 - (a) Hospital;
 - (b) Psychiatric hospital; or
 - (c) Nursing facility.
- (4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11[10.] Citizenship requirements. An applicant or recipient shall be a:

- (1) Citizen of the United States; or
- (2) Qualified alien.

Section 12[14.] Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13[12]. Mental Illness or Intellectual Disability (MI/ID)[~~Mental Retardation (MI/MR)~~] Supplement Program. (1) A personal care home:

- (a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;
- (b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and
- (c) Shall meet the following certification criteria for eligibility to participate in the MI/ID[MI/MR] Supplement Program:
 - 1. Be licensed in accordance with KRS 216B.010 to 216B.131;
 - 2. Care for a population that is thirty-five (35) percent mental illness or intellectual disability[mental-retardation] clients in all of its occupied licensed personal care home beds and who have a:
 - a. Primary or secondary diagnosis of intellectual disability[mental-retardation] including mild or moderate, or other ranges of intellectual disability[retardation] whose needs can be met in a personal care home;
 - b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or
 - c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;
 - 3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;
 - 4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication

technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 15(2)[44(2)] through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability[mental retardation] supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 15(6)[44(6)] of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or intellectual disability[mental retardation] diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or intellectual disability[mental retardation] diagnosis and is a recipient of state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability[mental retardation] percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. [43]. Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation] Basic Training. (1)(a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse[,] or individual who has successfully completed certified medication technician training shall attend the mental illness or intellectual disability[mental retardation] basic training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employee for certification purposes.

(2) The mental illness or intellectual disability[mental retardation] basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special

attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability[mental retardation];

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability[mental retardation]; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability[mental retardation].

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or intellectual disability[mental retardation] basic training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability[mental retardation] basic training workshop at the closest location.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) sessions per day, and each session shall be three (3) hours in duration.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or intellectual disability[mental retardation].

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID[MI/MR] Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 15. MI/ID[44—MI/MR] Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID[MI/MR] Supplement Program.

(a) The personal care home's initial MI/ID[MI/MR] Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID[MI/MR] Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 14(1)[13(4)] through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability[mental retardation] basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

a. Demonstrates a knowledge of psychotropic drug side affects; and

b. Is on duty as specified in Section 13(1)(c)3[12(4)(e)3] of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID[MI/MR] Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or intellectual disability[mental retardation] clients, as specified in Section 13(1)(c)2[12(1)(e)2] of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability[mental retardation] population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a)[12(6)(a)] of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the

STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID[MI/MR] Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6[12(4)(e)6] of this administrative regulation, for the next following quarter.

Section 16[15]. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17[16]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Application for Benefits", 01/14[edition 1/09];

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Notice of Decision to Personal Care Home", 01/14[edition 1/09];

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Monthly Report Form", 01/14[edition 1/09]; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Certification Survey", 01/14[edition 1/42].

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

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 6, 2013

FILED WITH LRC: November 14, 2013 at 11 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(s): Justin Dearing, and Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Supplement Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplementation Program for persons who are aged, blind, or have a disability.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will create a new living arrangement category to support individuals with serious mental illness in private residences who meet other existing technical and financial eligibility requirements for the State Supplementation Program. The amendment to this administrative regulation will also increase the standards of need in the State Supplementation Program to reflect the cost of living adjustment (a.k.a., COLA) to be implemented in calendar year 2014 by the Social Security Administration for Supplemental Security Income (SSI) recipients. Lastly, the amendment updates terminology within the body of the administrative regulation and its incorporated materials. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with terms of the interim settlement agreement entered between the Cabinet for Health and Family Services and the Division of Protection and Advocacy to avoid federal suit. The new living arrangement category is one of many steps negotiated between the agencies in effort to achieve the goals of community integration and self-determination for individuals with serious mental illness who are living in, or at risk of living in, a personal care home. In addition, this amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to pass along the cost of living adjustment in Supplemental Security Income (SSI) benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration announced the amount of the Supplemental Security Income (SSI) cost of living adjustment on October 30, 2013. The announcement was delayed due to the federal government shutdown. Terms used in the administrative regulation and its incorporated material were also updated to reflect terminology changes made to the statutes during the 2012 Regular Session, specifically the replacement of "mental retardation" with "intellectual disability".

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes through its establishment of a new living arrangement category, as permitted by 20 C.F.R. 416.2030 and guidance received from the Social Security Administration, to prevent the unnecessary institutionalization of individuals with serious mental illness. The amendment also conforms to authorizing statutes by complying with an agreement between Kentucky and the federal government to pass along the cost of living adjustment for Supplemental Security Income (SSI) to State Supplementation Program through an increase in the program's standards of need for all recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by: (1) establishing State Supplementation Program eligibility and benefits to facilitate the most integrated setting and the provision of the most appropriate services to meet the needs of individuals with serious mental illness, (2) passing along the 2014 cost of living adjustment for the Supplemental Security Income (SSI) benefit by modifying the standards of need for all levels of care for the State Supplementation Program; and (3) making terminology used within the administrative regulation consistent with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For calendar year 2012, there were 3,677 individuals who received State Supplementation Program benefits. The number of recipients with serious mental illness in personal care homes or at risk of entering personal care homes is unavailable through existing databases maintained by the department.

(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: Assistance through the cabinet and the Division of Protection and Advocacy will be provided to existing State Supplementation recipients with interest and preliminary qualifications for the new living arrangement category. The new living arrangement category will also be an ongoing option for qualifying State Supplementation applicants and recipients with serious mental illness. Regulated entities will realize an increase in the standards of need for each level of care in the State Supplementation Program effective January 1, 2014.

(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 regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals with serious mental illness will be able to qualify for the State Supplementation Program through a new living arrangement category. In addition, the State Supplementation Program's standards of need will increase by the 2014 cost of living adjustment implemented for the Supplemental Security Income (SSI) Program by the Social Security Administration. Benefit amounts in the State Supplementation Program are the difference between the applicable standard of need and countable income.

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

(a) Initially: There is no new cost to the administrative body anticipated to initially implement the new living arrangement category. Other technical and financial eligibility requirements of the program were unchanged. There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2014 SSI cost of living adjustment. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

(b) On a continuing basis: There is no new cost to the administrative body anticipated for future years. There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2014 SSI cost of living adjustment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds/Agency Funds are used to fund the State Supplementation Program.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416
2. State compliance standards. KRS 194A.050 (1), 205.245
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or

additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 (1), 205.245, 42 U.S.C. 1382e-g, 20 C.F.R. Part 416

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are projected to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are projected to administer this program during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

921 KAR 3:090E

This emergency administrative regulation is necessary to adjust the standardized benefit allotments in the Simplified Assistance for the Elderly (SAFE) program concurrent with the sunset of a provision contained within the American Recovery and Reinvestment Act of 2009, as amended by the Healthy Hungry Free Kids Act of 2010, which increased the Supplemental Nutrition Assistance Program (SNAP) maximum benefit allotments effective April 1, 2009, through November 1, 2013. Benefits through the SAFE Program, a demonstration project under SNAP, must be adjusted by November 1st to ensure that SAFE benefits are cost neutral in comparison to benefits that are available through regular SNAP per federal instruction received September 13, 2013. Failure to adjust the SAFE program's benefit allotments would result in noncompliance with governing federal laws, federal instruction, and may result in suspension or loss of the demonstration project that improves access to food benefits, delivery of food benefits, and program participation for recipients of Supplemental Security Income (SSI) who are aged sixty (60) or older. An ordinary administrative regulation would not allow the agency sufficient time to adjust the standardized benefit allotments in the SAFE program concurrent with the November 1st effective date of the federally prescribed sunset. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation. The SAFE program is an approved demonstration project by the U.S. Department of Agriculture's Food and Nutrition Service (FNS) that provides a standardized monthly allotment of SNAP benefits. The program is required to be

cost neutral in relation to regular SNAP. To determine cost neutrality, benefit amounts received through the SAFE program should be comparable to regular SNAP benefits, but should be at no additional cost. An evaluation of the project by FNS earlier this year determined that the SAFE program was not cost neutral and adjustments in the monthly allotment were necessary to bring the project into compliance with federal mandates. On April 1, 2013, an emergency administrative regulation was filed to correct the noncompliance.

STEVEN L. BESHEAR, Governor

AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Emergency Amendment)

921 KAR 3:090E. Simplified assistance for the elderly program or "SAFE".

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

EFFECTIVE: October 30, 2013

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

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

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

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

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

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

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

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

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

- (a) Is a Kentucky resident;
- (b) Is:
 - 1. A current SSI recipient; or
 - 2. SSI eligible, but SSI benefits are currently in suspense;

(c) Is age sixty (60) or older;

(d) Is not institutionalized;

(e) Is:

1. Single, widowed, divorced, or separated; or

2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and

(f) Purchases and prepares food separately from another individual ~~who~~^[if the other individual] shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.

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

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

(a) Shall not be eligible for SAFE; and

(b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.

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

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

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

(a) Identify SSI participants who are potentially eligible for SAFE; and

(b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.

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

(a) Signed; and

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

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

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

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

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

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

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

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service~~[and listed in the SF-4]~~.

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

(a) Shelter costs;

(b) Household size; and

(c) The average benefits received by a similar household in the regular SNAP.

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

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

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

(a) Name;

(b) Date of birth; or

(c) Address.

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

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 11/13[04/13]; and

(b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 04/13.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 22, 2013

FILED WITH LRC: October 30, 2013 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Simplified Assistance for the Elderly (SAFE) Program, a demonstration project administered by the Cabinet for Health and Family Services' Department for Community Based Services to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for the SAFE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department for Community Based Services has responsibility under 7 C.F.R. 271.4 to administer SNAP, which includes the SAFE Program, a demonstration project.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the SAFE Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reduce the monthly benefit allotments contained on the form, SF-1, Simplified Assistance for the Elderly (SAFE) Application. The form is incorporated by reference and used in the application process.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary due to the sunset of an increase to the SNAP maximum benefit allotment to help people affected by the recession as originally authorized by the American Recovery and Reinvestment Act of 2009 (ARRA). The Healthy Hungry Free Kids Act of 2010 established the November 1, 2013, sunset of the increase. Although SAFE does not have a maximum benefit allotment, the Department for Community Based Services was informed on September 13, 2013, by the U.S. Department of Agriculture's Food and Nutrition Service that the SAFE standardized allotments must also be reduced. Benefits through the SAFE Program, a demonstration project under SNAP, must be adjusted to ensure that SAFE benefits are cost neutral in comparison to benefits that are available through regular SNAP. This change is necessary to comply with federal laws and instruction to maintain the SAFE Program, a demonstration project, in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by implementing the application requirements of 7 C.F.R. 273.2.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by aligning SAFE monthly benefit allotments with SNAP benefit allotments, a condition to maintain the demonstration project.

(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 13,500 households that are currently participating in the SAFE Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require any additional actions on the part of SAFE Program applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will reduce SAFE benefits as follows:

One (1) person households with monthly shelter expenses of \$199 or less will have their monthly benefit reduced from fifty-four (54) dollars to forty-three (43) dollars (- eleven (11) dollars);

One (1) person households with monthly shelter expenses of \$200 or more will have their monthly benefit reduced from \$101 to ninety (90) dollars (- eleven (11) dollars);

Two (2) person households with monthly shelter expenses of \$107 or less will have their monthly benefit reduced from ninety (97) dollars to seventy-seven (77) dollars (- twenty (20) dollars); and

Two (2) person households with monthly shelter expenses of \$108.00 or more will have their monthly benefit reduced from \$143 to \$123 (- twenty (20) dollars).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will ensure that the SAFE program remains an option for regulated entities to improve access to SNAP benefits.

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

(a) Initially: No additional funding is required initially to implement the administrative regulation.

(b) On a continuing basis: No additional funding is required on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP/SAFE benefits are 100 percent federally funded by the U.S. Department of Agriculture. Program administrative costs are funded fifty (50) percent federal and fifty (50) percent state and have been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

2. State compliance standards. KRS 194.050 (1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2

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 revenue for the state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, November 12, 2013)

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(1)(a), 151B.125(1)(a), 151B.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.0234(1)(a) requires the Kentucky Adult Education Program to promulgate necessary administrative regulations and 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 so that they provide applicants with sufficient access and are able to meet the expected testing volume 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 4:130].

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 subtest, 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 subtest, 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 subtest, 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 subtest retests attempted].

(2)[(6)] A request for a duplicate transcript or diploma from Kentucky Adult Education shall:

- (a) Be in writing;
- (b) Carry the signature, birth date, and Social Security number of the test-taker; and

(c) Be accompanied by the payment of:

1. A ten (10) dollar processing fee assessed for the issuance of a duplicate transcript request; or

2. A twenty-five (25) dollar fee assessed for the issuance of a duplicate diploma[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.

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.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Professional Engineers
and Land Surveyors
(As Amended at ARRS, November 12, 2013)

201 KAR 18:020. Application forms.

RELATES TO: KRS 322.040, 322.045, 322.050, 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) or more times to furnish proof of further study. KRS 322.290(4) 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)1. An application by any of the four (4) classes of applicants, including a professional engineer, a professional land surveyor, an engineer-in-training, or a land surveyor-in-training, shall be made on the following[respective] forms issued by the board:

a. Combined Application to take the Principles & Practice of Engineering Examination And For Licensure as a Professional Engineer;

b. Application for Licensure to Practice Professional Land Surveying;

c. Application For Licensure as a Professional Engineer (PE) or Land Surveyor (PLS) By Endorsement;

d. Application for Business Entity Permit – PE or LS;

e. Application For Land Surveyor-In-Training (LSIT) Certification; or

f. Application For Engineer-In-Training (EIT) Certification.

2. Upon the applicant's completion of an application required by subparagraph 1. of this paragraph, the following forms shall be submitted if applicable:

a. Request for Confidential Information – PE;

b. Personal Reference – PE;

c. Report of Professional Experience – PLS;

d. Personal Reference – PLS;

e. Personal Reference – LSIT;

f. Professional Reference for Reinstatement – PE Applicant;

g. Professional Reference for Reinstatement – PLS Applicant;

h. Engineering Affidavit;

i. Surveying Affidavit; or

j. Employment Verification – PE Reinstatement.

(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 listed under this subsection and shall be securely attached[thereto].

(c)[(d)] The board may require clarification or expansion of any of the information on the application required under this subsection in order to evaluate fully an applicant's[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, the applicant shall submit a new application required under subsection (1)(a)1. of this section[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 shall[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]", [(Fed. 11/2013[8/4/02]);

(b) "Request for Confidential Information - PE", [(Fed. 10/03)];

(c) "Personal Reference - PE", [(Fed. 1/07)];

(d) "Application for Licensure to Practice Professional Land Surveying", [(Fed. 7/1/05)];

(e) "Report of Professional Experience - PLS", [(Fed. 8/1/02)];

(f) "Personal Reference - PLS", [(Fed. 1/04)];

(g) "Personal Reference - LSIT"[(Fed. 1/04)];

(h) "Professional Reference for Reinstatement - PE Applicant", [(Fed. 1/07)];

(i) "Professional Reference for Reinstatement - PLS Applicant", [(Fed. 1/07)];

(j) "Engineering Affidavit", [(Fed. 1/07)];

(k) "Surveying Affidavit", [(Fed. 1/07)];

(l) "Employment Verification - PE Reinstatement", [(Fed. 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 – (Fed. 11/2013[1/07]);and]

(n) "Application for Business Entity Permit - PE or LS", [(Fed. 1/07];

(o) "Application For Land Surveyor-In-Training (LSIT) Certification", ed. 11/2013; and

(p) "Application For Engineer-In-Training (EIT) Certification", ed. 11/2013[)].

(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.

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.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 12, 2013)**

301 KAR 1:130. Live bait for personal use.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 105.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area[to regulate creel and possession limits of fish, including the size or types of devices used for taking fish and the places where the taking of fish is permitted]. This administrative regulation establishes the procedures for the taking of live bait for personal use.

Section 1. Definitions. (1) "Different body of water" means a body of water that is separate and not contiguous to another body of water, including a man-made reservoir that is separated from a downstream river by a dam, but does not include a river, stream, or creek that is separated by a low-level dam.

(2) "Live bait" means live bait fishes[minnows, shad, herring], crayfish, salamanders, frogs except bullfrogs, tadpoles, native lampreys, Asiatic clams (Genus Corbicula), and other aquatic invertebrate organisms except mussels.

(3)[(2)] "Live bait fishes" means:

(a) Rough fishes, except blackside dace, palezone shiner, relict darter, Cumberland darter, and tuxedo darter; or

(b) Redear sunfish less than six (6) inches in length[Minnows]

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means fishes under six (6) inches in length, except blackside dace, palezone shiner, relict darter, duskytail darter, largemouth bass, smallmouth bass, Kentucky bass, redear sunfish, rock bass, trout, crappie, walleye, sauger, pikes, white bass, yellow bass, striped bass, and muskellunge, or any hybrids of the above].

(4)(3)] "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes a person who is license exempt pursuant to KRS 150.170[is defined in 301 KAR 1:410(6)].

Section 2. Equipment. (1) Any other organisms not defined as live bait pursuant to Section 1 of this administrative regulation shall be returned immediately to the water.

(2) Live bait for personal use shall only be taken as established in paragraphs (a) through (d) of this subsection [with the following gear:]

(a) The maximum size seine for:

1. Take in the Ohio and Mississippi Rivers and Barkley and Kentucky Lakes shall be:

a. Thirty (30) feet long;

b. Six (6) feet deep; and

c. With bar mesh no larger than one-fourth (1/4) of an inch; or

2. All other waters of the Commonwealth shall be:

a. Ten (10) feet long;

b. Four (4) feet deep; and

c. With bar mesh no larger than one-fourth (1/4) of an inch.

(b) The maximum size for a minnow trap shall be:

1. Three (3) feet long;

2. Eighteen (18) inches in diameter; and

3. With openings no larger than one (1) inch.

(c) The maximum size for a dip net shall be three (3) feet in diameter, and shall only be allowed in the following waters:

1. Ohio River;

2. Tennessee River;

3. Mississippi River;

4. Cumberland River below Barkley Dam;

5. Kentucky River below Lock Number Fourteen (14); and

6. All lakes over 1,000 acres.

(d) The maximum size for a sport cast net on a statewide basis shall be twenty (20) feet in diameter with one (1) inch bar mesh, except take shall be/is prohibited in the following bodies of water:

1. Lakes with a surface area of less than 500 acres; and

2. Hatchery Creek in Russell County, a tributary to the Cumberland River located below Wolf Creek Dam[Live bait shall be taken with the following gear for personal use. Other species except live bait taken with this gear shall be returned immediately to the water:

(1) Seine:

(a) Maximum size shall be ten (10) feet long, four (4) feet deep, one-fourth (1/4) inch bar mesh, with taking permitted statewide; and

(b) Maximum size shall be thirty (30) feet long, six (6) feet deep, one-fourth (1/4) inch bar mesh, with taking permitted in Ohio and Mississippi Rivers and Kentucky and Barkley lakes.

(2) Minnow trap: Maximum size shall be three (3) feet long, eighteen (18) inches in diameter, one (1) inch openings for catching, with taking permitted statewide.

(3) Dip net: Maximum size shall be three (3) feet in diameter, with taking permitted in Ohio, Tennessee, and Mississippi Rivers; Cumberland River below Barkley Dam; Kentucky River below Lock #14; and all lakes over 1,000 acres.

(4) Sport cast net: The maximum size shall be twenty (20) feet in diameter, one (1) inch bar mesh, with taking permitted statewide except for:

(a) Streams stocked with trout, which include statewide streams, national forest streams, seasonal catch and release streams, and the Fort Campbell and Fort Knox military reservations that are cited in the List of Streams Stocked with Trout, 2008;

(b) Lakes with a surface area of less than 500 acres; and

(c) Crocus and Marrowbone Creeks, Cumberland County.

1. Crocus Creek shall be closed to cast nets for an area extending from its mouth to fifty (50) yards upstream.

2. All other tributaries of the Cumberland River below Wolf

Creek Dam to the Tennessee state line shall be closed to cast nets].

Section 3. Bait. (1) A mussel, except for an Asiatic clam, shall not be taken or used as bait[Mussels shall not be taken for use as bait except Asiatic clams].

(2) A sport fisherman shall not possess bait in an amount greater than the following[fishermen shall fisherman shall not possess bait in amounts greater than those listed in each category below]:

(a) 500 live bait fishes[minnows];

(b) 500 crayfish;

(c) Twenty-five (25) dusky salamanders of the genus Desmognathus;

(d) Five (5) frogs, except[(other than] bullfrogs[]];

(e) Five (5) tadpoles;

(f) 100 native lampreys; or

(g) 500 aquatic invertebrates other than mussels, excluding Asiatic clams[(h) 500 shad; and
(i) 500 herring].

Section 4. Possession and Movement of Live Bait for Personal Use. (1) A person possessing live wild-caught shad or herring shall:

(a) Only use live wild-caught shad or herring[be used] in the water body from which[where] they were collected; and

(b) Not transport live wild-caught shad or herring from the body in which they were collected to:

1. A different body of water; or

2. The same body of water if it involves transporting the shad or herring via a Kentucky roadway[be transported to or used in a different body of water].

(2) A person may possess or transport live shad or herring if the person legally purchased the shad or herring from a licensed bait dealer and possesses a valid receipt of the purchase that includes the:

(a) Species of fish;

(b) Quantity of fish;

(c) Amount of the transaction; and

(d) Date of purchase.

(3) Prohibited aquatic species, as established in 301 KAR 1:122, shall not be possessed or used as live bait[Material Incorporated by Reference. (1) "List of Streams Stocked with Trout, 2008", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Eastern time].

BENJY KINMAN, Deputy Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 8, 2013

FILED WITH LRC: October 15, 2013 at 9 a.m.

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

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 12, 2013)**

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025,[150.175,] 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603,[150.620,] 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an

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administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty (20) dollars;

(b) Statewide annual fishing license (nonresident): fifty (50) dollars;

(c) Joint statewide fishing license (resident): thirty-six (36) dollars; ~~and~~

(d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and

(e) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$150; and

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$600.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty (20) dollars;

(b) Statewide hunting license (nonresident): ~~\$140~~ \$130;

(c) Statewide junior hunting license (resident): ~~six (6)~~ five (5) dollars; (nonresident): five (5) dollars;

(d) Statewide junior hunting license (nonresident): ten (10) dollars;

(e) Shooting preserve hunting license (resident or nonresident): five (5) dollars; and

(f) Migratory game bird and waterfowl permit (resident or nonresident): fifteen (15) dollars; ~~(e) Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and (f) Migratory game bird permit (resident or nonresident): ten (10) dollars].~~

(5) Combination hunting and fishing license (resident): thirty (30) dollars.

(6) Senior or disabled combination hunting and fishing license (resident): five (5) sportsman's license (resident): eleven (11) ~~Senior/disabled combination hunting and fishing license (resident): five (5) dollars.~~

(7) Disabled sportsman's license (resident): eleven (11) dollars;

(8) Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner/tenant): ten (10) dollars;

(c) Trapping license (nonresident): \$130; and

(d) Junior trapping license (resident): five (5) dollars.

(9) Game permits:

(a) Resident bear: thirty (30) dollars;

(b) Resident bear chase: thirty (30) dollars.

(c) Resident junior bear chase: ten (10) dollars;

(d) Resident quota cow elk permit: sixty (60) ~~elk hunt permit: thirty (30)~~ dollars;

(e) Nonresident quota cow elk permit: \$400 ~~elk hunt permit: \$365~~;

(f) Resident quota bull elk permit: \$100;

(g) Nonresident quota bull elk permit: \$550;

(h) Resident out-of-zone elk ~~hunt~~ permit: thirty (30) dollars;

(i) ~~(g)~~ Nonresident out-of-zone elk ~~hunt~~ permit: ~~\$400~~ \$365;

(j) ~~(h)~~ Game permit, Resident deer permit: thirty-five (35) ~~thirty (30)~~ dollars;

(k) ~~(i)~~ Game permit, Nonresident deer permit: ~~\$120~~ \$160 ~~sixty (60)~~ dollars;

(l) ~~(j)~~ Junior game permit, resident deer ~~(resident or nonresident)~~: ten (10) dollars;

(m) Junior game permit, nonresident deer: fifteen (15) dollars;

(n) ~~(k)~~ Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;

(o) ~~(l)~~ Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;

(p) ~~(m)~~ Game permit, resident spring turkey: thirty (30) dollars;

(q) ~~(n)~~ Game permit, nonresident spring turkey: ~~seventy-five (75)~~ sixty (60) dollars;

(r) ~~(o)~~ Game permit, resident fall turkey: thirty (30) dollars;

(s) ~~(p)~~ Game permit, nonresident fall turkey: ~~seventy-five (75)~~ sixty (60) dollars;

(t) ~~and (q)~~ Junior game permit, ~~(f)~~ resident ~~(or nonresident)~~ turkey: ten (10) dollars;

(u) Junior game permit, nonresident turkey: fifteen (15) dollars;

(v) Junior game permit, resident elk: thirty (30) dollars; and

(w) Junior game permit, nonresident elk: forty (40) dollars.

(9) ~~(10)~~ (9) Peabody individual permit: fifteen (15) dollars.

(10) ~~(11)~~ (10) Commercial mussel licenses:

(a) Musseling license (resident): \$400;

(b) Musseling license (nonresident): \$1,600;

(c) Mussel buyer's license (resident): \$600; and

(d) Mussel buyer's license (nonresident): \$1,600.

(11) ~~(12)~~ (11) Sportsman's license ~~licenses~~ (resident), which ~~(f)~~ includes a resident hunting and fishing license ~~combination~~, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and deer permit ~~game permit for deer~~: ninety-five (95) dollars.

(12) ~~(13)~~ (12) Junior sportsman's license (resident ~~[or nonresident]~~), which ~~(f)~~ includes a junior hunting license, two (2) junior deer permits ~~permit~~, and two (2) junior turkey permits ~~permit, trout permit and waterfowl permit~~: thirty (30) ~~twenty-five (25)~~ dollars.

(13) ~~(14)~~ (13) Land Between the Lakes hunting permit: twenty (20) dollars.

(14) ~~(15)~~ (14) Conservation permit: five (5) dollars.

Section 2. Licenses, tags, and permits ~~[,]~~ listed in this section shall be valid for the calendar year [in which they are] issued. (1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars; and

(b) Live fish and bait dealer's license (nonresident): \$150.

(2) Commercial taxidermist license: \$150.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): \$150; and

(b) Commercial guide license (nonresident): \$400.

(4) Shooting area permit: \$150.

(5) Dog training area permit: fifty (50) dollars.

(6) Collecting permits:

(a) Educational wildlife collecting permit: twenty-five (25) dollars; and

(b) Scientific wildlife collecting permit: \$100.

(7) Nuisance wildlife control operators ~~[(NWC)]~~ permit: \$100 ~~[,]~~

(8) Pay lake license:

(a) First two (2) acres or less: \$150; and

(b) Per additional acre or part of acre: twenty (20) dollars.

(9) Commercial captive wildlife permit: \$150.

(10) Commercial fish propagation permit: fifty (50) dollars.

(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.

(12) Annual wildlife transportation permit: ~~\$250~~ [, and]

(13) Peabody Wildlife Management Area annual event permit: ~~\$250~~ [, and]

(14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry permit: seventy-five (75) dollars.

(2) Noncommercial captive wildlife permit: seventy-five (75)

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dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:

- (a) One (1) day resident fishing license: seven (7) dollars;
- (b) One (1) day nonresident fishing license: ten (10) dollars;
- (c) Seven (7) day nonresident fishing license: thirty (30) dollars;
- (d) Fifteen (15) day nonresident fishing license: forty (40) dollars;~~;~~
- (e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars;~~;~~
- (f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ~~fifteen (15)~~~~ten (10)~~ dollars;~~;~~
- (g) ~~Seven (7)~~~~Five (5)~~ day nonresident hunting license (not valid for deer, elk, or turkey hunting): ~~fifty-five (55)~~~~forty (40)~~ dollars; ~~and~~
- (h) Three (3) day fur bearer's license: fifty (50) dollars;~~;~~ ~~and~~
- (2) Individual wildlife transportation permit: twenty-five (25) dollars.
- (3) Special resident commercial fishing permit: \$600.
- (4) Special non-resident commercial fishing permit: \$900.
- (5) Commercial waterfowl shooting area permit: \$150.
- (6) Shoot to retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): seventy-five (75) dollars;

and

- (b) Single day: twenty-five (25) dollars.

(7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.

(8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:

- (a) Tier I: \$100;
- (b) Tier II: \$200;
- (c) Tier III: \$300; and
- (d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.
- (9) Peabody individual event permit: twenty-five (25) dollars.
- (10) Commercial roe-bearing fish buyer's permit;~~;~~
- (a) Commercial roe-bearing fish buyer's permit (resident): \$500; and
- (b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.
- (11) Commercial roe-bearing fish harvester's permit:
 - (a) Commercial roe-bearing fish harvester's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.
- (12) Otter Creek Outdoor Recreation Area:

- (a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and

- (b) Daily Special Activities Permit: seven (7) dollars.

- (13) Commercial foxhound training enclosure permit: \$150. ~~[(14) Resident Senior Lifetime Sportsman's License: fifty-five (55) dollars.]~~

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5) Pond stocking fee (per stocking):

- (a) Ponds less than 1.5 surface acres: seventy-five (75) dollars;

- (b) Ponds from 1.5 to 2.9 surface acres: \$200; and

- (c) Ponds equal to or greater than 3.0 surface acres: \$200 plus \$150 for each additional surface acre of water over 3.0 acres prorated on a 0.25 acre basis.

- (6) Commercial captive cervid permit (per facility, per year): \$150.

(7) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150;~~;~~

- (2) Fur buyer's license (resident): fifty (50) dollars; ~~and~~;

- (3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

- (1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and

- (2) Annual Special Activities Permit: seventy (70) dollars.

BENJY KINMAN, Deputy Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 8, 2013

FILED WITH LRC: October 15, 2013 at 9 a.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wild-life 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, November 12, 2013)

301 KAR 4:095. Buying and selling mounted wildlife specimens.

RELATES TO: KRS 150.010, 150.180, 150.411, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.411(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 which to allow resident nonprofit 26 U.S.C. 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 pursuant to/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 pursuant to 26 U.S.C. 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

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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

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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, November 12, 2013)

501 KAR 6:050. Luther Lockett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) "Luther Lockett Correctional Complex policies and procedures", July 26, 2013[40, 2012], are incorporated by reference. Luther Lockett Correctional Complex Policies and Procedures include:

- LLCC 02-05-03 Inmate Canteen Committee (Amended 5/15/12)[LLCC 02-05-03 Inmate Canteen Committee (Amended 5/15/12)]
- LLCC 02-05-05 Inmate Canteen (Amended 5/15/12)
- LLCC 02-06-01 Inmate Control of Personal Funds (Amended 5/15/12)
- LLCC 02-06-02 Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 a.m. Weekdays (Amended 5/15/12)
- LLCC 05-02-02 Outside Consultation and Research (Amended 5/15/12)
- LLCC 06-01-01 Offender Information (Added 7/26/13)
- LLCC 06-02-01 Open Records (Amended 5/15/12)
- LLCC 08-04-01 Fire Safety (Amended 7/10/12)
- LLCC 09-14-02 Guidelines for Contractors (Amended 7/10/12)

- LLCC 09-18-01 Search Plan (Amended 5/15/12)
- LLCC 09-18-03 Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence (Amended 5/15/12)
- LLCC 09-25-01 Procedure for Maintaining Current Inmate Photographs (Amended 5/15/12)
- LLCC 09-29-01 Inmate Death (Amended 7/10/12)
- LLCC 10-01-01 Special Management Inmates (Amended 7/10/12)
- LLCC 11-01-01 Dining Room Guidelines (Amended 7/26/13[7/10/12])
- LLCC 11-02-01 Food Services: Security (Amended 5/15/12)
- LLCC 11-03-01 Food Services: General Guidelines (Amended 5/15/12)
- LLCC 11-04-01 Food Service Meals (Amended 5/15/12)
- LLCC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 5/15/12)
- LLCC 11-05-02 Health Requirements of Food Handlers (Amended 5/15/12)
- LLCC 11-06-01 Food Services: Inspections and Sanitation (Amended 7/10/12)
- LLCC 11-07-01 Food Services: Purchasing, Storage and Farm Products (Amended 5/15/12)
- LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing Issues (Amended 5/15/12)
- LLCC 12-02-01 Laundry Services (Amended 7/10/12)
- LLCC 12-03-01 Vermin and Insect Control (Amended 5/15/12)
- LLCC 12-04-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 5/15/12)
- LLCC 13-02-01 Access to Healthcare (Amended 5/15/12)
- LLCC 13-02-02 Specialized Health Services (Amended 5/15/12)
- LLCC 13-02-03 Vision Care, Prostheses and Orthodontic Devices (Amended 7/10/12)
- LLCC 13-02-05 Medical Services Co-pay (Amended 11/12/13 [7/26/13][5/15/12])
- LLCC 13-03-01 Mental Health Services (Amended 5/15/12)
- LLCC 13-03-02 Use of Psychotropic Medications (Amended 5/15/12)
- LLCC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 7/26/13[5/15/12])
- LLCC 13-04-02 Health Education and Special Health Programs (Added 7/26/13)
- LLCC 13-04-06 Psychological and Psychiatric Records (Added 5/15/12)
- LLCC 13-05-02 Self-Administration of Medication (Inmate) (Amended 7/26/13[5/15/12])
- LLCC 13-06-01 Health Records (Amended 7/26/13[5/15/12])
- LLCC 13-06-03 Notification[Notice] of Inmate Family of Serious Illness, Surgery or Inmate Death (Amended 7/26/13[5/15/12])
- LLCC 13-07-01 Serious and Infectious Diseases (Amended 7/26/13[5/15/12])
- LLCC 13-07-02 Medical Waste Management (Amended 5/15/12)
- LLCC 13-08-01 Restraint Approval (Amended 5/15/12)
- LLCC 13-09-01 Substance Abuse and Chemical Dependency Program (Amended 5/15/12)
- LLCC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/12)
- LLCC 14-03-01 Inmate Legal Services (Amended 5/15/12)
- LLCC 15-01-02 Inmate Housing Assignment (Amended 5/15/12)
- LLCC 15-01-03 Operational Procedures of the Units (Amended 5/15/12)
- LLCC 15-01-04 Rules of the Unit (Amended 7/26/13[5/15/12])
- LLCC 15-01-08 Searches and Control of Excess Property (Amended 7/26/13[5/15/12])
- LLCC 15-01-09 Laundry Unit Services (Amended 5/15/12)
- LLCC 16-01-01 Inmate Correspondence (Amended 5/15/12)
- LLCC 16-01-02 Inmate Privileged or Legal Mail (Amended 5/15/12)
- LLCC 16-01-03 Inmate Packages (Amended 5/15/12)
- LLCC 16-02-01 Inmate Visiting (Amended 7/26/13[5/15/12])
- LLCC 16-02-02 Extended and Special Visits (Amended 5/15/12)
- LLCC 16-02-03 Restricted Visitation Privileges (Amended 5/15/12)
- LLCC 16-03-04 Parole Hearings: Media and Visitors (Amended 5/15/12)

5/15/12)
 LLCC 17-01-01 Inmate Transportation, Reception and Discharge Process (Amended 5/15/12)
 LLCC 17-03-01 Assessment and Orientation (Amended 7/26/13[5/45/42])
 LLCC 17-04-01 Personal Property Control (Amended 5/15/12)
 LLCC 17-04-02 Missing or Stolen Inmate Personal Property (Amended 5/15/12)
 LLCC 17-05-01 Appliances to Outside Dealers for Repair (Amended 7/10/12)
 LLCC 18-01-01 Meritorious Housing (Amended 7/26/13[5/45/42])
 LLCC 18-02-01 Minimum Security Unit Operations (Amended 7/26/13[5/45/42])
 LLCC 19-01-02 Job Assignments and Dismissals (Amended 7/26/13[5/45/42])
 LLCC 20-01-01 Educational Programs (Amended 7/26/13[5/45/42])
 LLCC 21-01-01 Library Services (Amended 5/15/12)
 LLCC 22-01-01 Recreation and Inmate Activities (Amended 5/15/12)
 LLCC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/12)
 LLCC 22-02-02 Inmate Photographs Project (Amended 5/15/12)
 LLCC 22-05-02 Arts and Crafts Program (Amended 5/15/12)
 LLCC 23-01-01 Religious Program (Amended 7/26/13[5/45/42])
 LLCC 23-01-03 Inmate Family Emergency Notification (Amended 5/15/12)
 LLCC 24-01-01 Counseling and Social Services (Amended 7/26/13[5/45/42])
 LLCC 25-01-01 Final Release (Amended 5/15/12)
 LLCC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 5/15/12)
 LLCC 26-02-01 Use of Students (Amended 5/15/12)
 LLCC 26-02-02 Student and Volunteer Identification Badges (Amended 5/15/12)
 LLCC 26-03-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Students, and Volunteers (Amended 5/15/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
 APPROVED BY AGENCY: July 12, 2013
 FILED WITH LRC: July 26, 2013 at noon
 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.

**TRANSPORTATION CABINET
 Motor Vehicle Commission
 (As Amended at ARRS, November 12, 2013)**

605 KAR 1:050. Dealer and salesman.

RELATES TO: KRS 190.010, 190.030, 190.035
 STATUTORY AUTHORITY: KRS 190.010, 190.030, 190.035
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 requires that a salesman's license shall indicate for whom the salesman works~~190.010, 190.030, and 190.035 define what a motor vehicle salesman is and his relationship to his employing dealership. KRS 190.030 also provides for salesmen's licenses to indicate for whom they work~~ and [to] be displayed upon request. This administrative regulation establishes~~interprets~~ the relationship between the dealership and salesman and implements statutory requirements to facilitate accurate recordkeeping by the Motor Vehicle Commission.

Section 1. A properly licensed motor vehicle salesman

employed by a licensee may, in that capacity, sell or exchange a motor vehicle in Kentucky, subject to the requirements established in this section~~[the following limitations:]~~

(1) The activity shall~~[must]~~ be pursuant to the salesman's employment by the licensee whose name appears on the salesman's license.

(2) A[No] salesman shall not establish a place of business separate from the location for which his employer holds a license.

(3) A[No] salesman shall not hold himself out to be a licensed dealer or conduct himself in any manner which would lead a prospective purchaser to believe he is a licensed dealer.

(4) A[No] salesman shall not advertise his sales activity at any location other than the location for which his employer holds a license.

Section 2. In the event a salesman changes his place of employment to another dealership, he shall return his license to the commission along with a properly completed Application for Salesperson License, TC 98-4~~[salesman's license application]~~ showing the name and address of the new~~[other]~~ dealership.

Section 3. Every dealer licensee shall display in a conspicuous place in the dealership office a copy of the license of each salesman employed by the dealership. Upon the termination of employment of a salesman, the licensee shall, within ten (10) days, notify the commission of the termination and return to the commission the dealer's copy of the salesman's license.

Section 4. (1) An[Every] applicant for a motor vehicle salesman license shall submit an Application for Salesperson License, TC 98-4~~[on a form provided by the commission]~~ containing the name, home address, social security number, date of birth of the applicant, and the employment history of the applicant in the motor vehicle industry identifying the name and address of any previous motor vehicle dealerships at which the applicant was employed. If the applicant does not have~~[has no]~~ prior experience in the motor vehicle industry, the applicant shall so state.

(2) An[Every] applicant shall furnish a current photograph for identification purposes.

(3) An[Every] applicant shall authorize the commission to make inquiries or investigations concerning the applicant's employment, credit, or criminal records. The applicant or the employing dealership shall remit the required fee for a criminal background check if requested by the commission.

(4) An Application for Salesperson License, TC 98-4~~[Every application]~~ shall be signed by the applicant and the authorized representative of the employing dealership.

Section 5. The following individuals shall be~~[are]~~ required to obtain a salesman's license:

(1) Each general partner actively involved in the day-to-day operation of a general or limited partnership holding a motor vehicle dealer license;~~;~~

(2) The president, chief executive officer, chief operating officer, or equivalent of a corporation holding a motor vehicle dealer license; and~~;~~

(3) Each manager, or, if member-managed, each member actively involved in the day-to-day operation of a limited liability company holding a motor vehicle dealer license.

Section 6. If any of the individuals in Section 5 are physically located and conduct business at more than one location, the individual shall procure a salesman's license for each location. Otherwise, the individual shall procure a license for the location in Kentucky where he is located or a primary location in Kentucky if he is located outside the state.

Section 7. Incorporation by Reference. (1) "Application for Salesperson License", TC 98-4, October 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Motor

Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RAY COTTRELL, Chairman
APPROVED BY AGENCY: August 13, 2013
FILED WITH LRC: August 14, 2013 at 11 a.m.
CONTACT PERSON: Carlos R. Cassady, Executive Director,
Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1,
Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-
5487.

**TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, November 12, 2013)**

605 KAR 1:070. Change of ownership.

RELATES TO: KRS 190.030
STATUTORY AUTHORITY: KRS 190.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the Motor Vehicle Commission. This administrative regulation establishes requirements for change of ownership of dealer licenses, particularly if implements those requirements, particularly when a sale or transfer occurs, so that the commission can be on notice of who actually holds a license[licenses].

Section 1. A[Any] complete change of ownership of a licensee shall require a new Application for Motor Vehicle Dealer License from the new owner[owner(s)-or corporation].

Section 2. Upon the sale or transfer of a licensee's business to a new individual or entity, the new owner shall secure a new license for each location acquired[If the licensee is a corporation, the sale of the controlling stock in the corporation must be reported to the commission, and the commission may require a new license application].

Section 3. (1) If the licensee is a corporation or limited liability company, the transfer of the controlling stock or controlling membership interest shall[must] be reported to the commission within fifteen (15) days of the transfer.

(2) The commission may require a new license application based on the reported transfer.

Section 4. The commission shall be notified on a timely basis of the following the death of.

(1) [the death of]A licensee who is a sole proprietor;

(2) [the death of]A general partner of a partnership or limited partnership licensee; or

(3) [The death of]An owner of the controlling interest of a corporate or limited liability company licensee.

Section 5. In the case of the death of a sole proprietor, the commission may, if the executor or administrator, alone or in conjunction with dealership employees, is capable of operating the business in compliance with KRS Chapter 190, allow a duly qualified executor or administrator to operate the business for the remainder of the calendar year. In the case of the death of an owner of a partnership, corporation, or limited liability company, the commission shall require a new Application for Motor Vehicle Dealer License if the death results in a material change to the financial, moral, or operational fitness of the licensee.

Section 6. Incorporation by Reference. (1) "Application for Motor Vehicle Dealer License", TC 98-1, August 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort,

Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[may require a new application for a license].

RAY COTTRELL, Chairman
APPROVED BY AGENCY: August 13, 2013
FILED WITH LRC: August 14, 2013 at 11 a.m.
CONTACT PERSON: Carlos R. Cassady, Executive Director,
Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1,
Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-
5487.

**TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, November 12, 2013)**

605 KAR 1:090. Business names.

RELATES TO: KRS 190.040
STATUTORY AUTHORITY: KRS 190.040
NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) authorizes a license to[provides that a license can] be denied, suspended, or revoked for false or misleading advertising. This administrative regulation establishes provisions against false or misleading advertising that prohibit the use of the name of a make of motor vehicle in the business name of a used motor vehicle dealer and the use of a dealership name that is[interprets that proscription against false or misleading advertising to include the use of the name of a make of motor vehicle in the business name of a used motor vehicle dealer, a practice which infringes on trademark law and would cause a consumer to think that a new motor vehicle may be obtained from that dealer. The proscription against false or misleading advertising also includes the use of a name] so similar to the name of an existing dealership that it would confuse or mislead the public.

Section 1. The trade name of a licensee shall incorporate the words used cars, auto sales, auto mart, or other similar wording clearly identifiable as a motor vehicle licensee.

(1) A licensee,[No licensee] other than a franchised new motor vehicle dealer, shall not[may] use the name of any make of motor vehicle as a part of the dealership business name.

(2) The adoption of the name of a make of motor vehicle in a trade name or advertising in this manner shall[be deemed to] constitute false or misleading advertising within the meaning of KRS 190.040 and shall be considered grounds for the denial, suspension, or revocation of a license.

Section 2. The commission shall[may] deny an Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:070,[a license] if the name or proposed trade name of the licensee is the same or so similar to the trade name of an existing licensee that the proposed name would confuse or otherwise mislead the public into believing that the two (2) entities are the same or related.

(1) If no other grounds are cited for the denial of the Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:070, the applicant may reapply.

(2) Reapplication with a new trade name shall be submitted[with a new trade name] within ten (10) days of denial without remitting an additional application fee.

RAY COTTRELL, Chairman
APPROVED BY AGENCY: August 13, 2013
FILED WITH LRC: August 14, 2013 at 11 a.m.
CONTACT PERSON: Carlos R. Cassady, Executive Director,
Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1,
Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-
5487.

TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, November 12, 2013)

605 KAR 1:130. Procedures.

RELATES TO: KRS 190.058, 190.062

STATUTORY AUTHORITY: KRS 190.020, 190.058, 190.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS

190.058(11) authorizes the Motor Vehicle Commission to promulgate administrative regulations. This administrative regulation establishes the procedure and practice for~~[An absolute necessity for any administrative board is a written code of practice and procedure. The enabling legislation for the adoption of such procedures by the Motor Vehicle Commission is found in KRS 190.058. This administrative regulation establishes the proper form of procedure and practice before]~~ the Motor Vehicle Commission~~[and adopts the general practice procedures found in the Kentucky Rules of Civil Procedure].~~

Section 1. Hearings. Hearings shall be conducted as established~~[provided]~~ in this administrative regulation and KRS Chapter 13B.

(1) During any hearing, the reason for any objection shall be stated and made a part of the stenographic record.

(2) All testimony shall be transcribed~~[Section 1. Hearings shall be conducted by a commission member or person designated by the commission as a hearing officer. Hearings shall be conducted pursuant to the Kentucky Rules of Civil Procedure except as otherwise provided in this administrative regulation. The hearing officer shall conduct the hearing and shall rule on matters of procedure and introduction of evidence. The hearing shall be conducted in the manner as the hearing officer determines will best serve the purpose of attainment of justice and dispatch. Objections may be taken to any ruling of the hearing officer and shall be ruled on by the commission. The reason for any objection shall be stated and made a part of the stenographic record. All testimony shall be transcribed].~~

Section 2. Appearances. A~~[Any]~~ licensee who is a natural person may appear and be heard in person, or with or by a duly appointed attorney, and may produce under oath evidence relative and material to matters before the commission.

(1) A licensee that is an artificial entity shall~~[may]~~ be represented only by a general partner, managing member, president,~~[i]~~ or equivalent officer;~~[i]~~ or by an attorney licensed or authorized to practice in Kentucky.

(2) Any attorney, in a representative capacity, appearing before the commission may be required to demonstrate the authority to act in a representative~~[show his authority to act in such]~~ capacity.

Section 3. Argument. All oral arguments shall be succinct and concise. The hearing officer may curtail or establish~~[set]~~ time limits for oral arguments.

Section 4. Additional Hearings. (1) The commission may, on its own motion, prior to its determination, require an additional hearing, if an additional hearing is in the interests of justice.

(2) Notice to all interested parties establishing the date of the hearing shall~~[setting forth the date of such hearing must]~~ be given in writing by the executive director.

Section 5. Briefs. Briefs may be filed as a matter of right.

(1) All briefs shall be concise, summarizing first the evidence presented at the hearing.

(2) Copies of briefs shall~~[must]~~ be typewritten or typed and printed and filed in quadruplicate.

(3) The time allowed for filing briefs shall be designated by the hearing officer, but shall not~~[in no event shall]~~ be less than five (5) days after the hearing.

(4)(a) Response~~[Respondent]~~ briefs may be filed by the

commission, or filed by any person whose interests are affected.

(b) Reply briefs may be filed only if~~[when]~~ limited strictly to answering the brief of respondent.

(5) Briefs containing more than ten (10) pages shall contain on the top fly leaves a subject index with page references.

Section 6. Continuances. Continuances shall be granted if a continuance is in the interest of justice~~[may be granted in the discretion of the hearing officer if good cause for the continuance is shown]~~ and if requested at least forty-eight (48) hours in advance of the hearing date.

Section 7. Depositions. The hearing officer may order testimony to be taken by deposition at any stage of the hearing.

(1) Depositions shall be taken before any person having power to administer oaths, or written by the person taking the deposition or under his direction and shall then be subscribed by the deponent and certified in the usual manner by the person taking the deposition.

(2) The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 8. Except as otherwise provided in this administrative regulation, the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission, unless the hearing officer relaxes rules~~[if; provided, however, that the hearing officer may relax such rules in any case where, in his judgment,]~~ the ends of justice will be better served by so doing.

(1) Judicial notice.

(a) If~~[When]~~ called to the attention of the hearing officer, "judicial notice" may be taken of any matter situated in the files of the commission, the Revenue Cabinet or the Transportation Cabinet, any action pending that~~[which]~~ involves the commission or and all other matters of which a court of Kentucky may take judicial notice.

(b) A brief statement recognizing the matter shall be made in the transcript by the hearing officer.

(2) Additional evidence.

(a) Upon application to the commission, prior to the decision of the commission in the case, the hearing may~~[, in the discretion of the commission,]~~ be reopened for the presentation of additional evidence.

(b) Application for and additional hearing shall establish~~[set forth]~~ concisely the nature of this additional evidence. The commission may, on its own motion, require an additional hearing.

Section 9. Ex Parte Contacts. A person shall not~~[No person shall]~~ have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. A person in violation of this Section shall be identified on the record to the commission and any information provided through the ex parte contact shall be stricken from the commission's records and disregarded~~[In the event an ex parte contact occurs, the name of the person making the contact shall be revealed on the record. In no event shall the information conveyed in an ex parte contact be relied upon or considered in reaching a decision].~~

Section 10. The Report and Recommended Order. Upon the conclusion of a hearing, the hearing officer shall make a report and recommended order which shall contain his finding of facts and conclusions of law. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 11. Exceptions and Replies. Any party to a hearing may, within twenty (20) days after the date the finding of facts and conclusions of law and recommended order is filed with the commission, file and serve exceptions. Exceptions shall consist of as many objections to the whole or any part of the finding of facts and conclusions of law as the party filing the exceptions desires to make, with each objection numbered. Each objection shall fully state the nature and grounds for the objection. Parties filing

~~exceptions shall serve a copy upon every other party participating in the hearing and shall certify to the commission that such service has been accomplished. Replies to exceptions shall be filed and served within twenty (20) days after the filing of exceptions, if any party desires to make a reply. The reply shall consist of a separate reply to each objection set out in the exceptions. Any party filing a reply shall serve a copy on every other party participating in the hearing and shall certify to the commission that such service has been accomplished.~~

~~Section 12. Final Order. Upon the filing of the exceptions and replies or upon expiration of the time for filing exceptions and replies, the hearing officer shall render the complete record to the commission which shall consider and rule upon the case. The commission may, after a study of the case, refer it back to the hearing officer and request the taking of more proof on any point in issue. The commission may require oral argument of the case. When the commission has rendered its decision in the case, its decision shall be served by mail upon all parties and shall be the final order of the commission. The final order shall contain the date of its rendition, and shall be final for purposes of judicial appeal.~~

~~Section 13. Service of Motions, Pleadings. Copies of all motions and pleadings shall be served upon all interested parties, in addition to filing the required copies before the commission. [There shall be no demurrers. Motions to dismiss, setting forth the reasons in support of the motion, may be heard by the commission.]~~

~~Section 11[14]. Reconsideration Hearings. Any party to the proceeding may request in writing a hearing for purposes of reconsideration of a commission decision of any matter formally heard by the commission.~~

~~(1) The request shall be filed with the executive director within fifteen (15) days from the date the notice of the commission's decision is mailed.~~

~~(2) A reconsideration hearing shall be granted only if the request presents significant, relevant information not previously available for consideration, or demonstrates that there have been significant changes in the factors or circumstances relied upon by the commission in reaching its decision, or demonstrates that the commission has materially failed to follow its adopted procedures in reaching its decision.~~

~~(3) The commission shall consider requests for reconsideration in a summary manner.~~

~~(4) If a hearing for reconsideration is granted by the commission, it shall be conducted in accordance with the requirements of this administrative regulation.~~

~~(5) The reconsideration hearing shall be held within thirty (30) days of the decision to grant the request for reconsideration.~~

~~Section 12[15]. Notices. (1) Upon the filing of an appeal from an order or decision, the appellant shall serve a copy on all interested parties.~~

~~(2) All other hearings except license suspension or revocation hearings shall be held only after notice given at least ten (10) days before the date of the hearing.~~

~~(3) A notice of a license suspension or revocation hearing by registered mail to the licensee, sent to the business address of the licensee shown on the latest application for a license shall be [deemed] sufficient notice.~~

~~Section 13[16]. Specifications as to Pleadings, Complaints, Briefs, Motions, Etc. Except if/when permission is granted by the hearing officer, all papers pursuant to this administrative regulation ~~filed under these rules~~ shall be typewritten or printed.~~

~~(1) All copies shall be clearly legible and double spaced, except for quotations.~~

~~(2) All motions, complaints, briefs, etc., shall be made on unglazed paper eight and one-half (8 1/2) inches wide and eleven (11) inches long.~~

~~Section 14[17]. Subpoenas and Subpoena Duces Tecum. (1)~~

The party desiring a subpoena shall make application at least five (5) days before the hearing date with the executive director of the commission.

~~(2) The application shall be in writing, and shall state the name and address of each witness required.~~

~~(3) If evidence other than oral testimony is required, such as documents or written data, the application shall establish ~~set forth~~ the specific matter to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant.~~

~~Section 15[18]. Costs of Hearing. (1) If the commission, by issuance of a final order, [.] finds that a violation has been committed by a licensee, or upholds the recommendation of the hearing officer in a matter involving an applicant for a motor vehicle dealer license, the commission may assess to the licensee or the applicant the fee charged to the commission for the transcription of the record and the fee charged by the hearing officer.~~

~~(2) If the hearing officer or the commission finds that the hearing has been held as a result of an allegation or charge lacking substantial merit, or if the hearing officer or commission finds that a party to the hearing has materially delayed or increased the cost of the hearing through its actions, the commission shall ~~may~~ assess to the party bringing the allegation or causing the delay, the fee charged to the commission for transcription of the record and the fee charged by the hearing officer.~~

~~(3) The fee assessed for the transcription of the record and for the hearing officer shall be the actual costs charged to the commission for that particular hearing, and may be assessed in addition to any fine levied by the commission.~~

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

CONTACT PERSON: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

**TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, November 12, 2013)**

605 KAR 1:190. Motor vehicle advertising.

RELATES TO: KRS 190.010-190.990

STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030, 190.040, 190.058, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) requires that a motor vehicle dealer shall not engage in "false or misleading advertising." KRS 190.073 authorizes the Motor Vehicle Commission to promulgate administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190. This administrative regulation establishes examples of what constitutes false or misleading advertising ~~prohibits a motor vehicle dealer from engaging in "false or misleading advertising"; this is the only statutory or regulatory language which attempts to provide any guideline or standard for dealer advertising. The Motor Vehicle Commission has received numerous inquiries and complaints concerning advertising by licensees. It is the objective of this administrative regulation to define certain conduct which constitutes "false or misleading advertising". KRS 190.073 authorizes the Motor Vehicle Commission to "promulgate appropriate and reasonable regulations for the purpose of carrying out the provisions of this chapter. The purpose of this administrative regulation is to provide for truthful and accurate advertising practices in the sale and lease of motor vehicles by licensed motor vehicle dealers].~~

Section 1. Definitions. ~~[In this section:]~~ (1) "Advertising" means any oral, written or graphic statement, whether physical or

electronic, which offers vehicles for sale or lease or ~~that[which]~~ indicates the availability of vehicles, including any statements or representation made in a newspaper, pamphlet, or circular, other publication, or ~~in[on]~~ radio or television, or contained in any notice, handbill, sign, billboard poster, bill catalog, letter, or business card.

(2) **"Bait advertising" means:**

(a) An alluring but insincere offer to sell or lease a product, to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from the advertised product to another product for a higher price or on a basis more advantageous to the dealer; or

(b) Advertising a new motor vehicle at a price that does not include all equipment listed as standard equipment by the manufacturer without disclosing that fact, or failing to disclose any of that equipment for the purpose of advertising a low price and "baiting" the customer into charges above the advertised price.

(3) "Clear and conspicuous" means a statement, representation or term differing from other statements, representations, or terms being made so as to be readily noticeable to the person to whom it is being disclosed either by its size, sound, length of time, color, placement in the ad, or other features.

(4)[(3)] "Demonstrator" means a vehicle of the current or preceding model year that has never been the subject of a retail sale, and that has been used by dealership personnel for demonstrating performance ability.

(5) "Executive vehicle" or "official vehicle" means, if so advertised, a vehicle that has been used exclusively by an executive or executives of the dealer franchisor[, official or executive vehicles]: the word "demonstrator" means a vehicle of the current or preceding model year which has never been the subject of a retail sale, and which has been used by dealership personnel for demonstrating performance ability. "Executive" and "official" vehicles when so advertised shall have been used exclusively by executives of the dealer's franchisor.

(4) "Bait advertising" means an alluring but insincere offer to sell or lease a product, to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from the advertised product to another product for a higher price or on a basis more advantageous to the dealer. Advertising a new motor vehicle at a price which does not include all equipment listed as standard equipment by the manufacturer without disclosing such fact, or failing to disclose any such equipment for the purpose of advertising a low price and "baiting" the customer into charges above the advertised price is prohibited. No practice shall be pursued by the advertiser which will discourage the sale of the advertised product with the intent and purpose of selling other merchandise instead.]

Section 2. **A licensee[Licenses]** shall not use misleading or bait advertising. **A practice shall not be pursued by an advertiser if the practice will discourage the sale of the advertised product with the intent and purpose of selling other merchandise instead.**

Section 3. **An advertisement[Advertisements]** for the sale or lease of new and used vehicles placed by a licensee shall clearly and conspicuously identify the dealership by including in the text of the advertisement[~~either the word "dealer" or~~] the business name as it appears on the ~~dealer's[dealer]~~ license.

(1) In a classified newspaper advertisement[In classified newspaper advertisements], the licensee may, as an alternative, use the word "dealer" in the text of the advertisement.

(2) A new or used motor vehicle dealer advertising the sale or lease of new or used motor vehicles at more than one (1) licensed location shall use in the text of the advertisement the business name for each advertised location as the name appears on the dealer's license for the locations subject to the advertisement.

(3)[Additionally,] A new motor vehicle dealer advertising the sale or lease of new motor vehicles at more than one (1) licensed

location shall specifically identify the makes of vehicles available at each advertised location.

Section 4. (1) Except as **established[provided]** in subsection (2) of this section, if a specific new motor vehicle is advertised by a dealer as being for sale, that vehicle shall be:

(a) In the possession of the dealer;

(b) Shown; and

(c) Sold as advertised, illustrated, or described at the advertised price and terms, at the advertised address.

(2) The advertisement for the sale or lease of a specific new motor vehicle that is not in stock on the date of the advertisement shall:

(a) State:

1.[state:(a)] "Not in stock";

2.[or(b)] "Order yours now"; or

3.[(c)] Other phrases of similar import that clearly indicate the vehicle is not available for immediate delivery; and

(b)[(d) Shall] Disclose a reasonable estimate of the period of time in which delivery will be made.

(3) If an advertisement pertains to one (1) specific vehicle only, this fact shall be disclosed in the advertisement. Listing a stock number **shall be[is]** adequate disclosure.

Section 5. The following statements shall not be used in advertising by a dealer, unless **the[such]** statements are absolutely true with no qualifications:

(1) Statements such as:

(a) "Write your own deal";

(b)[,] "Name your own price";

(c)[,] "Name your own monthly payments";

(d)[,] "Appraise your own car"; or

(e)[if[car]]["or"] Statements with similar meaning[,].]

(2) Statements such as:

(a) "Everybody financed";

(b)[,] "No credit rejected";

(c)[,] "We finance anyone"; or

(d)[, and] Other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit[,].]

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated; **and[,].]**

(4) Statements implying that because of its large sales volume, a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles.

Section 6. [(5)(a)] Retail advertising shall not state or imply that the dealer:

(1)[,] Is selling vehicles in a manner other than through normal retail channels; or

(2)[2-] Has a special relationship or connection to the manufacturer that other dealers do not have.

Section 7. (1)[(b)] Terms such as "wholesale", "factory sale", "factory discount", "factory outlet", "factory branch", and similar terms used in connection with the manufacturer's name are examples of terms that imply that a dealer has a special relationship or connection to a manufacturer that other dealers do not have, **and shall be prohibited in retail advertisements.**

(2)[(6)](a) Claims such as "first", "largest", "biggest", shall not be used unless they are valid at the time such claims are made.

(b) If such claims are qualified with regard to area, location, time, or other limitations, upon the direction of the commission, the dealer shall incorporate within the advertisement the terms of such qualification.

Section **8.[6.]** Since the amount of trade-in allowance will vary depending on the condition, model, and age of a buyer's vehicle, no specific trade-in amount or range of amounts shall be used in advertising.

Section **9.(1)[7.]** An asterisk (*) may be used to give additional information about a word or term.

~~(2); however,~~ Use of one (1) or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify, or unreasonably limit a principal message of the advertisement shall not be used.

Section ~~10.(1)(8).~~ Any disclosure appearing in advertisements shall clearly and conspicuously feature all necessary information in a manner that can be read and understood or ~~that[which]~~ can be heard and understood.

~~(2)~~ The minimum duration of printed language in a television advertisement shall be five (5) seconds for every three (3) lines.

Section ~~11. If[9. When]~~ a motor vehicle advertisement contains an offer of a discount on a new vehicle, the amount of ~~the[such]~~ discount shall be stated by reference to the actual dollar figure of the manufacturer's suggested retail price of the vehicle plus the retail price of dealer-added options.

Section ~~12.[10.]~~ The words "free", "gift", or words of similar import may be used in advertising only ~~if[when]~~ the advertiser is offering an unconditional gift.

Section ~~13.[14.]~~ The manufacturer's suggested retail price (MSRP) dollar figure of a new motor vehicle ~~if[when]~~ advertised in local media by a manufacturer, distributor, or regional advertisement council or association shall include all costs and charges for the vehicle advertised including destination charges ~~if[when]~~ those charges are uniform regardless of destination throughout the state; destination charges subject to variance within the state and dealer preparation charges may be excluded from ~~the price, if[such price, provided that]~~ the advertisement conspicuously states that ~~the[such]~~ costs and charges are excluded.

~~(1) If[When]~~ the price of a vehicle is advertised in local media by a licensee, the vehicle shall be fully identified as to year, make, model, and if new or used.

~~(2)[In addition,]~~ The stated price shall include all charges ~~that[which]~~ the customer ~~is required to[must]~~ pay for the vehicle, including, ~~but not limited to,~~ "freight" or "destination charges", "dealer preparation", "dealer handling", "additional dealer profit", "additional dealer margin", and "undercoating or rustproofing" if the vehicle is already so equipped.

~~(3)~~ The advertised price at which the dealer is advertising a particular motor vehicle shall be the price before consideration for a down-payment, a trade-in allowance, or other similar allowances.

Section ~~14. If[12. Where]~~ the words "list" or "sticker" or words of similar import are used in a new motor vehicle advertisement, ~~the words[they]~~ shall only refer to the actual dollar figure of the manufacturer's suggested retail price (MSRP) plus the retail price of dealer-added options.

Section ~~15. If[13. Whenever]~~ any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle.

Section ~~16.[14.]~~ A dealer offering to sell a demonstrator, program, official, or executive vehicle shall clearly and conspicuously identify ~~former use.~~

~~(1) A demonstrator[such former use. Demonstrators]~~ shall be offered for sale as such only by a dealer who holds a valid sales agreement or franchise ~~for[for]~~ the sale of the same line make of motor vehicle.

~~(2) A vehicle[vehicles]~~ advertised as ~~an~~ official or executive ~~vehicle[vehicles]~~ shall not have been sold or leased to a retail customer prior to the appearance of the advertisement.

Section ~~17.[15. No reduced interest rate on]~~ Motor vehicle financing shall ~~not~~ be advertised ~~at a reduced interest rate~~ if the cost thereof would be directly or indirectly borne by the buyer unless the advertisement discloses that rate ~~shall[will]~~ affect the negotiated price of the vehicle to the buyer.

Section ~~18.[16.]~~ In any action ~~pursuant to[under]~~ this administrative regulation, truth shall be an absolute defense.

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

CONTACT PERSON: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 564-5487.

**TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, November 12, 2013)**

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

RELATES TO: KRS 190.010 (29), (30), 190.032, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 190.032, 190.073

NECESSITY, FUNCTION AND CONFORMITY: KRS 190.032 requires the Motor Vehicle Commission to establish requirements for initial application for and renewal of a license to be a nonprofit motor vehicle dealer and directs the commission to establish relevant requirements ~~that shall[which must]~~ include standards for disability or disadvantaging conditions concerning the clients served by nonprofit motor vehicle dealers. This administrative regulation establishes ~~[those]~~ requirements and standards for nonprofit motor vehicle dealers and licensing.

Section 1. In addition to ~~[the attributes described in]~~ KRS 190.010(29) and the application requirements ~~established[contained]~~ in 605 KAR 1:030, Sections 4, 5, and 10, a nonprofit motor vehicle dealer applicant shall certify that it is an organization exempt from taxation ~~pursuant to[under]~~ 26 U.S.C. Section 501(c)(3) of the Internal Revenue Code and that it has made all required filings with the Internal Revenue Service.

Section 2. In addition to ~~[the attributes described in]~~ KRS 190.010(30), an applicant shall demonstrate to the commission that ~~the applicant's[its]~~ sales program serves only clients meeting two (2) or more of the following disability or disadvantaging conditions:

(1) The client's household income is at or below the current federal Poverty Guidelines as established by the United States Department of Health and Human Services;

(2) The client has been designated as physically disabled by any state or federal agency;

(3) The client has an actual need for a motor vehicle in order to meet work, educational, or medical needs and the client cannot obtain a reliable vehicle without the dealer's assistance;

(4) The client has received state or federal funding specifically designed to allow the purchase of a vehicle for personal or household use; or

(5) The client has experienced the loss of a functioning vehicle as a result of an event certified as a natural disaster by any applicable state or federal agency.

Section 3. Upon the submission of its initial application and each renewal application thereafter, the applicant or licensee shall submit the current IRS Form 990 filed by the organization. If the applicant or licensee files a short form version of IRS Form 990, the commission may require the applicant or licensee to submit additional information which would be contained on IRS Form 990 if the commission has reasonable cause to doubt the financial responsibility of the applicant to comply with the provisions of KRS Chapter 190.

Section 4. A nonprofit motor vehicle dealer that is not also licensed as either a new motor vehicle dealer or a used motor vehicle dealer shall not sell any vehicles except as allowed by KRS 190.032(3).

RAY COTTRELL, Chairman

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 11 a.m.

CONTACT PERSON: Carlos R. Cassidy, Executive Director,
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5487.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 12, 2013)

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

RELATES TO: KRS [456.031,] 160.180

STATUTORY AUTHORITY: KRS 156.070, 160.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS

156.070(4) authorizes the Kentucky Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. [KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 160.180(5) provides that all local school board members shall complete an established number of hours of in-service training annually, based on the number of years of experience, and that the Kentucky Board of Education [State Board for Elementary and Secondary Education] shall identify the criteria for fulfilling these[such] requirements. This administrative regulation establishes standards for the annual in-service training of district board members.

Section 1. Content of Training. (1) The[annual] in-service requirements for all district school board members set forth in KRS 160.180(5) shall include[be as follows]:

(a)1. For school board members with zero to three (3) years of experience:

a. Three (3) hours of school finance training annually;

b. One (1) hour of ethics training annually; and

c. One (1) hour of superintendent evaluation training annually;

2.[Three (3)](1) Twelve (12)][hours of school finance training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training annually for school board members with zero to three (3) years of experience.] School board members with zero to three (3) years of experience may[shall] acquire the remainder of their hours in these topics or topics listed in Section 2(1)(b) of this administrative regulation;

(b) For school board members with four (4) to seven (7) years of experience:

1. Two (2) hours of school finance training annually;

2. One (1) hour of ethics training annually; and

3. One (1) hour of superintendent evaluation training annually.[Two (2)](2) Eight (8)][hours of school finance training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training annually for school board members with four (4) to seven (7) years of experience]; or[-]

(c) For school board members with eight (8) or more years of experience:

1. One (1) hour of school finance training annually;

2. One (1) hour of ethics training annually; and

3. One (1) hour of superintendent evaluation training biennially.[One (1) hour of school finance](3) Four (4) hours][training annually, one (1) hour of ethics training annually, and one (1) hour of superintendent evaluation training biennially for school board members with eight (8) or more years of experience.](4)(a) Newly appointed or elected

~~school board members who take office after June 30th of a particular year shall be entitled, upon appropriate request, to an extension of time under Section 5 of this administrative regulation within which to acquire a maximum number of unacquired hours equal to the difference between the required number of hours and one (1) hour per month for each full month actually served during the year, and such extensions shall extend no longer than through the remainder of the term being served or the next two (2) calendar years, whichever is longer.~~

~~(b) Newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year may be granted an extension of time under Section 5 of this administrative regulation, in appropriate cases and for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required, but unacquired in-service hours for the initial year of new service. Any such extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.]~~

(2) For board members with four (4) or more years of experience, the remaining hours of required training[Section 2. The topics relating to the responsibilities of board members] may include topics such as[but not be limited to the following subjects]:

(a)[(1)] The basic role and responsibility of the district board and its members;

(b) Curriculum and instruction[(2) Instructional programs];

(c)[(3) District finance;

(4)] Relations with superintendent and staff;

(d)[(5)] School law; and

(e)[(6)] Community relations.

(3) To qualify toward meeting the in-service board member training requirements of KRS 160.180(5) and this administrative regulation, the required training activity shall not be:

(a) The regular work of the board, such as the attendance of meetings or the conduct of hearings;

(b) Irrelevant to the pertinent knowledge and skills of board membership; or

(c) A public relations or social activity, such as graduation or other student events.

Section 2. Providers of Training.[3-] (1)(a) The Kentucky School Boards Association (KSBA) shall be[is recognized as] the provider of eight (8) hours of district board member in-service training for board members who are required to obtain twelve (12) hours annually. Board members with zero to three (3) years of experience may acquire the remaining four (4) hours of their training from either the KSBA or the providers described in subsection (2) of this section. Board members with[more than] four (4) or more years of experience may acquire their hours from the KSBA or the providers described in subsection (2) of this section[This arrangement equates to the KSBA being the provider of thirty-two (32) of the forty-eight (48) hours required during the four (4)-year period for new board members].

~~(b) The[New, inexperienced board members shall be exposed to basic information and skills that make them informed and effective board members. Topics that new, inexperienced board members shall acquire hours in shall be offered annually by] KSBA shall offer training on eight (8) of the eleven (11) following[from the following list of] topics annually and shall offer training on all eleven (11) topics at least once during every twenty-four (24) month period:~~

~~1. School law;~~

~~2. School finance;~~

~~3. Community relations;~~

~~4. Policy development;~~

~~5. Personnel relations;~~

~~6. Curriculum and instruction[Instructional programs];~~

~~7. Superintendent/board relations;~~

~~8. Goal setting/decision making;~~

~~9. Employment and evaluation of the superintendent;~~

~~10. Educational services provided for the exceptional, gifted and other special population children; and~~

11. Ethics.

(c) The KSBA shall coordinate with the chief state school officer annually to develop an in-service training plan for approval by the Kentucky Board of Education on or before November 1 of each year for use in the following calendar year. In-service training for district board members shall be provided at a minimum of five (5) geographic locations, on a variety of dates [KSBA shall offer hours in at least seven (7) of the ten (10) topics listed in paragraph (b) of this subsection annually. No topic shall be made available less frequently than once in every twenty-four (24) month period.

(d) Board members in the zero to three (3) year experience period shall be allowed a maximum of four (4) hours per year, or sixteen (16) hours for the four (4) year period, as flexible hours of in-service. If board members in this category opt to get all of their hours through the KSBA, then they shall have KSBA credit them for these hours. If they determine to acquire a portion or all of the sixteen (16) flexible hours through sources other than KSBA, then they shall get credit through their own school board's action at a board meeting, and a copy of that record shall be sent to KSBA so that proper credit can be given].

(2) Training providers, other than the KSBA, including the Prichard Committee, the Kentucky Education Association, the Kentucky Association of School Councils, the Kentucky PTA, the Kentucky Association of School Superintendents, the Kentucky Association of School Administrators, and any other provider, shall only provide training through courses that are:

(a) Customized for board members; **and**

(b) Verified by the department to be compliant with the requirements of this administrative regulation.

~~[(b) Approved by the department; and~~

~~(c) In compliance with the requirements of this administrative regulation]~~ Those district board members in the four (4) to seven (7) years experience category may acquire their hours anywhere, through any source they desire. If they obtain their hours through any source other than the KSBA, they shall have local board approval and send a copy of the record (board minutes) to KSBA[.]

(3)(a) If board members opt to get all of their training hours through the KSBA, then they shall have KSBA credit them for these hours. If they obtain hours through any source other than the KSBA, they shall have local board approval and send a copy of the record (board minutes) to KSBA. If they acquire training hours through the other approved providers described in subsection (2) of this section, then a copy of proof of attendance including a recitation of the time, date, location, and description of the in-service training shall be sent by the course provider to KSBA within two (2) weeks of completion of the training so that proper credit can be given.

(b) The KSBA shall combine ~~these[such]~~ hours with hours of in-service training received through KSBA training activities. These records shall be submitted annually by the KSBA to the Kentucky Board of Education.

(c) Each provider of training hours shall conduct an evaluation of each training course, which is offered by the provider during a calendar year and submitted by a local board member for training hours credit under this administrative regulation, and **shall** compile responses to be submitted to the KSBA within sixty (60) days of completion of the training[Those board members in the eight (8)-or more years experience category are subject to subsection (2) of this section.

(4) As the approved provider, the KSBA shall, in cooperation with the chief state school officer, annually develop an in-service training plan for the review and approval of the State Board for Elementary and Secondary Education. In-service training for district board members shall be provided at a minimum of five (5) geographic locations, on a variety of dates.

(5) The local district board of education shall by board action certify completion of all qualifying flexible hours of in-service training in writing to KSBA, which shall combine such hours with hours of in-service training received through its approved activities. The certification to KSBA shall include a description of the time, date, location, and description of the in-service training. These records shall be submitted annually to the State Board for Elementary and Secondary Education].

Section 3. Failure to Acquire Training.[4-] Subject to extensions granted under Section 4[5] of this administrative regulation, the names of all district school board members who fail to complete the required[hours-of] in-service training set forth in KRS 160.180(5) and this administrative regulation shall be transmitted by the department [of Education] to the Attorney General.

Section 4. Extension of Time. (1) The Kentucky Board of Education may grant newly appointed or elected school board members, who take office after June 30th of a particular year, an extension of time within which to acquire a maximum number of unacquired hours equal to the difference between the required number of hours and one (1) hour per month for each full month actually served during the year. ~~These[, and such]~~ extensions shall ~~not extend beyond[extend no longer than through]~~ the remainder of the term being served or the next two (2) calendar years, whichever is longer.

(2) The Kentucky Board of Education may grant **an appropriate extension of time, not to exceed two (2) calendar years,** to newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year[~~an extension of time, for an appropriate period of time not to exceed two (2) calendar years,~~] within which to obtain the balance of any required, but unacquired in-service hours for the initial year of new service. Any ~~[such]~~ extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.

(3) **The Kentucky Board of Education, in cases of true emergency, may grant an extension of time within which a local board member shall complete the required hours of in-service training. True emergencies shall include events such as death or prolonged illness of a loved one, prolonged illness of the board member, personal disasters of the magnitude of tornadoes or fires or floods affecting the board member directly, prolonged requirement for appearance in a court proceeding, and other emergency reasons where there exists a pressing necessity that requires immediate and prolonged attention. True emergencies shall not include, for board members serving less than a full year, the length of the member's tenure[The Kentucky Board of Education]**[5. The State Board for Elementary and Secondary Education][~~in cases of emergency, may grant an extension of time within which a local board member shall complete the required hours of in-service training. Such extensions may include true emergencies for board members serving less than a full year, based upon reasons other than merely less than a full year's service].~~

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

TERRY HOLLIDAY, Ph.D., Commissioner

ROGER MARCUM, Chairperson

APPROVED BY AGENCY: October 15, 2013

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

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 12, 2013)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.095 requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development to improve training, with the purpose of the program being the improvement of instruction in the public schools. KRS 158.070(5) requires the state board to promulgate administrative regulations establishing guidelines and procedures to be followed for the approval of the days utilized for professional development activities four (4) days of the minimum school term required which are mandated to be four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development activities for the professional staff (teachers) [the professional staff]. This administrative regulation establishes the requirements for the annual professional development plan.

Section 1. Definitions. (1) "Comprehensive School Improvement Plan" is defined in 703 KAR 5:225. Section 1(3) "High-quality professional development" means those experiences that systematically, over a sustained period of time, enable educators to facilitate the learning of students by acquiring and applying knowledge, understanding, skills, and abilities that address the instructional improvement goals of the school district, the individual school, or the individual professional growth needs of the educator.

(2) "Improvement plan" means a product that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished in the school or district relative to established standards, goals, or objectives for improvement].

(2)(3) "Needs assessment" means the gathering, sorting, and analysis of student, educator, and system data that lead to conclusions regarding the need for content and learning designs for professional development in identified areas related to educator performance and student achievement.

(3) "Professional development" means professional learning that is an individual and collective responsibility, that fosters shared accountability among the entire education workforce for student achievement, and:

(a) Aligns with Kentucky's Core Academic Standards in 704 KAR 3:303, educator effectiveness standards, individual professional growth goals, and school, school district, and state goals for student achievement;

(b) Focuses on content and pedagogy, as specified in certification requirements, and other related job-specific performance standards and expectations;

(c) Occurs among educators who share responsibility [accountability] for student growth;

(d) Is facilitated by school and district leaders, including curriculum specialists, principals, instructional coaches, competent and qualified third-party facilitators, mentors, teachers or teacher leaders;

(e) Focuses on individual improvement, school improvement, and program implementation; and

(f) Is [Be] on-going [Occurs several times per week].

(4) "Professional development program" means a sustained, [and] coherent, relevant, and useful professional learning process [of professional development] that is measurable by indicators and provides [includes] professional learning and ongoing support to transfer that learning to practice [may be composed of several initiatives].

Section 2. Each local school and district shall develop a process to design [plan] [for the development of] a professional development plan [program] that meets [This process shall lead to a program of high quality professional development experiences that the school and district will provide for its instructional and administrative staff within] the goals [as] established in KRS 158.6451 and in the local needs assessment. A school professional development plan [program] shall be incorporated into the school improvement plan and shall be made public prior to the implementation of the plan [school] [program]. The local district professional development plan [program] shall be incorporated into the district improvement plan and posted to the local district

Web site prior to the implementation of the plan [program].

Section 3. Each school and local district professional development plan [program] [improvement plan] shall contain [meet] the following six (6) elements [standards related to the professional development program]:

(1) A [There is a] clear statement of the school or district mission;

(2) [There is] Evidence of representation of all persons affected by the professional development plan [program];

(3) A [Application of] needs assessment analysis [is evident];

(4) Professional development objectives that are focused on the school or district mission, [and] derived from needs assessment, and that specify changes in educator practice needed to improve student achievement; and

(5) [The professional development program and implementation strategies are designed to support school or district goals and objectives; and

(6) A process for evaluating [professional development experiences for their] impact on student learning and improving professional learning, using evaluation results [to improve] [improving] [professional learning] [development initiatives is incorporated in the plan].

Section 4. (1) The school or district improvement plan shall, in compliance with KRS 158.6451, address professional learning required to improve instruction [for any instructional improvement or training needs that are in accordance with the goals as established in KRS 158.6451].

(2) [High-quality] Professional development [experiences] shall:

(a) Be related to the teachers' instructional assignments and the administrators' professional responsibilities; [Experiences shall support the local school's instructional improvement goals; and]

(b) Be aligned with the school or district improvement plan or the individual professional growth plans of teachers;

(c) Occur within learning communities committed to continuous improvement, collective responsibility, and goal alignment;

(d) Be facilitated by skillful leaders who develop capacity and advocate and create support systems for professional learning;

(e) Be prioritized and monitored by the district;

(f) Use a variety of sources and types of student, educator, and system data to plan, assess, and evaluate professional learning;

(g) Integrate theories, research, and models of human learning to achieve its intended outcomes;

(h) Apply current research on systems change and sustain support for implementation of professional learning for long-term instructional improvement as evidenced by student growth;

(i) Align its outcomes with educator performance and student curriculum standards; and

(j) Focus resources on areas of identified need.

(3) [Experiences for] Professional development [credit of classroom teachers] shall not supplant any of the six (6) hour instructional day.

(4) A district may report flexible professional development [experiences] on unpaid [noncontact snow] days. This shall require a district calendar change and the change shall be reported to the Department of Education.

(5) Professional development [experiences] that relates [relate] to an individual professional growth plan may be used to satisfy the requirements for certification or renewal options as established by the Kentucky Education Professional Standards Board in Title 16 KAR.

(6)(a) Professional development grant dollars may reimburse college or graduate course tuition expended [be used for college or graduate course tuition reimbursement] for a teacher to deepen content knowledge and content-specific pedagogy in [specific academic subject content areas in] math, science, English/language arts, social studies, arts and humanities, and practical living and career studies, if [for which] the teacher is assigned to teach in those areas.

(b) The use of professional development funds for tuition reimbursement [this purpose] shall be specified in the district improvement plan approved by the school board or the school plan

approved by the school council as to funds under its control.

(c) Particular content areas and grade levels, which qualify for reimbursement, may be specified based upon information about the level of academic preparation of the teacher employed, local student performance data, and student learning needs[instructional need].

(7) Professional development credit shall not be awarded for those experiences that provide remuneration beyond travel, food, lodging or tuition.

(8) A school district implementing a flexible professional development schedule shall award professional development credit for any experience that addresses the goals of the school, the goals of the district improvement plan, or the individual professional growth plans of teachers.

(9) Parent-teacher conferencing skill development shall be permissible as a professional development experience.

Section 5. The Qualifications and Duties of the District Professional Development Coordinator. (1) Qualifications for the position of district professional development coordinator shall include:

(a) A staff member meeting the certification requirement for a professional development coordinator as established by the Education Professional Standards Board in 16 KAR 4:010;

(b) A demonstrated ability to work with schools to plan, design, implement, and evaluate professional development that aligns with the requirements of this administrative regulation[Experience in professional development planning]; and

(c) A demonstrated ability to work with schools to connect professional development with effective instructional practices and student achievement data.

(2) Duties of the district professional development coordinator shall include:

(a) Facilitating analysis of student, educator, and system data to conduct[Conducting] the district professional development needs assessment;

(b) Coordinating the intradistrict alignment of professional learning to achieve identified goals[-] and objectives[-and experiences] for professional development;

(c) Building capacity of school leaders, school council members, and other school and district leaders to plan, access resources, implement, and evaluate professional learning[Providing technical assistance to school councils, staff and professional development committees in the alignment of professional development experiences with school goals as identified through the local school improvement planning process];

(d) Disseminating professional development information to school councils, staff members, and professional development committees;

(e) Providing technical assistance to school councils on scheduling to allow for job-embedded professional learning opportunities[during the school day].

(f) Coordinating the planning, implementation, and evaluation of the district professional development plan[program] that is aligned, supportive of, and developed in conjunction with [local] school improvement plans; [(f) Upon request by a school council or school staff, providing technical assistance on the evaluation and coordination of school-based professional development experiences;]

(g) Coordinating the establishment of local policies, procedures, timetables, [preparation of] necessary forms and letters, assignment of workshop sites, and all other practical elements of professional development [training], including fiscal management;

(h) Maintaining, verifying, and, if appropriate, submitting district and school professional development records, documentation, and other pertinent information to the Department of Education;

(i) Explaining the district's professional development plans[programs'] objectives, results, and needs to school professionals, district staff, [the] board members, civic and parent groups, teacher training institutions, and others, as requested; [and]

(j) Maintaining [a professional] contact with the Department of Education and other agencies involved in providing professional

development; and

(k) Identifying, selecting, coordinating and evaluating the services of third-party professional development providers[experiences].

Section 6. A maximum of fifteen (15) percent of the district's professional development grant may be used for administrative purposes.

Section 7. When implementing professional development plans[programs] under KRS 158.070, a local school or district shall adhere to its school or district improvement plan.

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

TERRY HOLLIDAY, Ph.D., Commissioner

ROGER MARCUM, Chairperson

APPROVED BY AGENCY: October 15, 2013

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

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at ARRS, November 12, 2013)

704 KAR 3:390. Extended school services.

RELATES TO: KRS 158.070, 158.6451, 158.6459

STATUTORY AUTHORITY: KRS 156.070, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS

156.070(4) authorizes the Kentucky Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 158.070(9)(8)) requires schools to provide continuing education for students who need additional instructional time to achieve the outcomes defined in KRS 158.6451. KRS 158.070(9)(8)) requires the Kentucky Board of Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver those services during the regular school day. This administrative regulation establishes[established] requirements for extended school services.

Section 1. Definitions. (1) [~~"A5 program" means an alternative program, which is a district-operated and district-controlled facility with no definable attendance boundaries, that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court-ordered placements). Students enrolled in A5 program typically include:~~

(a) ~~Actual dropouts returning to an alternate educational environment;~~

(b) ~~Potential or probable dropouts;~~

(c) ~~Drug abusers;~~

(d) ~~Physically abused students;~~

(e) ~~Discipline problem students;~~

(f) ~~Nontraditional students (e.g., students who have to work during the school day); or~~

(g) ~~Students needing treatment (e.g., emotional or~~

psychological).

(2) "A6 program" means a district-operated instructional program in a nondistrict-operated institution or school.

(3) "Diagnostic assessment[," "formative assessment" or "benchmark assessment,]" means an assessment that is used to identify[identify] gaps in student learning in specific content areas.

(2)[(4)] "Extended school services" or "ESS" means instructional and support services provided:

(a) By school districts for students who are unlikely to achieve proficiency, transition to the next level of learning successfully, or be able to meet the academic expectations in 703 KAR 4:060 without additional time or differentiated opportunity to learn;

(b) At times separate from the regular school day, regular school week, or the minimum school term, unless a district's request for a waiver meets the criteria established in Section 7 of this administrative regulation and has been approved by the commissioner [of Education]; and

(c) As interventions included in the student's intervention plan, [in primary through grade 5, or in the student's Individual Learning Plan, in grades 6 through 12,] to ensure that the student remains in school and is on track to meet goals for postsecondary education and career after high school.

(3)[(5)] "Formative assessment" is defined by KRS 158.6453(1)(e)[means the process used by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended learning outcomes].

(4)[(6)] "Individual learning plan" means a plan to help students in grades 6 through 12 better focus their coursework on individual goals as they prepare for postsecondary studies and careers.

(5)[(7)] "Interim[or benchmark] assessments" is defined by KRS 158.6453(1)(f).

(6) "Student intervention plan" means a plan written to identify the specific intervention goals for a student and used to track student progress on those goals.

(7)[means assessments that are administered at the school or district level at prescribed intervals and aimed at collecting student instructional data.

(8)] "Summative assessment" is defined by KRS 158.6453(1)(i).

(8)[means tests given at the end of instruction to determine what was learned.

(9)] "Support services" means services that provide technical, administrative, and logistical support to facilitate and enhance instruction and [noninstructional components of a program] that:

(a) Are provided to enable the student to realize the benefits of the instructional program; and

(b) Include services, such as[May include] transportation, instructional materials or supplies, student snacks, school-based counseling, community-based mentoring, academic advising, parent training for follow through, or referrals for social, health, or financial assistance through appropriate service agencies.

Section 2. Instructional Program. (1) The major emphases of extended school services shall be to provide additional time and differentiated opportunity to learn in a program in which rigorous academic and enrichment content are aligned with individual student needs to improve the present level of performance in one (1) or more content areas. Priority for ESS services shall be placed on designing and delivering services to students at academic risk with the specific objective that students are able to:

(a) Progress from grade to grade with their cohort;

(b) Exit elementary school ready to meet academic expectations at the middle school level;

(c) Exit middle school ready to meet academic expectations at the high school level; and

(d) Exit high school ready to meet academic expectations at the [of] postsecondary education level and in the workplace, with particular emphasis on literacy and mathematics.

(2) The extended school services provided to a student shall be planned, documented, and evaluated through the student intervention plan[, at primary through grade 5, or in the student's Individual Learning Plan, in grades 6 through 12]. The instructional

program for extended school services shall include:

(a) Diagnostic assessments to determine areas of highest academic need of the individual student;

(b) Development of goals, in consultation with classroom teachers, parents, and students, for eliminating the identified academic need, including timelines and specific measurable outcomes;

(c) Formative and summative assessments to facilitate student progress and to determine if the student has achieved the learning goals of the student's intervention plan;

(d) Instructional strategies that are differentiated[varied] and that do not replicate practices that have proven to be ineffective for the student in the traditional classroom;

(e) A plan for collaboration and consistent use of interventions among the teachers supporting the student in core academic classes and those providing supports through extended school services;

(f) Counseling and academic advising to remove barriers to achievement; and

(g) Regular communication with the parent or guardian.

(3) The instructional program may utilize a variety of scheduling models including:

(a) Programs operated during the regular school day as provided in Section 7 of this administrative regulation;

(b) Extended day programs which are scheduled at any time outside of the regular school day;

(c) Night programs;

(d) Saturday programs;

(e) Summer programs; or

(f) Flexible school calendars which allow eligible students to attend school for a longer period of time than other students.

(4) The district's comprehensive school improvement plan shall include opportunities to collaborate with businesses, colleges, and community organizations to provide services and advising in off-campus locations as part of or aligned with the extended school services programs.

(5) Extended school services programs shall not supplant instructional time of the regular school program, but shall extend time and provide differentiated opportunity to learn in a specific area of academic need.

(6) Certified staff, including administrators, teachers, and advisors, shall collaborate to plan, deliver, and evaluate extended school services instruction and supports[in collaboration] as part of a student's intervention plan[Individual Learning Plan (ILP)].

(7) Teachers providing instruction in extended school programs shall meet the same professional qualifications as teachers who are employed in the regular school program.

(8) Teachers providing instruction in extended school programs shall be provided with professional development on effective instructional strategies for meeting the needs of at-risk students and the use of formative assessment strategies to monitor progress.

(9) Certified staff shall supervise noncertified tutors.

(10) Extended school services shall be provided to eligible students who are in the first year of the primary school program through the twelfth grade. Students shall be eligible to receive these services until they graduate from the twelfth grade or reach[become] twenty-one (21) years of age, whichever comes first.

Section 3. Student Selection. (1) Each school district shall select pupils who need additional instructional time or differentiated opportunity to learn as described in Section 2(1) of this administrative regulation[who need additional instructional time]. A student shall not be selected or assigned to receive extended school services for disciplinary purposes or for any kind of in-school suspension.[The needs of students in A5 and A6 programs shall be considered in the selection process.]

(2) Within its scope of authority, a local board of education[or school council] may mandate the participation of eligible students in[te] extended school services through the adoption of a written policy, which shall describe all conditions under which attendance will be required and shall provide a description of any exceptions

permissible under the policy.

(3) ~~The policy for attendance in extended school services~~~~Conditions for attendance for extended school service~~ shall include:

(a) Identification of the learning goals and benchmarks that, if achieved, indicate that the student may exit the extended school services program;

(b) The conditions under which a student's absence may be considered excused or unexcused; and

(c) The arrangements for transporting the students mandated to attend.

(4) ~~If requested by the Kentucky Department of Education, the local school board shall provide notice of the policy in the district's annual extended school services program report, which is submitted at the same time as the district's comprehensive school improvement plan.~~

(5) One (1) or more of the following shall be used to determine which students shall be eligible for and in greatest need of extended school services:

(a) Teacher recommendation;

(b) Academic performance data, including diagnostic, formative, interim, ~~benchmark,~~ or summative assessments;

(c) Student performance on high school, college, or workforce readiness assessments required by KRS 158.6459; or

(d) Behavioral and developmental progress as documented in formal and informal assessments and reports.

(6) Local school boards shall approve and disseminate procedures whereby pupils who have a greater need as determined by the eligibility criteria shall be referred and selected first to receive extended school services. These procedures shall not exclude students who have greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

(7) A local school district shall solicit input from parents and the community to identify potential barriers to participation. Identified barriers shall be addressed through engagement with community partners or off-campus locations of after school, weekend, or evening services.

(8) Schools shall inform parents and guardians of extended school services including:

(a) The rationale for offering extended school services, including data about educational achievement and ~~future~~~~future~~ earnings, opportunities for postsecondary education and training, and consequences of failure to achieve the high school diploma;

(b) A specific notification to parents or guardians of their child's eligibility to ~~be assigned~~~~receive or assignment~~ to extended school services, including the manner in which a personalized student intervention plan and goals will be included as part of the student's individual learning plan to help ensure that the student is able to achieve the student's academic and career goals; and

(c) Written procedures for parents or guardians to request reconsideration of their ~~child's~~~~children's identification or lack of identification of~~ eligibility for extended school services.

Section 4. Funding. (1) Each school district shall be eligible to receive a grant award from available funds to provide extended school services. Available funds shall be the amount of the total appropriation less two (2) percent for state administrative costs.

(2) The commissioner~~of education~~ shall ~~distribute~~~~determine~~ the ~~remaining appropriation as follows~~~~the amount of the grant award for which each school district is eligible based upon the following division of funds~~:

(a) ~~One-third (1/3)~~~~One-half (1/2)~~ of the total funds shall be distributed based on the most current average daily attendance (ADA);

(b) ~~One-third (1/3)~~~~One-sixth (1/6)~~ of the total funds shall be distributed based on the most current rates of economic deprivation (ED); and

(c) ~~One-third (1/3)~~~~One-sixth (1/6)~~ of the total funds shall be distributed based on the most current dropout rates (DR); and

(d) ~~One-sixth (1/6)~~ of the total funds shall be distributed based on the most current state assessment overall score (OS)~~(CATS Academic Indices (AI))~~.

(3)(a) The state total for ED shall be the sum of all districts' ED quotients. Each district's ED quotient shall be calculated by multiplying the district's ED times the district's ADA.

(b) The state total for OS shall be the sum of all districts' OS quotients.

(c) The state total for ADA shall be the sum of the ADA for all districts.

(4) Actual district allocations shall be calculated as follows:

(a)~~Determine the state total for ADA by summing the ADA for all districts;~~

(b)~~Determine the percentage each district shall receive for ADA by dividing the district's ADA by the state total ADA. The resulting percentage multiplied times the total funds available for average daily attendance shall equal the amount the district shall receive for ADA;~~

(b) Determine the percentage each district shall receive for ED by multiplying the district's ED times the district's ADA and divide the result by the state's total ED, as determined by **subsection (3) of this section**~~paragraph (c) of this subsection~~. The resulting percentage multiplied times the total funds available for economic deprivation shall equal the amount the district shall receive for ED;

(c)~~State totals for ED, AI, and DR shall be calculated as follows:~~

1. ~~The state total for ED shall be the sum of all districts' ED quotients. Each district's ED quotient shall be calculated by multiplying the district's ED times the district's ADA;~~

2. ~~The state total for AI shall be the sum of all districts' AI quotients. Each district's AI quotient shall be calculated by subtracting the AI from 100 and then multiplying the difference by the district's ADA; and~~

3. ~~The state total for DR shall be the sum of all district's DR quotients. Each district's DR quotient shall be calculated by multiplying the district's DR times the district's ADA;~~

(d) ~~Determine the percentage each district shall receive for ED by multiplying the district's ED times the district's ADA and divide the result by the state's total ED, as determined by paragraph (c)1 of this subsection. The resulting percentage multiplied times the total funds available for economic deprivation shall equal the amount the district shall receive for ED;~~

(e) ~~Determine the percentage each district shall receive for OS~~~~AI~~ by multiplying the district's ~~OS~~~~AI~~ times the district's ADA and divide the result by the state's total ~~OS~~~~AI~~ as determined by **subsection (3) of this section**~~paragraph (b)~~~~(c)2~~~~of this subsection~~. The resulting percentage multiplied times the total funds available for ~~overall score~~~~academic indices~~ shall equal the amount the district shall receive for ~~OS~~~~AI~~;

(f) ~~Determine the percentage each district shall receive for DR by multiplying the district's DR times the district's ADA and divide the result by the state's total DR as determined by paragraph (c)3 of this subsection. The resulting percentage times the total funds available for dropout rate shall equal the amount the district shall receive for DR;~~ and

~~(d)~~~~(5)~~~~(g)~~ Sum the district's portions for ADA, ED, and OS ~~AI, and DR~~ to determine the district's total ESS allocation.

~~(5)~~~~(6)~~~~(4)~~ To ensure the opportunity for all school districts to provide effective extended school services of adequate size and scope, a school district shall not receive a grant of less than \$15,000.

~~(6)~~~~(7)~~~~(5)~~ Grant awards shall be made to each school district upon approval by the commissioner~~of education~~ of an application ~~described~~~~as prescribed~~ in Section 5 of this administrative regulation. Regular grant funds shall be available for use by~~school~~ districts for fifteen (15) months through September 30 of the last year of the grant period. All services shall be delivered by September 30 of the last year of the grant period and all expenditures shall be paid for extended school services by December 30 of the last year of the grant period.

~~(7)~~~~(8)~~~~(6)~~(a) Funds received for extended school services shall be expended for instructional and support services necessary to provide an effective program.

(b) These services shall include salaries of personnel.

(c) Transportation and staff development related to the provision of extended school services shall be considered

permissible support services. ~~[Support may include expenditures for field trips, which shall not exceed two (2) percent of the district's allocation for students served by the extended school services program.]~~

(d) Funds for extended school services shall not be used for capital outlay or indirect costs.

(e) School districts shall be authorized to enter into contractual arrangements if needed to provide comprehensive extended school service programs.

(f) ~~[The]~~ Funds may be expended for instructional materials and supplies if a need is demonstrated and the district does not have the supplies and materials available.

(g) ~~[Part of these funds may be used for up to three (3) percent of the district's allocation for operation of plant for a summer extended school services program which shall be prorated if other programs are taking place at the same time and place.]~~

(h) ~~[Part of these funds may be used for administrative costs, which shall not exceed five (5) percent of the district's allocation.]~~

(i) ~~[Students shall not receive monetary compensation to attend the extended school services program.]~~

(j) ~~[School districts shall maintain]~~ have on file the written criteria for the selection of personnel employed in extended school services and shall ensure staffing decisions are made to best meet the needs of students.

~~(8)~~ (7) Financial records for extended school services shall be maintained by each school district and shall be submitted to the Department of Education via the state technology system.

Section 5. Requesting Funds. (1) ~~A~~ The request for the use of extended school services funds shall be submitted as part of the district's comprehensive improvement plan.

(2) (a) District applications for funds shall be approved by the commissioner ~~[of education]~~ prior to the encumbrance or expenditure of funds for extended school services by any school district, including the contracting ~~off~~ for personnel for extended school services.

(b) Approval of programs as described in each district's comprehensive improvement plan, required program reports, and request for a waiver for alternative service delivery shall be based on this administrative regulation and KRS 158.070.

Section 6. Program Evaluation. For the purpose of program evaluation, the Kentucky Department of Education shall collect in the student information system the following data for all schools:

(1) Number of students receiving extended school services;

(2) Content areas where services received;

(3) Hours of service provided;

(4) Demographic data for students receiving extended school services; and

(5) Student improvement as a result of extended school services ~~[School districts providing extended school services shall submit to the Department of Education:~~

~~(1) Student data through the student information system and the Individual Learning Plan at the end of the regular school term and any summer term in which funds are expended for extended school services;~~

~~(2) Evaluation and evaluative data as approved in the waiver application, if the school district receives approval to implement extended school services during the regular school day; and~~

~~(3) Data relative to the effectiveness of the extended school service program, including:~~

~~(a) Pre- and post-student qualitative and quantitative performance data;~~

~~(b) Student attendance at extended school services; and~~

~~(c) Promotion and graduation data.]~~

Section 7. Waiver for Alternative Service Delivery. (1) The commissioner ~~[of education]~~ may consider a request for a waiver to operate an extended school services [a] program during the school day or to use an alternative delivery format. A request for a waiver shall include:

(a) [(4)] A rationale describing why a daytime program is needed;

(b) [(2)] A description of the instructional program that meets the criteria established in Section 2 of this administrative regulation;

(c) [(3)] A description of the student selection process that meets the criteria in Sections 2 and 3 of this administrative regulation; and

(d) [(4)] A detailed and ~~[.]~~ accurate budget that includes ~~[using]~~ correct MUNIS codes. A person compensated with extended school services ~~[ESS]~~ funds shall devote his or her time to delivering extended school ~~[ESS]~~ services during the time period for which he or she is being compensated with extended school services ~~[ESS]~~ funds.

(2) For the purpose of program evaluation, the Kentucky Department of Education shall collect the following additional data from schools receiving a daytime waiver:

(a) Evaluation and evaluative data as approved in the waiver application; and

(b) Data relative to the effectiveness of the extended school service program, including:

1. Pre- and post-student qualitative and quantitative performance data;

2. Student attendance at extended school services; and

3. Promotion and graduation data.

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

TERRY HOLLIDAY, PH.D.

DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 14, 2013

FILED WITH LRC: August 15, 2013 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control
(As Amended at ARRS, November 12, 2013)

804 KAR 1:100. General advertising practices.

RELATES TO: KRS 244.130, 244.500, 244.590

STATUTORY AUTHORITY: KRS 241.060, 244.130

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) If outdoor advertising is used, it shall not:

(a) Include a retail licensee's name or business designation (DBA); or

(b) Refer to a retail licensee in any other way ~~[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 ~~3/4~~[3]. A licensee may advertise in material directed to the home or business of ~~a/the~~ consumer if the advertising material is in conformity with ~~the provisions of~~ KRS 244.130 and this administrative regulation.

Section ~~4/5~~[4]. (1) Except as provided by ~~subsections~~[subsection] (2) ~~and (3)~~ of this section, advertising novelties ~~may be used~~[shall be permitted].

(2) A licensee shall not require ~~directly or indirectly,~~ the purchase or consumption of ~~an~~[any] alcoholic beverage as a condition for the sale, gift, or reduction in price of ~~an~~[any] advertising novelty.

(3) Except as provided ~~by~~[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 ~~5/6~~[5]. A licensee may advertise by means of radio and television.

Section ~~6/7~~[A] licensee may advertise by means of the Internet and social media.

Section ~~7/8~~[6]. (1) A licensee may sponsor or cosponsor athletic leagues, tournaments, contests, and charitable events ~~if provided that~~ the consumption or purchase of alcoholic beverages ~~is not~~[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 ~~8/9~~[7]. A licensee shall not use the terms "free", "complimentary", or any other terms, which imply or suggest giveaways in the advertising of alcoholic beverages ~~in any advertisement~~.

Section ~~9/10~~[8]. A licensee shall not advertise ~~a~~[any] product, service, or activity ~~if, which~~ the licensee is prohibited by statute or administrative regulation from selling, providing, or conducting ~~it~~.

FREDERICK A. HIGDON, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 12, 2013

FILED WITH LRC: September 12, 2013 at 3 p.m.

CONTACT PERSON: Trey Hieneman, Special Assistant,
Department of Alcoholic Beverage Control, 1003 Twilight Trail,
Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, November 12, 2013)

804 KAR 9:040. Quota retail package licenses[Retail package liquor license quota].

RELATES TO: KRS 241.060[(2)], 241.065, 241.075, 242.125, 243.030[(7)]

STATUTORY AUTHORITY: KRS 241.060[(2), EO-2008-507]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit in its sound discretion the number of licenses of each kind or class to be issued[issue] in this state or any political subdivision, and restrict the locations of licensed premises.[EO-2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol Beverage Control.] This administrative regulation

establishes quota retail liquor package licenses in cities that have become wet pursuant to KRS 242.125 separately from their respective counties which remain dry[individual quotas for smaller political subdivisions within a county if the general retail package liquor license quota established in 804 KAR 9:040, if applied, would result in the issuance of more licenses than the population of the political subdivision could reasonably support].

Section 1. Establishment of general city quotas. (1) Except as provided in subsection (2) of this section and Section 4 of this administrative regulation, the number of quota retail package licenses issued by the department in a[any] city of the Commonwealth which becomes wet separately by virtue of a KRS 242.125 local option election held after January 1, 2013, shall ~~be~~[not exceed] a number equal to one (1) for every 2,300 persons resident in the city.

(2) The minimum number of quota retail package licenses issued by the department in a[any] city shall be two (2)[such] licenses.

(3) The estimates of population for Kentucky cities prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used ~~if available,~~ in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) ~~or more~~ years after the certification of a wet election pursuant to KRS 242.125 by a city, the city may file a request to the board seeking a specific city quota to increase the number of quota retail package licenses for the city ~~from that established in Section 1 of this administrative regulation~~.

(2) Before seeking this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city's intent to request additional city quota licenses from the board. ~~A city may petition the board for a specific quota increasing the number of quota retail package licenses only once every three (3) years from the date of the denial or establishment of a specific city quota.~~

(3) A city's request to the board for a specific increased quota shall include:

(a) A certified copy of a city's governing body[city council] government resolution approving the request;

(b) A certified copy of the notice referenced in subsection (2) of this section; and

(c) An explanation why the city meets the criteria for a quota increase in conformity with Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) The specific city quota for quota retail package licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(6) This section does not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing the requested increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holders.

(7) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may indicate, in writing, its desire for an administrative hearing before the board regarding its request. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(8) Following an initial request for an increase under subsection (1) of this section, a city may file an additional

request to the board once every three (3) years from the date of the denial or establishment of a specific city quota. The procedures established in subsections (1) through (7) of this section shall be followed.

(6) In conformity with Section 4 of this administrative regulation, the department may publish notice of quota vacancies and issue quota retail package licenses for the general quota number established by Section 1 of this administrative regulation. A licensee that holds a quota retail package license assumes the business risk that the number of quota licenses might be increased.

(7) Any specific city quota for quota retail package licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(8) This Section does not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing such an increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holder.]

Section 3. Criteria for Consideration. (1) The board shall/may consider the following information in its determination of a city's request for an increased quota made under Section 2(3) of this administrative regulation:

(a)/(1) Population served by the city;

(b)/(2) Total retail sales of the city for the most recent past fiscal year;

(c)/(3) Retail sales per capita for the most recent past fiscal year;

(d)/(4) Total alcohol sales in the city for the most recent fiscal year;

(e)/(5) Tourist destinations in the area, if applicable; and

(f)/(6)/(5) Other economic and commercial data offered to show the city's capacity to support additional licenses.

(2) The board shall grant the request if the factors considered under subsection (1) of this section justify the requested increase.

Section 4. Establishment of Specific City Quotas. (1) Pikeville, which repealed prohibition on April 12, 1983, shall have a quota of thirteen (13) quota retail package licenses.

(2) Madisonville, which repealed prohibition on March 10, 1992, shall have a quota of seven (7) quota retail package licenses.

(3) Central City, which repealed prohibition on July 10, 2002, shall have a quota of four (4) quota retail package licenses.

(4) Dawson Springs, which repealed prohibition on February 5, 2008, shall have a quota of two (2) quota retail package licenses.

(5) Lancaster, which repealed prohibition on August 19, 2008, shall have a quota of three (3) quota retail package licenses.

(6) Paintsville, which repealed prohibition on June 9, 2009, shall have a quota of three (3) quota retail package licenses.

(7) Danville, which repealed prohibition on March 2, 2010, shall have a quota of six (6) quota retail package licenses.

(8) Earlinton, which repealed prohibition on March 29, 2011, shall have a quota of two (2) quota retail package licenses.

(9) Manchester, which repealed prohibition on June 21, 2011, shall have a quota of two (2) quota retail package licenses.

(10) Elizabethtown, which repealed prohibition on October 4, 2011, shall have a quota of twelve (12) quota retail package licenses.

(11) Radcliff, which repealed prohibition on October 4, 2011, shall have a quota of nine (9) quota retail package licenses.

(12) Vine Grove, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(13) Guthrie, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(14) Junction City, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(15) Corbin, which repealed prohibition on February 14, 2012,

shall have a quota of three (3) quota retail package licenses.

(16) Somerset, which repealed prohibition on June 26, 2012, shall have a quota of five (5) quota retail package licenses.

(17) Whitesburg, which repealed prohibition on June 26, 2012, shall have a quota of two (2) quota retail package licenses.

(18) Murray, which repealed prohibition on July 17, 2012, shall have a quota of seven (7) quota retail package licenses.

(19) Franklin, which repealed prohibition on July 17, 2012, shall have a quota of three (3) quota retail package licenses.

(20) LaGrange, which repealed prohibition on July 24, 2012, shall have a quota of three (3) quota retail package licenses.

(21) Georgetown, which repealed prohibition on July 31, 2012, shall have a quota of twelve (12) quota retail package licenses.

(22) Princeton, which repealed prohibition on August 7, 2012, shall have a quota of two (2) quota retail package licenses.

Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for all wet cities located in dry counties.

(2) If a city's population has increased and the city no longer has one (1) quota retail package license for every 2,300 persons resident in the city, the Department of Alcoholic Beverage Control shall increase the city's quota to maintain the 1:2,300 ratio.

(3) If/When a quota retail package license vacancy is created under Section 1, 2, or 5(2) of this administrative regulation or it occurs for any other reason, the Department of Alcoholic Beverage Control shall within sixty (60) days arrange for the newspaper used for city legal notices to advertise the vacancy and provide information about applying for it.

(4)/(3) The Department of Alcoholic Beverage Control shall accept applications for a quota retail package license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (3)/(2) of this section is published.

(5) A licensee that holds a quota retail package license shall assume the business risk that the number of quota licenses might be increased.

Section 6. Quota Reductions. (1) This administrative regulation shall not prohibit renewal or approved transfer of an existing quota retail package license issued in a wet city situated in a dry county.

(2) Except for cities with specific quotas under Section 2 of this administrative regulation, if a city has in existence more than one (1) quota retail package license for every 2,300 persons resident in the city, the number of licenses [The number of existing quota retail package licenses in excess of the quota established by this administrative regulation] shall be reduced as they expire or are surrendered or revoked.

Section 7. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the quota established for that entire county by 804 KAR 9:010 shall supersede and replace any separate city quota under this administrative regulation [For Pikeville, following its repeal of prohibition on April 12, 1983, the retail package liquor license quota shall be thirteen (13)].

Section 2. For Madisonville, following its repeal of prohibition on March 10, 1992, the retail package liquor license quota shall be seven (7).

Section 3. For Central City, following its repeal of prohibition on July 10, 2002, the retail package liquor license quota shall be four (4).

Section 4. For Dawson Springs, following its repeal of prohibition on February 5, 2008, the retail package liquor license quota shall be one (1).

Section 5. For Lancaster, following its repeal of prohibition on August 19, 2008, the retail package liquor license quota shall be three (3).

FREDERICK HIGDON, Chairman

ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 14, 2013
FILED WITH LRC: October 14, 2013 at noon
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, November 12, 2013)**

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, **65.810, Chapter 74**, 278.010,
278.020(3), 278.100, 278.180, 278.300, **322.340**, 365.015,
369.102, 424.300, 47 C.F.R. 36
STATUTORY AUTHORITY: KRS 278.040(3), **278.260(2)**, 278.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3)
authorizes the commission to promulgate reasonable
administrative regulations to implement the provisions of KRS
Chapter 278. KRS 278.310 requires that all hearings and
investigations before the commission shall be governed by rules
promulgated by the commission. This administrative regulation
establishes requirements with respect to formal and informal
proceedings before the commission.

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

- (a) That is wholly owned by a utility;
- (b) In which a utility has a controlling interest;
- (c) That wholly owns a utility;
- (d) That has a controlling interest in a utility; or
- (e) That is under common control with the utility.

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

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

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

- (a) Directly or indirectly has the power to direct, or to cause the
direction of, the management or policies of another entity; and
- (b) Exercises that power:
 - 1. Through one (1) or more intermediary companies, or alone;
 - 2. In conjunction with, or pursuant to an agreement;
 - 3. Through ownership of ten (10) percent or more of the voting
securities;
 - 4. Through common directors, officers, stockholders, voting or
holding trusts, associated companies;
 - 5. By contract; or
 - 6. Through direct or indirect means.

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

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

(7) "Electronic signature" is defined by KRS 369.102(8).

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

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

(10)[(9)] "Party" means a person who:

- (a) Initiates action through the filing of a formal complaint,
application, or petition;
- (b) Files a tariff or tariff sheet with the commission pursuant to
KRS 278.180 and 807 KAR 5:011 that the commission has
suspended and established a case to investigate or review;

(c) Is named as a defendant in a formal complaint filed
pursuant to Section 20[19] of this administrative regulation;

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

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

(11)[(40)] "Person" is defined by KRS 278.010(2).

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

(13)[(42)] "Signature" means a[any] manual, facsimile,
conformed, or electronic signatures[an original signature or an
electronic signature as defined by KRS 369.102(8)].

(14) "Tariff" means the schedules of a utility's rates, charges,
regulations, rules, tolls, terms, and conditions of service over which
the commission has jurisdiction.

(15)[(43)] "Utility" is defined by KRS 278.010(3).

(16) "Water district" means a special district formed pursuant to
KRS 65.810 and [KRS]Chapter 74.

(17) "Web site" means an identifiable site on the internet,
including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of
hearing in a case by order except if a hearing is not concluded on
the designated day and the presiding officer verbally announces
the date for continuation of the hearing. A verbal announcement
made by the presiding officer shall be deemed proper notice of the
continued hearing.

Section 3. Duties of Executive Director[to Furnish Information].

(1) Upon request, the executive director shall:

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

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

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

(2) The executive director shall reject for filing a document that
on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases[Formal
Proceedings]. (1) Address of the commission. All communications
shall be addressed to: Public Service Commission, 211 Sower
Boulevard, Post Office Box 615, Frankfort, Kentucky
40602[40604].

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

(3) Signing of papers.

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

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

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

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

(6) Witnesses and subpoenas.

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

(b) Subpoenas for the production of books, accounts,

documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena form with its written request as necessary.

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

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

(7) Computation of time.

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

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

(8) Service.

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

(b) Service upon an attorney or upon a party shall be made by:

1. Delivering a copy to the attorney or party;

2. ~~or by~~ Mailing a copy[it] by United States mail or other recognized mail carrier to the attorney or party at the last known address; or

3. ~~by~~ Sending a copy[it] by electronic means to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic means shall comply with Section 8(4) of this administrative regulation.

(c) Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper[document] shall not be deemed filed with the commission until it is physically received by the executive director at the commission's offices during the commission's official business hours and the paper meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

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

(10) Privacy protection for filings.

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

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

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

3. The digits of the financial account number.

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

(c) The executive director shall not be required to review papers[documents] for compliance with this section. The

responsibility to redact a document shall rest with the party that files the document.

(11) Intervention and parties.

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

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she ~~a person~~ has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used in the case, a party shall serve a person granted leave to intervene with all papers ~~filed testimony, exhibits, papers, correspondence, and all other documents~~ that the party submits in the case after the order granting intervention, but is not required to provide any papers ~~documents~~ submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

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

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

a. Include the name of the witness responsible for responding to the questions related to the information provided; and

b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, the

party[its] shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

6. The responding party shall file with the commission the party's[its] response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party's[its] request for information by motion to the commission, which shall include:

1. A description of the information requested;
2. The reasons why it is relevant to the issues in the case; and
3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated where rights of the parties or the public interest will not be prejudiced.

(b) Upon[When] ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

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

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

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

Section 6. Proof[Certificate] of Service. (1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable[any] proof[satisfactory to the commission].

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served[All documents served pursuant to 807 KAR Chapter 5 shall have a proof of service certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service].

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

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

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

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

(c) Font. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.[d] Binding. A side-bound or top-bound filing shall also include an identical unbound copy.]

(3) Except as provided for in Section 8 of this administrative

regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

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

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

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

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

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

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

(4)(a) Audio or video files.

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

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

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

1. In portable document format;

2. Search-capable;

3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If[a] scanned material[document], scanned at a resolution of no less than 300 dots per inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

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

1. A general description of the filing;

2. A list of all material to be filed in paper or physical medium but not included in the electronic submission[filing]; and

3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium[attesting that the electronically filed documents are a true representation of the original documents].

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

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description.[d] If the electronic submission does not include all documents contained in the paper medium version, the absence of these documents shall be noted in the "Read1st" document.]

(6)(a) An[~~electronic transmission or~~] uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30)[fifty (50)] megabytes.

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

(7) If filing a paper[document] with the commission, the filing

party shall certify that:

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

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

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

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

(b) Upon a party's[its] receipt of this notification, each party shall be solely responsible for accessing the commission's Web site at <http://psc.ky.gov> to view or download the submission[a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at <http://psc.ky.gov> and view or download the submission].

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

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

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that:

1. The party waives any right to service of commission orders by United States mail; and

2. The party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which[where] the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall Unless a party to a case states an objection to the use of electronic filing procedures within seven (7) days of issuance of an order in which the commission orders the use of electronic filing procedures on its own motion, that party shall].

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

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

1. The party waives any right to service of commission orders by United States mail; and

2. The party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

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

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

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

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

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

(13) Except as expressly provided in this section, a party

making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if[required by statute, waived by the parties in the case, or if the commission finds that a hearing is not necessary in the public interest or for the protection of substantial rights, the commission shall grant a hearing in the following classes of cases]:

(a) [If] An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint to the commission's satisfaction[of the commission]; or

(b) A request for hearing has been made[If an application has been made in a formal proceeding].

(2) Publication of notice.

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

(b) 1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing[pursuant to KRS 424.300] is published by the applicant in a newspaper, it shall be published at least one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. [one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place, and date of hearing.] The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or[Chapter] 278 or 807 KAR Chapter 5. The commission may also, through its own experts or employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

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

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a case[proceeding or investigation by the commission] may agree among themselves or with commission staff upon the facts or any portion of the facts involved in the

controversy, which stipulation shall be regarded and used as evidence at the hearing.

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

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

(9) Record of evidence.

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

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

2. The commission shall grant the motion.

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

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

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

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

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

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

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

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

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

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

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

Section 12. Financial Exhibit. (1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had \$5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a [consecutive] twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than \$5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the [consecutive] twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. [No]Material changes have not occurred since the end of that twelve (12) month period; or

2. Identifies all material changes that have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated[in subsections (1) through (9)]:

(a)[(1)] Amount and kinds of stock authorized;

(b)[(2)] Amount and kinds of stock issued and outstanding;

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

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

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

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

(g)[(7)] Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year[-];

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

(i)[(9)] A detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

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

(a) A request for[person who requests] confidential treatment of material shall be made by[file a] motion that:

1. Establishes specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential;

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

3. Includes ten (10) copies of the material in paper medium with those portions obscured for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof that[which] do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document,[unambiguous] written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b)[The motion, one (1) copy of the material in paper medium which is identified by underscoring or highlighting, and ten (10) copies of the material in paper medium with those portions

~~obscured for which confidentiality is sought, shall be filed with the commission. If confidential treatment is sought for an entire document, the filer may file a sheet noting that the entire document is confidential in lieu of redacting the document.~~

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

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

~~(d) Unless the commission orders otherwise, (e)] a party may respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.~~

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

~~(3) Procedure for determining confidentiality of material submitted outside of a case.~~

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

~~1. Establishes specific grounds upon which the material should be classified as confidential;~~

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

~~3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document, [unambiguous] written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.~~

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

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

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

~~(d)](e)] A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to[petition] the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section. The commission shall establish a case and shall review the application[petition] without regard to the executive director's determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section. The application shall comply with the requirements of subsection (2)(a) of this section.~~

~~(e)](f)] If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought~~

~~shall not be placed in the public record for twenty (20) days following his or her decision[to allow the requesting party to petition the commission].~~

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

~~(5) If the[petition or] motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.~~

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

~~(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party on grounds of confidentiality[proceeding before the commission shall not fail to respond to discovery by the commission or its staff or another party to the proceeding on grounds of confidentiality].~~

~~1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation[if a party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, the party shall follow the procedures for petitioning for confidentiality established in this administrative regulation].~~

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

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

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

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

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

~~(7) Requests for access to records pursuant to KRS 61.870 to 61.884. A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884. Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.~~

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

~~(9) Use of confidential material[during formal proceedings]. (a) A person who[that] files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and [A party that files material that contains or reveals material that has previously been deemed confidential shall submit with the filed material:]~~

~~1. If the confidential status of the material has been determined previously, a written notice identifying the person who[that] originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or [A written notice identifying the date on which the confidentiality of the original material was determined and, if applicable, the case number in which the determination was made; and]~~

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted (One (1) copy of the filed material identified by underscoring or highlighting, and ten (10) copies of the material with those portions redacted for which confidentiality has previously been granted).

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

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

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

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

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

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The ~~person~~~~petitioner~~ who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

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

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

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

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

(2) If ~~a corporation, the applicant shall identify in the application~~~~is a corporation, a statement identifying~~ the state in which it is incorporated and the date of its incorporation, ~~attest~~~~attesting~~ that it is currently in good standing in the state in which it is incorporated, and ~~stating~~, if it is not a Kentucky corporation, ~~state~~ whether it is authorized to transact business in Kentucky.

(3) If ~~a limited liability company, the applicant shall identify~~

~~in the application~~~~is a limited liability company, a statement identifying~~ the state in which it is organized and the date on which it was organized, ~~attest~~~~attesting~~ that it is in good standing in the state in which it is organized, and ~~stating~~, if it is not a Kentucky limited liability company, ~~state~~ whether it is authorized to transact business in Kentucky.

~~(4) [Articles of incorporation.~~

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

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

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

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3).

(a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application~~], the following~~:

1. The information required pursuant to Section 14 of this administrative regulation~~[(a) A copy of its articles of incorporation, partnership agreement, or articles of organization pursuant to Section 14(2) of this administrative regulation]~~;

2.~~[(b)]~~ The name of the governmental agency offering the franchise;

3.~~[(c)]~~ The type of franchise offered; and

4.~~[(d)]~~ A statement showing the need and demand for service.

(b) If ~~an~~~~the~~ applicant is successful in acquiring the franchise, license, or permit, ~~the applicant~~~~it~~ shall file a copy with the commission using the commission's electronic tariff filing system.

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

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

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

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

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:

1. Maps to suitable scale showing the location or route of the proposed~~new~~ construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and

2. Plans and specifications and drawings of the proposed plant, equipment, and facilities~~]. The utility shall supply one (1)~~

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

(e) The manner in detail in which the applicant proposes[it is proposed] to finance the proposed[new] construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service[; and

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

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

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

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

(a) Be supported by:

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

2. A fully forecasted test period; and

(b) Include:

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

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

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

3[4]. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

4[5]. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

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

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

5[6]. A statement that[customer] notice has been given in compliance with Section 17 of this administrative regulation[subsections (3) and (4) of this section] with a copy of the notice; and

6. If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body.

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

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

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

(c) Upon[When] filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate

Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to rateintervention@ag.ky.gov[The applicant shall also transmit by electronic mail a copy of the notice in a portable document format, to the Attorney General's Office of Rate Intervention at rateintervention@ag.ky.gov].

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4)[Manner of notification.

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

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

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

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

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

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

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

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

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

(d) Notice given pursuant to this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

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

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

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

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

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

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

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

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

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

(5) Proof of notice. An applicant shall file with the commission

no later than forty-five (45) days from the date of the initial filing:

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

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

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

(6) Additional notice requirements. In addition to the notice requirements established in subsection (4) of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

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

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

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

(5)[(4)] Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

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

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

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

1. The starting date of the construction of each major component of plant;
2. The proposed in-service date;
3. The total estimated cost of construction at completion;
4. The amount contained in construction work in progress at the end of the test period;
5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;
6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;
7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The estimated completion date;

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

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

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

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

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

2. Balance sheet;

3. Statement of cash flows;

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

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

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

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

14. Customer forecast (gas, water);

15. Sales volume forecasts – cubic feet (gas);

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

17. A detailed explanation of other information provided, if applicable;

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

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

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

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

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

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

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

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

(q) The independent auditor's annual opinion report, with any

written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;

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

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

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

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

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

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

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

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

(v) If the utility provides gas, electric, sewage[utility], or water utility service and has annual gross revenues greater than \$5,000,000 in the division for which a rate adjustment is sought, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

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

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

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

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

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

(8)(43) Each application seeking a general adjustment in rates supported by a forecasted test period shall include[the following data]:

(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for

both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(9)(14) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies[utility of deficiencies, if applicable, in the application within thirty (30) days of receiving it. For the application to be considered filed with the commission, the utility shall cure deficiencies within thirty (30) days of the commission giving notice of deficiencies].

(10)(15) A request for a waiver from the requirements of this section shall include[waiver of provisions of these filing requirements shall establish] the specific reasons for the request. The commission shall grant the request[for waiver] upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and

(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. When filing an application for a general rate adjustment, a utility shall provide notice as established in this section.[follows:]

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers or is a sewage utility, the utility[~~it~~] shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers and is not a sewage utility, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county and is not a sewage utility may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

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

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

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

(e) A statement that a person may examine this application ~~[and any related documents the utility has filed with the Public Service Commission]~~ at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application ~~[and any related documents]~~ at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

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

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

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

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) An application for authority to issue~~[Upon application by the utility for an order authorizing the issuance of]~~ securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof~~[, pursuant to the provisions of KRS 278.300, the application, in addition to complying with the requirements of Section 14 of this administrative regulation,]~~ shall contain:

(a) The information required by Section 14 of this administrative regulation;

(b) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

~~(c)[(b)]~~ The amount and kinds of stock, if any, which the applicant~~[utility]~~ desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant~~[utility]~~ desires to issue, with terms, rate of interest, and if and how to be secured;

~~(d)[(e)]~~ The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

~~(e)[(4)]~~ The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application~~[petition]~~;

~~(f)[(e)]~~ If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application~~[petition]~~ shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of **the applicant's[its]** written notification to the state local debt officer regarding the proposed issuance~~(f) Other facts pertinent to the application~~].

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform

system of accounts for the various classes of utilities.

Section 19[48]. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

- (a) Be in writing;
- (b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;
- (c) Fully disclose the applicant's interest;
- (d) Identify all statutes, administrative regulations, and orders to which the application relates; and
- (e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

Section 20[49]. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and ~~the name of~~ the defendant, and shall state:

- (a) The full name and post office address of the complainant;
- (b) The full name and post office address of the defendant; ~~and~~
- (c) Fully, clearly, and with reasonable certainty, the act or ~~omission~~ ~~thing done or omitted to be done~~, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation ~~section and subsection~~, of which a failure to comply is alleged ~~a violation is claimed~~, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; ~~and~~
- (d) The relief sought ~~violation. The complainant shall specifically establish the relief desired~~.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint ~~The complaint shall be signed by the complainant or his or her attorney, if applicable, and if signed by an attorney, shall show the attorney's post office address~~. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its ~~the entity's~~ attorney.

(3) Number of copies required. When the complainant files his or her original complaint, the complainant shall also file two (2) more copies than the number of persons ~~or corporations~~ to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint ~~same~~ to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds ~~is of the opinion~~ that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the

complainant ~~or his or her attorney to that effect~~, and provide the complainant an opportunity ~~shall be given~~ to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may ~~in particular cases~~ require the answer to be filed within a shorter or longer period.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that ~~which~~ the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed ~~further proceedings shall not be taken~~.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant ~~person complained of~~ shall file an answer to the complaint ~~with certificate of service on other endorsed parties~~, within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters ~~matter~~ constituting a defense.

(b) If the defendant ~~answering party~~ does not have information sufficient to ~~enable him or her to~~ answer an allegation of the complaint, if the answering party may so state in the answer and place the denial upon that ground.

Section 21[20]. Informal Complaints. (1) An informal complaint shall be made to the commission's division of consumer services in a manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint. If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period as commission staff may require. If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22[24]. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23[22]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "FERC Form-1", Annual Report of Major Electric Utilities, Licensees and Others, March 2007;
- (b) "FERC Form-2", Annual Report of Major Natural Gas Companies, December 2007;
- (c) "Notice of Election of Use of Electronic Filing Procedures", July 2012;
- (d) "PSC Form-T (telephone)", August 2005;
- (e) "Form 8-K", January 2012;
- (f) "Form 10-K", January 2012; ~~and~~
- (g) "Form 10-Q", January 2012; and

(h) "Subpoena Form", August 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: October 11, 2013

FILED WITH LRC: October 15, 2013 at 10 a.m.

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email gerald.wuetcher@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, November 12, 2013)**

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

RELATES TO: KRS 278.020(1), 278.023, 278.190, 278.300

STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) ~~authorizes[provides that]~~ the commission ~~to[may]~~ ~~adopt[promulgate]~~ reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue a certificate of public convenience and necessity for utility construction. KRS 278.300 authorizes the commission to approve the issuance or assumption of an obligation, liability, or evidence of indebtedness by a utility. KRS 278.190 authorizes the commission to approve proposed changes in rates. KRS 278.023 ~~requires[provides]~~ that the commission ~~[shall]~~ review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) ~~requires[provides that]~~ the commission ~~to[shall]~~ prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and [with] the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water[commission or] district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation establishes[prescribes] filing requirements and procedures a water association, a water[commission, or] district, or a combined water, gas, or sewer district[districted] formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Construction project" means activity involving the construction or installation of facilities, plant, or equipment to provide, extend, or enhance the quality of water or sewer service within the geographical area that a water utility has the responsibility to serve.

(3) "Federal lending agency" means the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

(4) "Water utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply or the collection or treatment of

sewage for the public;

(b) A water district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74; or

(c) A combined water, gas, or sewer district formed as a special district pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. Filing Requirements. A water utility proposing[to construct] a construction project financed in whole or in part under the terms of an agreement between the water utility and a federal lending agency shall file with the commission[by the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development shall file with the commission the following documents and information]:

(1) All documents and information required by 807 KAR 5:001, Section 7, 8, and 14;

(2) A copy of the documents from the federal lending agency[U.S. Department of Agriculture or U.S. Department of Housing and Urban Development, as appropriate,] stating approval of the project and including all terms and conditions of the agreement, including all amendments[to be met];

(3) A copy of the letter of concurrence in contract[bid] award;

(4) A copy of the preliminary and final engineering reports and bid tabulations;

(5) ~~[Notwithstanding 807 KAR 5:001, Sections 7 and 8,]~~ One (1) copy of each set of plans and specifications on electronic storage medium in portable document format;

(6) A certified statement from an authorized water utility official confirming:

(a) That the proposed plans and specifications for the construction project have been designed to meet the minimum construction and operating requirements established in:

1. If the construction project involves facilities to treat or distribute water, 807 KAR 5:066, Section 4(3) and (4), Section 5(1), Sections 6 and 7, Section 8(1) through (3), Section 9(1) and Section 10; or

2. If the construction project involves facilities to collect or treat sewage, 807 KAR 5:071, Section 5 and Sections 7(1) through (3);

(b) That all other state approvals or permits have been obtained;

(c) That the proposed rates, if any, shall produce the total revenue requirements recommended[set out] in the engineering reports; and

(d) The dates upon which construction will begin and end;

(7)[(6)] If applicable, a statement that notice meeting the requirements of Section 3[2] of this administrative regulation has been given, together with a copy of the notice;[and]

(8)[(7)] If applicable, a motion requesting approval to deviate from a minimum construction standard or operating condition required by subsection (6)[(5)](a) of this section, together with supporting evidence to identify and explain the reasons that the minimum requirements cannot be met; and

(9) If a water district or combined water, gas, or sewer district proposes to increase any current rate for water or sewer service or implement a new rate for water or sewer service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body.

Section 3. Notice. ~~Upon[When]~~ filing for a change in rates as a result of a construction project, a water utility shall provide notice as established in this section.[follows:]

(1) Public postings.

(a) A water utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A water utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer notice.

(a) If a water utility has twenty (20) or fewer customers or is proposing to increase its rates for sewer service, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a water utility has more than twenty (20) customers and is not proposing to increase its rates for sewer service, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice in a prominent manner in a newspaper of general circulation in the water utility's service area no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A water utility that provides service in more than one (1) county and is not proposing to increase its rates for sewer service may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of notice. A water utility shall file with the commission no later than fifteen (15) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the water utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a water utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the water utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice content. Each notice issued in accordance with this section shall contain a brief description of the construction project and shall also contain:

(a) The proposed effective date of the proposed rate adjustment;

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

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

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application **[and any related documents the water utility has filed with the Public Service Commission]** at the offices of (water utility name) located at (water utility address);

(f) A statement that a person may examine this application **[and any related documents]** at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; **and**

(h) A statement that the proposed rates are required under the terms of an agreement between (water utility name) and (federal lending agency name) and that KRS 278.023 does not grant the Public Service Commission any discretionary authority to modify or reject any portion of the agreement between (federal lending

agency) and (water utility name), or to defer the issuance of all necessary orders to implement the terms of that agreement[Section 2. Notice to Customers of Rate Change. If a change in rates is required to finance the construction project, the utility shall, before application is made, mail to each customer, or publish in a newspaper of general circulation in the local service area, a notice that contains the current and proposed rates and a brief description of the construction project].

Section 4[3]. Additional Construction Activity. If surplus project funds remain after the approved construction project has been completed, the water utility may construct[an] additional facilities[plant-facility] without prior commission approval if no change in existing rates will result. The water utility shall notify the commission in writing of additional construction proposed under this section, and shall attach to the notice a statement of the federal lending agency authorizing the water utility to use the remaining project funds in the manner proposed.

Section 5[4]. System Maps and Records. Within thirty (30) days after completion of construction authorized under this administrative regulation, the utility shall revise its system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to include all required information regarding the new construction.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: August 8, 2013

FILED WITH LRC: August 12, 2013 at 3 p.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Kentucky Health Benefit Exchange
(As Amended at ARRS, November 12, 2013)**

**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, **42 U.S.C. 18082**.

(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 is described in and meets the requirements[meets the conditions] of 45 C.F.R. 156.155.

(8) "COBRA" means continuation of coverage under 29 U.S.C. Part 6[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 an exchange[the KHBE] or for an individual who is an Indian enrolled in a qualified health plan in an exchange[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 Section 151 of the Internal Revenue Code, 26 U.S.C. 151, 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 health coverage[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, 42 U.S.C. 301 et seq.;

(b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.;

(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, 26 U.S.C. 36B, 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, 42 U.S.C. 18071.

(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"[F] 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. 155.20[155.2].

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

(28) "Medicaid" means coverage in accordance with the program established under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq. as amended[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-2[5000A(f)].

(30) "Non-citizen" is defined by 45 C.F.R. 155.300[8 U.S.C. 1401(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:

(a) Is paid for by a governmental entity and provided to consumers; and

(b) Includes[, 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 office[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[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) or[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 or[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 and whose eligibility is governed by Section 11 of this administrative regulation, enrolls in a silver level[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, and who has 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 (2), (3)(b), or (4)(b)(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 coverage following a birth, adoption, or placement for an adoption~~;~~ shall have as the[an] effective date of coverage~~[of]~~ the date of the birth, adoption, or placement for adoption; or

(b) For coverage following a marriage or loss of minimum essential coverage~~;~~ shall have as the[an] effective date of coverage ~~[of]~~ the first day of the month following the marriage or loss of minimum essential coverage.

(9)~~(a)~~ 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) An individual 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. **A** 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 **(5)(a)[(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 **(5)(a)[(4)(a)]** of this section within the thirty (30) day timeframe specified in subsection **(5)(b)[(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, **10, or 11[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, **[if 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, 42 U.S.C. 18071, 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, 42 U.S.C. 18071, 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) To terminate coverage in a QHP, an enrollee, including an enrollee who has obtained other minimum essential coverage, shall submit[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 shall[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; ~~or~~**and**
(e) Act on behalf of the individual or employee in a matter with the KHBE.

(4) **The designation of** 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.

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 Administration and Financial Management

(As Amended at ARRS, November 12, 2013)

907 KAR 1:563. Medicaid covered services [hearings and] appeals and hearings unrelated to managed care.

RELATES TO: KRS Chapter 13B, 194A.025, 205.231, 205.237, 42 C.F.R. Part 475, 483.12, 431 Subpart E, 483 Subpart E, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(2) and (3), 205.6315, 42 U.S.C. 1396[(3), EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]—The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes policies and requirements[provisions] relating to an adverse action, an appeal, or a hearing regarding[the] Medicaid covered services that are not the responsibility of a managed care organization[hearing and appeal process for applicants and recipients].

Section 1. Definitions. (1) "1915(c) home and community based waiver service"

means a service available or provided via a 1915(c) home and community based waiver services program.

(2) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(3) "Administrative hearing" is defined by KRS 13B.010(2).

(4) "Applicant" means an individual who has applied for Medicaid covered services.

(5)/(4)/(2) "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity [or guardian] acting on behalf of, and with written consent from, the[a] recipient or the applicant; or

(b) A legal guardian.

(6)/(5) "Cabinet" means the Cabinet for Health and Family Services.

(7)/(6)/(3) "Department" means the Department for Medicaid Services or its designee.

(8)/(7) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program covered services.

(9)/(8) "Final order" is defined by KRS 13B.010(6).

(10)/(9) "Hearing officer" is defined by KRS 13B.010(7)"/
means cabinet level administrative hearing].

(11)/(10)/(9) "ICF IID" means intermediate care facility for an individual with an intellectual disability.

(12)/(11)/(10) "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.

(13)/(12)/(11)/(4) "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(14) "Party" is defined by KRS 13B.010(3).

(15)/(13)/(12) "PASRR" means preadmission screening and resident review.

(16)/(14)/(13) "Patient liability" means the financial obligation of a recipient towards the cost of the recipient's nursing facility services.

(17)/(15)/(14) "Provider" is defined by KRS 205.8451(7).

(18)/(16)/(15) "QIO" or "quality improvement organization" means an entity that meets the requirements established in 42 C.F.R. 475.101.

(19)/(17)/(16) "Recipient" is defined by KRS 205.8451(9).

(20)/(18) "Recommended order" is defined by KRS 13B.010(5).

(21)/(19)/(17)/(5) "Member" means a Medicaid recipient who is enrolled in a partnership or a managed behavioral healthcare organization.

(6) "Peer review organization" means a federally designated organization that is performing the utilization review functions for the department.

(7) "Recipient" means an individual who receives Medicaid.

(8) ["Secretary" means the Secretary of the Cabinet for Health and Family Services.

(18) [(9)] "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage **Administrative** Hearing Rights. (1) An applicant, recipient, or authorized representative[guardian] shall be informed, in writing, of the applicant's or recipient's right to **an administrative[a]** hearing[of his right to a cabinet level administrative hearing in writing] if an adverse action is taken affecting covered services.

(2) An applicant, recipient, or authorized representative[guardian] shall be informed of the method by which the applicant or recipient[he] may obtain **an administrative[a]** hearing and that the applicant or recipient[he] may be represented by:

- (a) Legal counsel;
- (b) A relative;
- (c) A friend;
- (d) A[Other] spokesperson not listed in paragraph (a), (b), (c), (e), or (f) of this subsection;
- (e) An authorized representative; or
- (f) Himself or herself.
- (3) An adverse action[The] notice shall contain a statement of:
 - (a) The Medicaid adverse action;
 - (b) The reason for the action;
 - (c) The specific federal or state law or administrative regulation that supports the action; and
 - (d) An explanation of the circumstances under which payment for services shall be continued if an administrative[a] hearing is requested in a timely manner pursuant to [timely in accordance with] Section 5 of this administrative regulation.

Section 3. Notification Process. (1) An adverse action notice regarding an applicant or a recipient shall be mailed to the applicant, recipient, or authorized representative of the applicant or recipient using:

- (a) The United States Postal Service; and
- (b) A return receipt requested format.
- (2) Refusal by an applicant, a recipient, or an authorized representative to confirm receipt of an adverse action notice shall be considered receipt of the adverse action notice.[an applicant or a recipient using the United States Postal Service.
- (2) An adverse notice to an applicant, recipient or responsible party covered under Section 5(1) of this administrative regulation shall be sent using a return receipt requested format.]

Section 4. Request for an Administrative[a] Hearing. (1) An applicant, recipient, or an authorized representative may request an administrative[a] hearing by filing a written request with the department.

- (2) If an applicant, recipient, or authorized representative requests an administrative[a] hearing, the request shall:
 - (a) Be in writing and clearly specify the reason for the request;
 - (b) Indicate the date of service or type of service for which payments may be denied; and
 - (c) Be postmarked within thirty (30) calendar days from the date of the department's written notice of adverse action of:
 - 1. Discontinuance of services;
 - 2. Adverse determination made with regard to the PASRR requirements of 42 U.S.C. 1396f(e); or
 - 3. Patient liability.

Section 5. Continuation of Medicaid Covered Services. (1)(a) Except as established in paragraphs (b) or (c) of this subsection or subsections (2), (3), or (4) of this section, if a[the] request for an administrative[a] [cabinet-level administrative] hearing is postmarked or received within ten (10) days of the advance notice date of denial [for any of the following types of denials], the individual shall remain eligible for the care, program participation, or service denied until the date that the final [hearing decision] order is rendered in accordance with Section 11[9] of this administrative regulation.

(b) The individual shall not remain eligible for the care, program participation, or service denied if:

- 1.a. It is determined at the administrative hearing that the sole issue is one of federal or state law or policy; and
- b. The department promptly informs the individual in writing that the services shall be terminated or reduced pending the administrative hearing decision;
- 2. The individual's eligibility for time-limited benefits has expired; or
- 3. The individual receives[has already received] in full the specified amount of care or number of services that were authorized by the department.

(c) Except as established in paragraph (d) of this subsection, a request for an amount of care or number of services subsequent to receiving a previously authorized amount of care or number of services in full shall not be

considered a continuation of the previously authorized amount of care or number of services.

(d) The following shall qualify for continuation of services in accordance with paragraph (a) of this subsection if the care, program participation, or service was previously received by the individual within thirty (30) days of the request for continuation:

- 1. Denial that an individual meets patient status criteria to qualify for nursing facility services pursuant to 907 KAR 1:022;
- 2. Denial that an individual meets patient status criteria to qualify for ICF IID services pursuant to 907 KAR 1:022;
- 3. Denial that an individual meets nursing facility level of care criteria, nursing facility patient status criteria, or ICF IID patient status criteria pursuant to 907 KAR 1:022 to qualify for 1915(c) home and community based waiver services; or
- 4. Denial of a 1915(c) home and community based waiver service[;

(a) Denial that an individual meets patient status criteria to qualify for nursing facility services pursuant to 907 KAR 1:022;

(b) Denial that an individual meets patient status criteria to qualify for ICF IID services pursuant to 907 KAR 1:022;

(c) Denial that an individual meets nursing facility level of care criteria, nursing facility patient status criteria, or ICF IID patient status criteria pursuant to 907 KAR 1:022 to qualify for home and community based waiver services; or

(d) Denial of a home and community based waiver service[specified on the notice for denial of level of care, a Medicaid vendor payment for nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, or home and community-based waivers services shall continue until the date the final cabinet-level hearing decision order is rendered in accordance with Section 9 of this administrative regulation.]

(2)[Subsection (1) of this section shall not apply to a Medicaid Program service not stated in subsection (1) of this section.

(3)] Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.

(3)[(4)] Time-limited benefits shall not be extended based on a request for an administrative[a] hearing.

(4)[(5)] If a request for an administrative[a] [the request for a cabinet-level administrative] hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, the department shall continue to reimburse[a Medicaid vendor payment] for nursing facility services [shall continue] until the date that the final order[the cabinet-level administrative] [hearing decision] is rendered.

Section 6. Notice of Scheduled Hearing. (1) A[The] scheduled administrative hearing notice shall contain:

(a) The date, time, and place of the scheduled administrative hearing; and

(b) A statement that the local Department for Community Based Services[Social Insurance] office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(2) An administrative[a] A[cabinet-level administrative] hearing shall be conducted within thirty (30) days of the date of the request for an administrative[a] hearing unless otherwise authorized by the hearing officer.

[(b)] and [A decision shall be issued within thirty (30) days of the hearing date, except for a hearing decision regarding:

- 1. A nursing facility level of care or patient status decision;
- 2. An ICF IID patient status decision;
- 3. A nursing facility level of care, nursing facility patient status, or ICF IID patient status decision related to 1915(c) home and community based waiver program participation; or
- 4. A 1915(c) home and community based waiver service.
- (c) A hearing decision regarding an item listed in

~~paragraph (b) of this subsection shall be issued within fifteen (15) calendar days of the date of request for the hearing~~ that a hearing decision regarding vendor payments to the following shall be issued within fifteen (15) days:

- (a) Nursing facilities;
- (b) Intermediate care facility for the mentally retarded and developmentally disabled; or
- (c) Community-based waiver services[.];
- (3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:
 - (a) Legal counsel or other representation;
 - (b) Review the case record relating to the issue; and
 - (c) Submit additional information in support of the applicant's or recipient's[his] claim.
- (4)(a) If an administrative[a] the hearing involves medical issues[.];
 - (a) a medical assessment by an independent physician participating in the Medicaid Program shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review[.];
 - (b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be established[set forth] in writing.

Section 7. Conduct of an Administrative[a] Hearing. (1) An administrative[A] The cabinet-level administrative hearing shall be conducted in accordance with the requirements of KRS Chapter 13B[13B.080 and 13B.090].

(2) A[Impartiality. The cabinet-level] hearing officer shall be impartial and shall disqualify himself or herself as required by KRS 13B.040.

(3) An administrative[A] The cabinet-level administrative hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) A[The] hearing officer shall offer to transmit a recommended order[the][hearing decision] by electronic format.

(5) If necessary to receive full information on the issue, a[the administrative] hearing officer may examine each party who appears and the party's[his] witnesses.

(6)(a) A[The administrative] hearing officer may reopen the administrative hearing and take additional evidence as is deemed necessary.

(b) Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Withdrawal or Abandonment of Request. (1) A[The] recipient or authorized representative:

(a) May withdraw the appeal for an administrative[a] hearing prior to the release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with the recipient's[his] legal counsel or authorized representative prior to finalizing the action.

(2) An administrative[Abandonment of request.][A] hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the administrative hearing.

Section 9. Recommended Order[The Cabinet Level Decision]. (1) After an administrative[a] the hearing is concluded, the hearing officer shall issue a recommended order in accordance with KRS 13B.110[decision].

(2)(a) A recommended order shall be issued within thirty (30) days of the administrative hearing date, except for a recommended order regarding:

- 1. A nursing facility level of care or patient status decision;
- 2. An ICF IID patient status decision;
- 3. A nursing facility level of care, nursing facility patient status, or ICF IID patient status decision related to 1915(c) home and community based waiver program participation; or
- 4. A 1915(c) home and community based waiver service.

(b) A recommended order regarding an item listed in paragraph (a) of this subsection shall be issued within fifteen (15) calendar days of the administrative hearing date.

(3)(a) If a party wishes to file an exception, the exception[Exceptions][shall be filed with the cabinet within fifteen (15) days from the recommended decision.

(3) A final order shall be issued within ninety (90) days from the date of the request for a hearing.

(4) A copy of the recommended order shall be:

1. Mailed to each party in accordance with KRS 13B.110(4); or

2. Sent by electronic means to any party which requests, during the administrative hearing, that the order be sent by electronic means[decision][and a copy of the final order shall be mailed to the recipient and the recipient's authorized representative if applicable][his representative].

(b)(5) If requested during the administrative hearing, a copy of the recommended order[decision][and the final order] shall be electronically transmitted to a site specified by the applicant or recipient on the[.];

(a) date the recommended order[decision] is rendered[.]; and (b) Date the final order is rendered][dates the recommended decision is rendered and the date the final order is rendered to a site specified by the applicant or recipient][.];

Section 10. Exceptions to a[Appeal of] Recommended Order[Cabinet-Level] [Hearing Decision]. (1) Filing an exception to a recommended order shall be the same as filing a request for review of a local evidentiary hearing decision as established in 42 C.F.R. 431.233.

(2)(a) A party may file an exception to a recommended order in accordance with KRS 13B.110(4).

(b) A[The][final order, with respect to the issue considered, shall be final regarding continuation of a service or service reimbursement][vendor payments][.];

(2) If a party wishes to file an exception to the recommended order, the exception shall be filed with the Cabinet for Health and Family Services, Division of Administrative Hearings within fifteen (15) days from the date that the recommended order is mailed.

Section 11. Final Order or Review of Recommended Order.

(1) The secretary of the Cabinet for Health and Family Services or other party authorized by KRS 13B.010 shall issue[(3)] a final order:

(a) [shall be issued] Within ninety (90) days from the date of the request for an administrative[a] hearing; or

(b) As established in 42 C.F.R. 431.244(f).

(2) [(4)(a)] In accordance with 42 C.F.R. 431.233, unless a recipient requests a de novo hearing, the review of a recommended order shall consist of an applicant or recipient shall have a right to request a:

1. cabinet level review of the record of the administrative hearing.

(b) If an exception to a recommended order was not filed, the information in the record considered in the cabinet level review or final order shall be limited to the information considered at the administrative hearing.

(c) If a recipient requests a de novo hearing, at the de novo hearing either[.]; or

2. De novo hearing at which the party may offer:

1. a. Evidence not presented at the hearing below; and

2. b. The evidentiary record of the fair hearing.

[(b) If the applicant or recipient does not specifically request a de novo hearing, the cabinet level review shall determine whether the:

1. Recommended order was supported by substantial evidence in the record; and

2. Law was applied correctly.]

Section 12. Judicial Review of a Final Order. (1) [(5)] A further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the final order[decision] in

accordance with KRS 13B.140 and 13B.150.

~~(2)(6)(3)~~ Information regarding free legal aid and welfare rights organizations may be obtained in accordance with Section 6(1) of this administrative regulation.

Section ~~13.[14.]~~ Medicaid Case Actions Following Circuit Court Level Appeal Decision.

(1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to:

(a) Remain in a nursing facility or an ICF IID during the circuit court appeal process, the department shall reimburse for the nursing facility services or ICF IID services which occurred during the circuit court appeal process; or

(b) Receive a 1915(c) home and community based waiver service during the circuit court appeal process, the department shall reimburse for the service which occurred during the circuit court appeal process.~~remain in or continue to receive services from a nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, or community-based waiver services, a vendor payment shall be authorized to reimburse the provider for services rendered during the circuit court appeal process].~~

Section ~~14.[12.]~~ Special Procedures Relating to a Managed Care Participant. (1) For an adverse action toward an enrollee regarding a service that is within the scope of managed care, the requirements governing the MCO internal appeal process and the department's [state fair] hearing process for the enrollee shall be as established in 907 KAR 17:010.

(2) For an adverse action by the department toward an enrollee regarding a service that is not within the scope of managed care, the appeals policies and requirements established in this administrative regulation shall apply.~~Special Procedures Relating to A Managed Care Participant. (1) A Medicaid recipient shall be informed in writing of the requirements for making a complaint, filing a grievance and requesting a hearing:~~

(a) ~~By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and~~

(b) ~~By the managed behavioral healthcare organization in which a member is enrolled in accordance with 907 KAR 1:710.~~

(2) ~~If the decision of the partnership or the managed behavioral healthcare organization is adverse to the member, the member or his authorized representative:~~

(a) ~~May request a hearing regarding the action or inaction on the part of the partnership, the managed behavioral healthcare organization or its subcontracted provider to the department in accordance with Section 3 of this administrative regulation; and~~

(b) ~~Shall not be required to employ or exhaust the other complaint or grievance resolution processes contained within the partnership or managed behavioral healthcare organization plan.~~

(3) ~~A cabinet level appeal shall be processed as established in Sections 3, 4, 6, 7, 8, and 9 of this administrative regulation.]~~

Section ~~15.[13.]~~ Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court; or

(c) \$300 for preparatory work and briefs and all other matters incident to an appeal to the:

(a) Court of Appeals; or

(b) Supreme Court of Kentucky.

(2)(a) Enforcement of payment of a fee shall:

1. Not be a matter for the department or the cabinet; and

2. Be a matter between the counsel or agent and the recipient.

~~(b) The fee [shall be a matter entirely between the counsel or agent and the recipient. The fee] shall not be deducted from a public assistance payment otherwise due and payable to the~~

recipient.

(3)(a) The fee limitations stated in subsection (1) of this section shall:

1. Apply to the amount an attorney may charge a recipient or applicant; and

2. Not apply to the amount an attorney may collect from another entity or person who represents the recipient or applicant in all categories of Medicaid.

(b) The amount an attorney may collect from an entity or person who is not a recipient or applicant for representing the recipient or applicant in all categories of Medicaid shall:

1. Be a matter between the attorney and other entity or person; and

2. Not be a matter that involves the department or cabinet.

Section ~~16.[14.]~~ A hearing or an appeal relating to a decision to reclassify or transfer a person with an intellectual disability~~[mental retardation]~~ in a state institution shall be in accordance with the requirements[requirement] of KRS 210.270.

Section ~~17.[15.]~~ Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 14, 2013 at 1 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Administration and Financial Management
(As Amended at ARRS, November 12, 2013)

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

RELATES TO: KRS Chapter 13B, 210.710, 210.720, and 210.730

STATUTORY AUTHORITY: KRS 194A.050, 210.710(4), 210.720(3), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 210.750 authorizes the Secretary to promulgate administrative regulations to carry out the provisions of KRS 210.710 to 210.760. KRS 210.710(4) and 210.720(3) require the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility operated or utilized by the Cabinet for Health and Family Services, for individuals with behavioral health, developmental and intellectual disabilities~~[the mentally ill or mentally retarded]~~. This administrative regulation establishes the "Means test" for making that determination.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward their care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

- (a) Salaries;
- (b) Wages;
- (c) Self-employed gross revenues, less operating expenses;
- (d) Benefit payments, except for Supplemental Security

Income payments;

- (e) Social Security payments;
- (f) Rents;
- (g) Royalties;
- (h) Pensions;
- (i) Retirement payments;
- (j) Veteran's Administration payments;
- (k) Black lung benefits;
- (l) Railroad retirement benefits;
- (m) Gifts;
- (n) Settlements;
- (o) Trust receipts;
- (p) Alimony, but does not include child support payments;
- (q) Interest income; and
- (r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2)(a) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the "Patient or Responsible Party Financial Record" form.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3:050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or

(b) The amount the patient is deemed able to pay in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) The following shall be allowed deductions from income:

- (a) Federal income taxes;
- (b) State income taxes;
- (c) Social security taxes;
- (d) Normal retirement contributions;
- (e) Unpaid medical and dental bills;
- (f) Health insurance premiums;
- (g) Medicare Part B insurance premiums;
- (h) Long-Term Care insurance premiums;
- (i) A personal needs allowance of forty (40) dollars per month;
- (j) Student loan payments;

(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;

(l) Child support payments;

(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and

(n) A basic maintenance allowance, derived from the Poverty Guidelines, as contained in the Basic Maintenance Allowance Table of Section 3(7) of this administrative regulation for the size of the patient's family if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;

2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort;

3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration; and

4. Dependents used in the calculation of the basic maintenance allowance shall include a legally-recognized spouse and each individual less than eighteen (18) years of age and in the patient's care.

(6) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed in lieu of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction if they can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

- (a) Prepaid burial plans of up to \$1,500 per family member;
- (b) Automobiles;
- (c) Housing structures;
- (d) Land;
- (e) Retirement accounts;
- (f) Pension funds;
- (g) Trust funds that cannot be accessed;

(h) The applicable amount contained in the Ability To Pay Assets Table of Section 3(7) of this administrative regulation for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n)4 of this section; and

(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay.

(1) The facility shall calculate the ability to pay amount utilizing either the "Ability to Pay Worksheet" or the "Deductible Ability to Pay Worksheet" as appropriate and by using the following formula:

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(5) of this administrative regulation;

(c) Subtract the allowed deductions from income; and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3:050. Any remaining liability shall be satisfied as follows with the exception of ability to pay amounts arising from deductibles:

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and

(c) The applicable average income per day and available asset

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amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability or psychiatric hospital in accordance with 907 KAR 1:655, that Medicaid income assessment shall be relied upon in lieu of the ability to pay provisions established in this administrative regulation.

(6)(a) After the ability to pay is determined for the patient or person responsible for the patient, a "Patient or Responsible Party Financial Agreement and Assignment" form shall be completed.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty threshold guidelines established in this subsection:

(a) The poverty guidelines effective July 31, 2011[2009] shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$10,890[\$10,830]
2	\$14,710[\$14,570]
3	\$18,530[\$18,310]
4	\$22,350[\$22,050]
5	\$26,170[\$25,790]
6	\$29,990[\$29,530]
7	\$33,810[\$33,270]
8	\$37,630[\$37,010]

*For each additional dependent, add \$3,820[\$3,740] dollars.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

*For each additional dependent, add fifty (50) dollars

(b) The poverty guidelines effective the effective date of this administrative regulation shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$11,490[\$10,890]
2	\$15,510[\$14,710]
3	\$19,530[\$18,530]
4	\$23,550[\$22,350]
5	\$27,570[\$26,170]
6	\$31,590[\$29,990]
7	\$35,610[\$33,810]
8	\$39,630[\$37,630]

*For each additional dependent, add \$4,020[\$3,820] dollars.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

*For each additional dependent, add fifty (50) dollars.

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

- (a) Income revisions;
- (b) Asset revisions including exhaustion of available assets;
- (c) Change in allowed deductions;
- (d) Change in a dependent of the patient or person responsible for the patient; or
- (e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised "Ability to Pay Worksheet" or "Deductible Ability to Pay Worksheet" shall be prepared along with a revised "Patient or Responsible Party Financial Record" form and a revised "Patient or Responsible Party Financial Agreement and Assignment" form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "Patient or Responsible Party Financial Agreement and Assignment" form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures.

(1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40621-0001. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's or person responsible for the patient's position and include all necessary supporting documentation.

(3) Waivers.

(a) The director of each facility may waive payment of his or her facility's charges under this administrative regulation if waiver is deemed to be in the best interest of all parties.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is deemed to be in the best interest of all parties.

Section 7. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "MHMR 3:060-1 Ability to Pay Worksheet", June 2008;
- (b) "MHMR 3:060-2 Deductible Ability to Pay Worksheet", June 2008;
- (c) "MHMR 3:060-3 Patient or Responsible Party Financial Agreement and Assignment", August 2004; and
- (d) "MHMR 3:060-4 Patient or Responsible Party Financial Record", March 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities [Mental Health and Mental Retardation Services], 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001, Monday through Friday, 8 a.m. to 4:30 p.m.

BETSY DUNNIGAN, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 13, 2013

FILED WITH LRC: August 13, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if request, be held on September, 23, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until September 30, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Ky. 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Mudd or Ray Peters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a "means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the provisions of KRS 210.720(3) and establish a homogeneous methodology to determine the ability of a patient or person responsible for the patient to pay for services received at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(3) requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the cabinet in determining the entire financial resources available to a patient or person responsible for the patient.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to

update the Basic Maintenance Allowances table based on the most recent version of the federal poverty guideline allowance amounts.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation, which revises tables related to benefit and support limits based on federal poverty guidelines, is necessary to accurately determine the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(3) requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility operated or utilized by the cabinet for individuals with behavioral health, developmental and intellectual disabilities.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient. This amendment allows the cabinet to more accurately assess the entire financial resources available to a patient or person responsible for the patient.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are fifteen (15) state operated facilities affected by this administrative regulation, and this amendment will primarily affect patients admitted to facilities operated by the cabinet.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This administrative regulation will assure that state operated facilities equitably charge patients served. Increases in poverty guidelines factor into patient's ability to benefit from allowable deductions.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Facility staff will be required to assess the financial resources of the clients or clients' financially responsible party.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows facilities to assess and recoup costs associated with treatment and services. No resident presented for admission shall be denied treatment due to their inability to pay.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is not an additional cost to implement and enforce this administrative regulation.

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

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

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because the "Means Test" to determine ability to pay apply equally to all patients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The fifteen (15) state operated facilities are impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.710, KRS 210.720, and KRS 210.730.

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

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

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

(c) How much will it cost to administer this program for the first year? There is not a cost to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is not a cost to administer this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, November 12, 2013)

910 KAR 1:190. Nutrition program for older persons.

RELATES TO: KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031, 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 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, approved under 42 U.S.C. 3027, 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, 42 U.S.C. 3001 to 3058ff, 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 establishes[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.

(15)[(44)] "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are homebound, such as[that include]:

(a) Nutrition screening;

(b) Nutrition education;

(c) Nutrition assessment; and

(d) Nutrition counseling.

(16)[(45)] "Licensed dietitian" is defined by KRS 310.005(11).

(17)[(46)] "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)[(47)] "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)[(48)] "Nontraditional meal" means a meal approved by the department that is cold, frozen, dried, canned, or modified atmosphere packaging.

(20)[(49)] "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, consisting of 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.

(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, in accordance with this section.

(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

~~(e)](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 administrative 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

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

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

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 authorizes[establishes] the Brownfield Redevelopment Program and authorizes the cabinet to implement the program. This administrative regulation establishes application procedures for a person who[that] owns or intends to acquire property as defined in 401 KAR 102:005, Section 1(8). This administrative regulation also establishes[outlines] the process and procedures for obtaining the cabinet's determination for the applicability of KRS 224.1-415 for a person who[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 notarized[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 that does not alter the cabinet's finding or concurrence, the cabinet shall establish a new expiration date. 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 subsection (6)[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 who[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 information[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(6)~~~~[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(3)~~~~[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 pursuant to~~[under]~~ any local, state, or federal law.

Section 9. Incorporation by Reference. (1) "Brownfield Liability Relief Eligibility Form", DEP 6056, November~~[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: November 13, 2013

FILED WITH LRC: November 14, 2013 at noon

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: The amendment 401 KAR 102:010 Section 3(3) was made to clarify the conditions under which the cabinet may extend the Notice of Eligibility. The amendment to 401 KAR 102:010 Section 5(2)(b) was made to clarify that the submittal of additional information would meet the requirement rather than an additional certification. Other amendments were made to meet requirements of KRS 13A.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to ensure the administrative regulation functions as intended in conformance with KRS 224.1-415 and to be responsive to public comments. Other amendments were necessary as a requirement of KRS 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to Section 3(3) of this administrative regulation clarifies the process for obtaining an extension for a Notice of Eligibility's expiration date related to the cabinet's determination for the applicability of KRS 224.1-415. The amendment to Section 5(2)(b) of this administrative regulation also clarified the procedure for documenting a discovered release subsequent to the cabinet's determination of the applicability of KRS 224.1-415. Other amendments conform to the requirements of KRS 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to Section 3(3) of this administrative regulation assists in the effectiveness of the administration of the statute by clarifying the conditions under which an extension may be granted for a Notice of Eligibility. The amendment to Section 5(2)(b) of this administrative regulation assists in the effectiveness of the administration of the statute by clarifying the necessity to submit information rather than a redundant certification. Other amendments were made to conform to the requirements of KRS 13A.

(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 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 (Amended After Comments)

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 authorizes~~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:

(1) 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 **known** 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.

(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: November 13, 2013

FILED WITH LRC: November 14, 2013 at noon

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: The amendment to Section 1(6) of this administrative regulation was made to clarify that only information that is known by the applicant would be required in response to a comment received. Other amendments were made to meet the requirements of KRS 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment of this regulation was necessary to clarify what information regarding institutional controls would be required of the applicant. Other amendments were necessary to meet the requirements of KRS 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment of Section 1(6) of this administrative regulation was conforms to the statute by clarifying the 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. Other amendments were made to meet the requirements of KRS 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to Section 1(6) of this administrative regulation assists in the effectiveness of the administration of the statute by clarifying the requirements of an applicant for known institutional controls as a part of the Property Management Plan. Other amendments were made to meet the requirements of KRS 13A.

(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 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 considerate 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
Department for Medicaid Services
Division of Policy and Provider Operations
(Amended After Comments)

907 KAR 1:180. Freestanding[Alternative] birth center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.170, 42 U.S.C. 1396a, b, d, [EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the program of Medical Assistance. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes[sets forth] the coverage provisions for services provided by freestanding[alternative] birth centers for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

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

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

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Freestanding birth center" means a:

(a) Freestanding birth center as defined by 42 U.S.C. 1396d(l)(3)(B); ~~and~~

(b) Facility that is:

1. Licensed as an alternative birth center in accordance with 902 KAR 20:150; **and**

2. Accredited by the Commission for the Accreditation of Birth Centers.

(5) "Freestanding birth center services" is defined by 42 U.S.C. 1396d(28) and 42 U.S.C. 1396d(l)(3)(A).

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

(7) "Participating freestanding birth center" means a freestanding birth center that is:

(a) Currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

(b) Currently participating in the Medicaid program pursuant to 907 KAR 1:671;

(c) Licensed in accordance with 902 KAR 20:150; and

(d) Authorized to provide the service in accordance with this administrative regulation.

(8) "Provider" is defined by KRS 205.8451(7).

(9) "Recipient" is defined by KRS 205.8451(9).

(10) "Registered nurse" is defined by KRS 314.011(5).

(11) "Rendering provider" means a provider who:

(a) Provides a service for which reimbursement is:

1. Made to the provider; and

2. Not made to a freestanding birth center; and

(b) Is:

1. A physician who provides a service associated with a freestanding birth center;

2. A physician assistant who provides a service associated with a freestanding birth center;

3. An advanced practice registered nurse who provides a service associated with a freestanding birth center; or

4. A registered nurse who provides a service associated with a freestanding birth center.

Section 2. General Provisions and Requirements. (1) For the department to reimburse for a freestanding birth center service, the service shall:

(a) Be provided:

1. To a recipient; and

2. By a:

a. Participating freestanding birth center that is currently licensed and operating in accordance with 902 KAR 20:150; or

b. Rendering provider;

(b) Be covered in accordance with this administrative regulation; and

(c) Be medically necessary.

(2)(a) A participating freestanding birth center shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 902 KAR 20:150; and

4. All applicable state and federal laws.

(b) A rendering provider shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. All applicable state and federal laws.

(3)(a) If a participating freestanding birth center or rendering provider receives any duplicate payment or overpayment from the department, regardless of reason, the participating freestanding birth center or rendering provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Non-duplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d)1. A freestanding birth center shall comply with KRS 205.622.

2. A rendering provider shall comply with KRS 205.622.

Section 3. [Services shall be covered only when provided to an eligible Medicaid recipient by a participating alternative birth center which is appropriately licensed and operating in accordance with 904 KAR 20:150. Section 2.] Covered Services. The following services may be provided by a freestanding[alternative] birth center[centers]:

(1) Prenatal visits, to include one (1) initial visit and follow-up visits as appropriate;[-]

(2) Standby services, with the rendering provider[medical professional (obstetrician or nurse-midwife)] physically present throughout the course of the labor;[-]

(3) Delivery including[-, which includes] the actual delivery, necessary supplies and material for the delivery, and the post-delivery[postdelivery] examination;[-]

(4) Postnatal visits;

(a)[-] Not to exceed two (2); and

(b) Which shall be accomplished within six (6) weeks of the delivery; or[-]

(5) Laboratory services directly related to the provision of a freestanding birth center service[as specified by the Cabinet for Health and Family Services].

Section 4[3]. Records, Reporting and Monitoring. A freestanding birth center shall:

(1) Maintain complete and legible records of services provided and in a manner that ensures the confidentiality of the recipient of the service; and

(2) Provide the records referenced in subsection (1) of this section, upon request, to:

(a) The department;

(b) The Cabinet for Health and Family Services, Office of the Inspector General or its designee;

(c) The Office of the Auditor of Public Accounts or its designee;

(d) The Office of the Attorney General or its designee;

(e) The Centers for Medicare and Medicaid Services or its

designee;

(f) The Office of Inspector General of the United States Department of Health and Human Services or its designee; or

(g) The United States Government Accountability Office or its designee.

Section 5. Federal Financial Participation. A provision or requirement established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision or requirement; or

(2) Disapproves the provision or requirement.

Section 6. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563[The facility shall maintain complete records of services rendered, and provide to the cabinet the records and reports the cabinet requires for the effective implementation and administration of the service. Facility records shall be available to the Cabinet for Health and Family Services, the United States Department of Health and Human Services, and the Comptroller General, and their representatives or designees for auditing or monitoring purposes].

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 13, 2013

FILED WITH LRC: November 14, 2013 at 11 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) service and coverage provisions and requirements related to freestanding birth center services. Freestanding birth centers are authorized to provide delivery services for deliveries that are not complicated.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's service and coverage provisions and requirements related to freestanding birth center services. Covering freestanding birth centers is mandated by Section 2301 of the Affordable Care Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's service and coverage provisions and requirements related to freestanding birth center services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing DMS's service and coverage provisions and requirements related to freestanding birthing center services.

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

(a) How the amendment will change this existing administrative regulation: The amendment inserts general provider requirements that were not previously stated in the administrative regulation; changes the facility's term from "alternative birthing center" to "freestanding birth center" to be consistent with language in the Affordable Care Act (and resulting federal law and regulation); establishes that policies are contingent upon receipt of federal funding/federal approval; and contains language or formatting changes to ensure compliance with KRS Chapter 13A standards (as the regulation has not been amended since 1992.)

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adopt the same term for these facilities as used in federal law and regulation and to insert general requirements that were not previously stated in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by using language consistent with federal law and regulation and inserting general provider requirements such as program integrity or related requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by using language consistent with federal law and regulation and inserting general provider requirements such as program integrity or related requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Freestanding birth centers; physicians, advanced practice registered nurses, registered nurse, and physician assistants who would work for a freestanding birth center; and Medicaid recipients who would like to have a baby in a freestanding birth center as opposed to an inpatient hospital would be affected by the administrative regulation. DMS understands that currently there are no freestanding birth centers licensed or operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions are required by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Freestanding birth centers and providers who provide services through the centers will benefit by being reimbursed for the services. Medicaid recipients will benefit by having an option to have a baby in a freestanding birth center rather than in an inpatient hospital. Freestanding birth centers provide a homelike setting for deliveries and perform deliveries in a manner that is less medically-oriented or rigid in protocol as inpatient hospitals. For example, freestanding birth centers typically do not induce or augment labor with oxytocin, do not provide continuous electronic fetal monitoring, do not provide epidural anesthesia, do not provide narcotics, and do not perform surgical deliveries.

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

(a) Initially: The cost is indeterminable as currently, there are no freestanding birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

(b) On a continuing basis: The cost is indeterminable. Please see the above response to question (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendment.

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 2301 of the Affordable Care Act which was codified into 42 U.S.C. 1396d(a)(28), 42 U.S.C. 1396d(l)(3), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396d(a)(28) establishes that medical assistance (Medicaid) includes "freestanding birth center services (as defined in subsection (l)(3)(A)) and other ambulatory services that are offered by a freestanding birth center (as defined in (l)(3)(B)) and that are otherwise included in the plan." 42 U.S.C. 1396d(l)(3) states:

(3)(a) The term freestanding birth center services means services furnished to an individual at a freestanding birth center (as defined in subparagraph (B)) at such center.

(b) The term freestanding birth center means a health facility

(i) That is not a hospital;

(ii) Where childbirth is planned to occur away from the pregnant woman's residence;

(iii) That is licensed or otherwise approved by the State to provide prenatal labor and delivery or postpartum care and other ambulatory services that are included in the plan; and

(iv) That complies with such other requirements relating to the health and safety of individuals furnished services by the facility as the State shall establish.

(c) A State shall provide separate payments to providers administering prenatal labor and delivery or postpartum care in a freestanding birth center (as defined in subparagraph (B)), such as nurse midwives and other providers of services such as birth attendants recognized under State law, as determined appropriate by the Secretary. For purposes of the preceding sentence, the term birth attendant means an individual who is recognized or registered by the State involved to provide health care at childbirth and who provides such care within the scope of practice under which the individual is legally authorized to perform such care under State law (or the State regulatory mechanism provided by State law), regardless of whether the individual is under the supervision of, or associated with, a physician or other health care provider. Nothing in this subparagraph shall be construed as changing State law requirements applicable to a birth attendant." 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services..."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements are not stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by this amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will generate no revenue for DMS.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment will generate no revenue for DMS.

(c) How much will it cost to administer this program for the first year? The cost is indeterminable as currently, there are no freestanding birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

(d) How much will it cost to administer this program for subsequent years? The cost is indeterminable. Please see the above response in paragraph (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Healthcare Facilities Management

(Amended After Comments)

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 447.325, 42 U.S.C. 1396a, b, d[, EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the program of Medical Assistance. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements[sets forth the method for determining amounts payable by the cabinet] for alternative birth center services and optional reimbursement provisions for those services when covered by a managed care organization.

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

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

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Freestanding birth center" means a:

(a) Freestanding birth center as defined by 42 U.S.C. 1396d(l)(3)(B); and

(b) Facility that is licensed as an alternative birth center in accordance with 902 KAR 20:150.

(5) "Freestanding birth center services" is defined by 42 U.S.C. 1396d(28) and 42 U.S.C. 1396d(l)(3)(A).

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

(7) "Participating freestanding birth center" means a freestanding birth center that is:

(a) Currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

(b) Currently participating in the Medicaid program pursuant to 907 KAR 1:671;

(c) Licensed in accordance with 902 KAR 20:150; and

(d) Authorized to provide the service in accordance with this administrative regulation.

(8) "Provider" is defined by KRS 205.8451(7).

(9) "Recipient" is defined by KRS 205.8451(9).

(10) "Registered nurse" is defined by KRS 314.011(5).

(11) "Rendering provider" means a provider who:

(a) Provides a service for which reimbursement is:

1. Made to the provider; and

2. Not made to a freestanding birth center; and

(b) Is:

1. A physician who provides a service associated with a freestanding birth center;

2. A physician assistant who provides a service associated with a freestanding birth center;

3. An advanced practice registered nurse who provides a service associated with a freestanding birth center; or

4. A registered nurse who provides a service associated with a freestanding birth center.

Section 2. General Requirements. (1) For the department to reimburse for a freestanding birth center service, the service shall:

(a) Be provided:

1. To a recipient; and

2. By a:

a. Participating freestanding birth center that is currently licensed and operating in accordance with 902 KAR 20:150; or

b. Rendering provider;

(b) Be covered in accordance with 907 KAR 1:180; and

(c) Be medically necessary.

(2)(a) A participating freestanding birth center shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 902 KAR 20:150; and

4. All applicable state and federal laws.

(b) A rendering provider shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. All applicable state and federal laws.

(3)(a) If a participating freestanding birth center or rendering provider receives any duplicate payment or overpayment from the department, regardless of reason, the participating freestanding birth center or rendering provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Non-duplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d)1. A freestanding birth center shall comply with KRS

205.622.

2. A rendering provider shall comply with KRS 205.622[The cabinet shall reimburse participating licensed alternative birth centers for covered services rendered eligible Medicaid recipients when the services are provided in accordance with the provisions of 902 KAR 20:150, Alternative birth centers].

Section 3. Reimbursement. (1)(a) The department shall reimburse a professional fee to a rendering provider for a prenatal visit, a standby service, or a postnatal visit at the lesser of:

1. The rendering provider's usual and customary charge for the service;

2. The reimbursement for the service pursuant to 907 KAR 3:010 if the rendering provider is a physician; or

3. Seventy-five (75) percent of the reimbursement for the service pursuant to 907 KAR 3:010 if the rendering provider is:

a. An advanced practice registered nurse;

b. A physician assistant; or

c. A registered nurse.

(b) The department shall:

1. Reimburse for no more than two (2) postnatal visits per recipient; and

2. Not reimburse for a postnatal visit that occurs after six (6) weeks have lapsed since the delivery.

(c) The department's reimbursement of a professional fee to a rendering provider referenced in this subsection shall be separate from and in addition to the reimbursement referenced in subsection (2) of this section.

(2) The department shall reimburse a freestanding birth center:

(a) Twenty-five (25) dollars for referring a recipient to an inpatient hospital for delivery services if the freestanding birth center determined before providing delivery-related services that the recipient's delivery was complicated and needed to be handled in an inpatient hospital;

(b) \$156 for:

1. Providing delivery-related services to a recipient; and

2. Determining, after providing delivery-related services to a recipient, that the recipient's delivery was complicated and needed to be handled in an inpatient hospital; or

(c) \$1,557 for services related to a complete delivery that occurred at the freestanding birth center[2. Payments. (1) Prenatal visits, standby services and postnatal visits billed by a birthing center shall be paid at the lower of the billed charge or seventy-five (75) percent of the upper limit for physicians for the same services provided on an outpatient basis when services are provided by the medical professional (i.e., physician or nurse-midwife who is an appropriately licensed and certified advanced registered nurse practitioner). Laboratory services shall be paid at the lower of the billed charges or the upper limit for physicians.

(2) The delivery fee payable to the center shall be the facility's usual and customary rate not to exceed \$365 per delivery. This fee is inclusive of all costs associated with the delivery, including the professional fee for the delivery, necessary supplies and materials, and the post delivery examination].

(d) The department's reimbursement to a freestanding birth center referenced in this subsection shall be separate from and in addition to the reimbursement referenced in subsection (1) of this section.

(3)(a) The department's reimbursement[Program payment] shall be considered payment in full for all services, supplies, and devices provided to a recipient.

(b)1. A freestanding birth center shall not bill a recipient or party other than the department for a service provided to the recipient if the service was covered by the department.

2. A rendering provider shall not bill a recipient or party other than the department for a service provided to the recipient if the service was covered by the department.

(4)(a) A managed care organization's reimbursement shall be considered payment in full for all services, supplies, and devices provided to an enrollee.

(b)1. A freestanding birth center shall not bill an enrollee or party other than the enrollee's managed care organization for a service provided to the enrollee if the service was covered by the

managed care organization.

2. A rendering provider shall not bill an enrollee or party other than the managed care organization for a service provided to the enrollee if the service was covered by the managed care organization.

Section 4. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse in accordance with this administrative regulation for a service or item covered pursuant to 907 KAR 1:180 and this administrative regulation.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a service or item covered pursuant to 907 KAR 1:180 and this administrative regulation.

Section 5. Federal Financial Participation. A provision or requirement established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision or requirement; or

(2) Disapproves the provision or requirement[during the visit billed, and no additional amounts may be requested from the recipient, the Medicaid program, or any other source. This shall not, however, preclude the collection of appropriate amounts from liable third-party sources which shall serve to reduce the liability of the cabinet].

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 13, 2013

FILED WITH LRC: November 14, 2013 at 11 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements related to freestanding birth center services. Freestanding birth centers are authorized to provide delivery services for deliveries that are not complicated.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements related to freestanding birth center services. Reimbursing for freestanding birth centers is mandated by Section 2301 of the Affordable Care Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements related to freestanding birth center services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing DMS's reimbursement provisions and requirements related to freestanding birth center services.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases reimbursement for freestanding birth centers by paying \$1,557, rather than \$365, to a freestanding birth center as the facility component of freestanding birth center services. DMS will continue to pay a professional component (to the rendering provider) based on reimbursed established in DMS's physicians' services reimbursement regulation (907 KAR 3:010.) Additional amendments including inserting necessary definitions for clarity; inserting general provider requirements (such as program integrity or related); establishing

that managed care organizations are not required to reimburse the same amount as DMS reimburses; and establishing that policies are contingent upon receipt of federal funding/federal approval.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to elevate DMS's reimbursement for freestanding birth center services to a level that is compatible with other states and will provide an incentive to freestanding birth centers to participate in the Medicaid program. Reimbursing for deliveries in a freestanding birth center (which are non-complicated deliveries) are less expensive than reimbursing for the same deliveries in an inpatient hospital.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by reimbursing for freestanding birth centers at a level compatible with other states and by encouraging such deliveries as they are less expensive than deliveries in an inpatient hospital.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by reimbursing for freestanding birth centers at a level compatible with other states and by encouraging such deliveries as they are less expensive than deliveries in an inpatient hospital.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Freestanding birth centers; physicians, advanced practice registered nurses, registered nurse, and physician assistants who would work for a freestanding birth center; and Medicaid recipients who would like to have a baby in a freestanding birth center as opposed to an inpatient hospital would be affected by the administrative regulation. DMS understands that currently there are no freestanding birth centers licensed or operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions are required by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Freestanding birth centers and providers who provide services through the centers will benefit by being reimbursed for the services. Medicaid recipients will benefit by having an option to have a baby in a freestanding birth center rather than in an inpatient hospital. Freestanding birth centers provide a homelike setting for deliveries and perform deliveries in a manner that is less medically-oriented or rigid in protocol as inpatient hospitals. For example, freestanding birth centers typically do not induce or augment labor with oxytocin, do not provide continuous electronic fetal monitoring, do not provide epidural anesthesia, do not provide narcotics, and do not perform surgical deliveries.

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

(a) Initially: The cost is indeterminable as currently, there are no freestanding birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

(b) On a continuing basis: The cost is indeterminable. Please see the above response to question (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds

authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendment.

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 2301 of the Affordable Care Act which was codified into 42 U.S.C. 1396d(a)(28), 42 U.S.C. 1396d(l)(3), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396d(l)(3)(C) states: "A State shall provide separate payments to providers administering prenatal labor and delivery or postpartum care in a freestanding birth center (as defined in subparagraph (B)), such as nurse midwives and other providers of services such as birth attendants recognized under State law, as determined appropriate by the Secretary. For purposes of the preceding sentence, the term birth attendant means an individual who is recognized or registered by the State involved to provide health care at childbirth and who provides such care within the scope of practice under which the individual is legally authorized to perform such care under State law (or the State regulatory mechanism provided by State law), regardless of whether the individual is under the supervision of, or associated with, a physician or other health care provider. Nothing in this subparagraph shall be construed as changing State law requirements applicable to a birth attendant." 42 U.S.C. establishes that medical assistance (Medicaid) includes "freestanding birth center services (as defined in subsection (l)(3)(A)) and other ambulatory services that are offered by a freestanding birth center (as defined in (l)(3)(B)) and that are otherwise included in the plan." 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services..."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements are not stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by this amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will generate no revenue for DMS.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment will generate no revenue for DMS.

(c) How much will it cost to administer this program for the first year? The cost is indeterminable as currently, there are no freestanding birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

(d) How much will it cost to administer this program for subsequent years? The cost is indeterminable. Please see the above response – in paragraph (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

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

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7874(16) requires the Authority to determine the KEES curriculum's courses of study. KRS 164.7879(3)(d) requires the Authority to determine the eligibility of a noncertified, nonpublic high school graduate and of a GED recipient for a supplemental award. KRS 164.7874(3) requires the Authority to establish a table to convert an SAT score to an ACT score. KRS 164.7881(6) requires the Authority to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the Authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the Authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the Authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" is defined by KRS 158.007(1).

(5) "Course" means the equivalent of one (1) credit as determined by KDE in 704 KAR 3:305.

(6) "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where the student is currently enrolled.

(7) "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the student is attending.

(9) "Free and Reduced Price Lunch" means the National School Lunch program established by the United States Department of Agriculture to provide subsidized meals to lower income students.

(10) "GED" means a general educational development diploma awarded to a student.

(11) "International baccalaureate" is defined by KRS 158.007(10).

(12) "KDE" means the Kentucky Department of Education

authorized and established pursuant to KRS 156.010.

(13) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each letter grade awarded for all courses taken during an academic year. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1a and b and shall submit the "Home of Record Certification" to the Authority.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and

2. Requesting that the local school submit the information to the Authority using the "Curriculum Certification" Form and the "Data Submission" Form.

(b) Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and

3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES

Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

- (a) Has earned a base scholarship award in high school;
- (b) Has completed the KEES curriculum as set forth in subsection (2) of this section;
- (c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and
- (d) Is enrolled in a participating institution in an eligible program.

(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

- (a) Completion of no fewer than three (3) courses of study; and
- (b) Satisfying the provisions of KRS 164.7879.

(4) Except as provided in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required academic and career interest standards-based learning experience if:

(a) The course provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR 4:060; or

(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.

(5) Beginning with the 2012-2013 academic year, only one (1) cooperative education course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) For students that graduated from high school not later than the 2004-2005 academic year, engineering if enrollment in the engineering program has been continuous (14.0101, 14.201, 14.0301, 14.401, 14.501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) semesters of a KEES award;

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or

3. A program contained on the Equivalent Undergraduate Programs List; and

(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. (1) Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic year:

Table C-2 Concordance Between SAT I Recentered V+M Score and ACT Composite Score									
SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		
<p>This table can be used to relate SAT I V+M scores to ACT Composite scores.</p> <p>The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.</p> <p>Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).</p> <p>January 1998</p>									

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT I Re centered V+M Score and ACT Composite Score									
SAT I V+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13
1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT CR+M scores to ACT Composite scores.

The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
June, 2008

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's 18th birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

- (a) The parents meet the provisions of KRS 164.7879(2)(c)1a and b;
- (b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c), a supplemental award shall be provided for achievement on Advanced Placement (AP) or International Baccalaureate (IB) examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the Authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income

eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The Authority shall develop an allotment schedule for the release of the administrative funds.

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

- (a) "Home of Record Certification", June 2005;
- (b) "Curriculum Certification", June 2005;
- (c) "Data Submission", June 2005; and
- (d) "Equivalent Undergraduate Programs List", June 2005.

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

JOHN CHESHIRE, Chair

APPROVED BY AGENCY: October 25, 2013

FILED WITH LRC: November 13, 2013 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 23, 2013 at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on January 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana L. Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for the Kentucky Higher Education Assistance Authority (KHEAA).

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program. KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study. KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(3) requires KHEAA to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program. KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7535 and 164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study. This administrative regulation established these requirements related to the KEES program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing program eligibility criteria for administration of the KEES program by KHEAA.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing regulation by adding "numerical course average" as a defined term for purposes of determining the underlying letter grades for course grade point average calculations used to determine KEES award eligibility.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to further instruct high schools that the letter grades used to calculate student grade point averages must be derived from the same numerical course average as the letter grades displayed on the student's official transcript.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to develop regulations for administration of the KEES program. This amendment enhances the provisions pertaining to high school calculation and reporting of grade point averages for their students to enable KHEAA to determine eligibility for KEES base awards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by further clarifying the letter grades used to calculate student grade point averages must be derived from the same numerical course average as the letter grades displayed on the student's official transcript.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation clarifies that high schools must utilize the same numerical course average to determine letter grades for KEES grade point average reporting purposes as those utilized in determining letter grades for use on the student's official high school transcript. While the amendment could potentially impact the high schools in their letter grade determinations, it is presumed that the vast majority of high schools already utilize the same numerical course average methodology for calculation of students' course letter grades for KEES as for transcript purposes, so there should be no net impact.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: High schools will be required to determine each course letter grade described utilized in grade point average calculations using the same numerical course average as the letter grades displayed on the student's official high school transcript.

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

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): High schools who comply with letter grade determination will have their students considered for KEES base award eligibility.

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

(a) Initially: None.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874; 164.7877(3); 164.7879(1), (2), (3); 164.7881(4)(a), (c), (6).

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)**

16 KAR 5:020. Standards for admission to educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048(7)

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires the Educational Professional Standards Board to promulgate administrative regulations setting standards for approval of an educator preparation institution that offers a preparation program corresponding to a particular certificate. KRS 161.030(1) requires the board to promulgate administrative regulations establishing requirements for issuance of a certificate authorized under KRS 161.010 to 161.126. This administrative regulation establishes the standards for admission to an educator preparation program.

Section 1. Selection and Admission to Educator Preparation Programs. (1) In addition to appropriate National Council for Accreditation of Teacher Education standards incorporated by reference in 16 KAR 5:010, each educator preparation institution shall develop minimum standards for admission to its initial certification educator preparation programs, including university-based alternative programs established pursuant to KRS 161.048(7) in accordance with this section.

(2)~~[Beginning September 1, 2012,]~~ Admission to an undergraduate initial certification educator preparation program shall require the following:

(a) 1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed; and

(b) Successful completion of the following pre-professional skills assessments of basic knowledge administered by the Educational Testing Service with the corresponding minimum score:

1. Until August 31, 2014:

a.~~(i)~~ " Pre-Professional Skills Test: Mathematics["] (0730)" - 174; or

~~(ii)~~[b-] "Computerized Pre-Professional Skills Test: Mathematics["] (5730)" - 174;

~~b.~~(i)[2- a.] "Pre-Professional Skills Test: Reading["] (0710)" - 176; or

~~(ii)~~[b-] "Computerized Pre-Professional Skills Test: Reading["] (5710)" - 176; and

~~c.~~(i)[3- a.] "Pre-Professional Skills Test: Writing["] (0720)" - 174; or

~~(ii)~~[b-] "Computerized Pre-Professional Skills Test: Writing["] (5720)" - 174.

2. Beginning September 1, 2014:

a. "Praxis Core Academic Skills for Educators (CASE): Reading (5712)" - 156;

b. "Praxis Core Academic Skills for Educators (CASE): Writing (5722)" - 162; and

c. "Praxis Core Academic Skills for Educators (CASE): Mathematics (5732)" - 150.

(3)~~[Beginning September 1, 2012,]~~ Admission to a graduate level initial certification educator preparation program, including an educator preparation program established pursuant to KRS 161.048(7), shall require the following:

(a) 1. A bachelor's degree or advanced degree awarded by a regionally accredited college or university with a cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(b) 1. Successful completion of the pre-professional skills assessments in subsection (2)(b) of this section; or

2. Successful completion of the Graduate Record Exam (GRE) administered by the Education Testing Service with the following corresponding scores on the corresponding sections:

a.(i) Verbal Reasoning taken prior to August 1, 2011 - 450; or
(ii) Verbal Reasoning taken after August 1, 2011 - 150;
b.(i) Quantitative Reasoning taken prior to August 1, 2011 - 490; or
(ii) Quantitative Reasoning taken after August 1, 2011 - 143; and

c. Analytical Writing - 4.0.

(4)~~[Beginning September 1, 2012,]~~ Each accredited educator preparation institution shall have a formal application procedure for admission to an initial teacher preparation program, which shall include the following:

(a) Documentation that the applicant demonstrates the following:

1. Critical thinking;
2. Communication;
3. Creativity; and
4. Collaboration;

(b) Evidence that the applicant has reviewed:

1. The Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

2. The character and fitness questionnaire contained in Section III of the TC-1 incorporated by reference in 16 KAR 2:010; and

(c) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(5) Undergraduate students shall not enroll in any educator preparation program courses restricted to admitted candidates.

(6) The educator preparation program shall maintain electronic records that document that all students admitted after September 1, 2012, meet the requirements established in subsection (2) of this section.

Section 2. Annual Report. (1) Each educator preparation unit shall submit an electronic report annually to the Education Professional Standards Board that includes the following program data on each candidate admitted to educator preparation programs:

(a) The candidate's Education Professional Standards Board Person Identifier;

(b) The candidate's Student School Identification number;

(c) The candidate's Social Security number;

(d) The candidate's full name;

(e) The candidate's birth date;

(f) The candidate's reported ethnicity;

(g) The candidate's reported gender;

(h) The candidate's email address;

(i) The candidate's present home mailing address;

(j) The candidate's permanent home mailing address;

(k) The candidate's phone number;

(l) The candidate's admission date;

(m) The candidate's total number of credit hours prior to admission to the institution's educator preparation program;

(n) The candidate's total number of credit hours in educator preparation courses completed prior to admission to the institution's educator preparation program;

(o) The candidate's grade point average at admission;

(p) The candidate's current program enrollment status;

(q) The candidate's program completion date;

(r) The candidate's grade point average at program completion;

(s) The candidate's academic major at program completion; and

(t) The candidate's academic minor or minors at program completion, if applicable.

(2) The report shall be submitted in the following manner:

(a) The institution shall electronically submit all data identified in subsection (1) to the Education Professional Standards Board; and

(b) By September 15 of each year, each institution shall provide written confirmation by electronic mail to the Director of the Division of Educator Preparation that all required information has been entered.

(3) The preparation program shall exit any candidate who has

not been enrolled in at least one (1) course required for program completion within the last eighteen (18) months.

(4) Failure to submit the annual report in accordance with this section may result in action against the program's accreditation status pursuant to 16 KAR 5:010, Section 21.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: October 28, 2013

FILED WITH LRC: November 5, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 30, 2013 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, January 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for admission to an educator preparation program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to educator preparation programs and applicants of the minimum standards applicants must attain prior to admission to educator preparations programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, evaluate, and approve college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the standards for admission to an educator preparation program.

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

(a) How the amendment will change this existing administrative regulation: This amendment replaces outgoing assessments and adopts corresponding passing scores for the following newly developed tests: Praxis Core Academic Skills for Educators: Reading (5712); Praxis Core Academic Skills for Educators: Writing (5722); and, Praxis Core Academic Skills for Educators: Mathematics (5732). This amendment also removes outdated language to ensure clarity in the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that all certified teachers in Kentucky are proficient in reading, writing, and mathematics and that they possess the necessary skills to increase student achievement.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education

Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, evaluate, and approve college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that all candidates in educator preparation programs in Kentucky possess the necessary skills to become effective educators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Thirty (30) educator preparation programs, any institutions seeking future accreditation for an educator preparation program, and any applicant seeking admission to an educator preparation program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The thirty (30) Educator Preparation Institutions, and any institutions seeking future accreditation, will have to adjust their admission standards to ensure that they meet the standards required by this amendment. Further, applicants will have to meet the minimum standards delineated in the amendment prior to admission to an educator preparation program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to bear the cost of the admission test unless it is provided by the institution.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs will benefit from having candidates proficient in the skills necessary to be an educator. Additionally, potential candidates will benefit from a selection process that will ensure they meet a minimum level of competency for the education profession prior to engaging in coursework.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all educator preparation programs and applicants 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 Education Professional Standards Board, public colleges and universities, and the 173 public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, 161.030

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

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

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: This regulatory amendment updates the testing necessary for admission to educator preparation programs. It is meant to improve the caliber of educator preparation candidates and should impact revenues or expenditures.

EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 6:010. Examination prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the appropriate tests identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall require the test or tests and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate. (1) An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take one (1) of the following tests and achieve the corresponding passing score or higher:

(a) "Interdisciplinary Early Childhood Education (0023)" – 166; or

(b) "Interdisciplinary Early Childhood Education (5023)" – 166.

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Multi-Subjects Test (5031)" with the following passing scores on the corresponding test sections:

(a) "Reading and Language Arts (5032)" – 165;

(b) "Mathematics (5033)" – 164;

(c) "Social Studies (5034)" – 155; and

(d) "Science (5035)" – 159.

(3) An applicant for certification at the middle school level (grades 5 through 9) shall take the content test or tests based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Middle School English and Communications:

1. Until August 31, 2014:

a. "Middle School English Language Arts (0049)" - 158; or

b. [2.] "Middle School English Language Arts (5049)" – 158; or

2. Beginning September 1, 2014, "Middle School English Language Arts (5047)" – 164;

(b) Middle School Mathematics:

1. Until August 31, 2014, "Middle School Mathematics (0069)" - 148; or

2. Beginning September 1, 2014, "Middle School Mathematics (5169)" – 165;

(c) Middle School Science: "Middle School Science (0439)" - 144; or

(d) Middle School Social Studies:

1. "Middle School Social Studies (0089)" – 149; or

2. "Middle School Social Studies (5089)" - 149.

(4) An applicant for certification at the secondary level (grades 8 through 12) shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology:

1. "Biology: Content Knowledge (0235)" - 146; or

2. "Biology: Content Knowledge (5235)" – 146;

(b) Chemistry:

1. "Chemistry: Content Knowledge (0245)" - 147; or

2. "Chemistry: Content Knowledge (5245)" – 147;

(c) Earth Science:

1. "Earth and Space Sciences: Content Knowledge (0571)" - 147; or

2. "Earth and Space Sciences: Content Knowledge (5571)" - 147;

(d) English:

1. Until August 31, 2014:

a. "English Language, Literature and Composition: Content and Analysis (0044)" – 166; or

b. [2.] "English Language, Literature and Composition: Content and Analysis (5044)" – 166; or

2. Beginning September 1, 2014, "English Language Arts: Content and Analysis (5039)" – 168;

(e) Mathematics:

1. Until August 31, 2014:

a. (i) "Mathematics: Content Knowledge (0061)" - 125; or

(ii) [b.] "Mathematics: Content Knowledge (5061)" - 125; and

b. [2.] "Mathematics: Proofs, Models and Problems, Part 1 (0063)" - 141; or

2. Beginning September 1, 2014, "Mathematics: Content Knowledge (5161)" – 160;

(f) 1. Physics: "Physics: Content Knowledge (0265)" - 133; or

2. "Physics: Content Knowledge (5265)" - 133; or

(g) Social Studies:

1. "Social Studies: Content and Interpretation (0086)" – 153; or

2. "Social Studies: Content and Interpretation (5086)" – 153.

(5) An applicant for certification in all grades shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this subsection, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:

(a) Art:

1. "Art: Content and Analysis (0135)" – 161; or

2. "Art: Content and Analysis (5135)" – 161;

(b) Chinese: "Chinese (Mandarin): World Language (5665)" – 164;

(c) French: "French: World Language (5174)" - 162;

(d) German: "German: World Language (5183)" - 163;

(e) Health: "Health Education (0550)" - 630;

(f) Health and Physical Education:

1. "Health and Physical Education: Content Knowledge (0856)" - 156; and

2. "Physical Education: Movement Forms - Analysis and Design (0092)" - 151;

(g) Integrated Music:

1. [Until August 31, 2013:

a. "Music: Content Knowledge (0113)" - 154; and

b. "Music: Concepts and Processes (0114)" – 145; or

2. Beginning September 1, 2013, -] "Music: Content and Analysis (0114)" – 162; or

2. "Music: Content and Instruction (5114)" – 162; [.]

(h) Instrumental Music: [1. Until August 31, 2013:

a. "Music: Content Knowledge (0113)" - 154; and

b. ~~"Music: Concepts and Processes (0111)" - 145; or~~
~~2. Beginning September 1, 2013,]~~ "Music: Content and Analysis (0114)" - 162.
 (i) ~~Vocal Music:[1. Until August 31, 2013:~~
 a. ~~"Music: Content Knowledge (0113)" - 154; and~~
 b. ~~"Music: Concepts and Processes (0111)" - 145; or~~
~~2. Beginning September 1, 2013,]~~ "Music: Content and Analysis (0114)" - 162.
 (j) Latin: "Latin (0601)" - 166;
 (k) Physical Education:
 1. "Physical Education: Content and Design (0095)" - 169; or
 2. "Physical Education: Content and Design (5095)" - 169;
 (l) School Media Librarian:
 1. "Library Media Specialist (0311)" - 156; or
 2. "Library Media Specialist (5311)" - 156;
 (m) School Psychologist: "School Psychologist (0401)" - 161;
 or
 (n) Spanish: "Spanish: World Language (5195)" - 168.
 (6) Except as provided in subsection (7) of this section, an applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:
 (a) Communication Disorders:
 1.a. "Special Education: Core Content Knowledge and Applications (0354)" - 151; or
 b. "Special Education: Core Content Knowledge and Applications (5354)" - 151; and
 2.a. "Speech-Language Pathology (0330)" - 600; or
 b. "Speech-Language Pathology (5330)" - 600;
 (b) Hearing Impaired:
 1.a. "Special Education: Core Knowledge and Applications (0354)" - 151; or
 b. "Special Education: Core Knowledge and Applications (5354)" - 151; and
 2.~~[a. Until August 31, 2013, "Education of Deaf and Hard of Hearing Students (0271)" - 167; or~~
~~b. Beginning September 1, 2013,]~~ "Special Education: Education of Deaf and Hard of hearing Students (0272)" - 160;
 (c) Hearing Impaired With Sign Proficiency:
 1. "Special Education: Core Knowledge and Applications (0354)" - 151;
 2.~~[a. Until August 31, 2013, "Education of Deaf and Hard of Hearing Students (0271)" - 167; or~~
~~b. Beginning September 1, 2013,]~~ "Special Education: Education of Deaf and Hard of hearing Students (0272)" - 160; and
 3. One (1) of the following tests with a passing score of Intermediate Level:
 a. "Sign Communication Proficiency Interview (SCPI)"; or
 b. "Educational Sign Skills Evaluation (ESSE)";
 (d) Learning and Behavior Disorders:
 1. "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158; or
 2. "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;
 (e) Moderate and Severe Disabilities:
 1. "Special Education: Core Knowledge and Severe to Profound Applications (0545)" - 158; or
 2. "Special Education: Core Knowledge and Severe to Profound Applications (5545)" - 158; or
 (f) Visually Impaired:
 1.a. "Special Education: Core Knowledge and Applications (0354)" - 151; or
 b. "Special Education: Core Knowledge and Applications (5354)" - 151; and
 2.~~[a. Until August 31, 2013, "Teaching Students with Visual Impairments (0281)" - 164; or~~
~~b. Beginning September 1, 2013,]~~ "Special Education: Teaching Students with Visual Impairments (0282)" - 163.

(7) A holder of an exceptional child certificate in Learning and Behavior Disorders or Moderate and Severe Disabilities who is seeking additional certification for any exceptional children teaching certificate listed in subsection (6) of this section shall not be required to take:

(a) "Education of Exceptional Students: Core Content Knowledge (0353);"

(b) "Special Education: Core Knowledge and Applications (0354);" or

(c) "Special Education: Core Knowledge and Applications (5354)".

(8)(a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades 5 - 12 shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this paragraph, and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:

1. Agriculture: "Agriculture (0700)" - 520;

2. Business and Marketing Education:

a. "Business Education (0101)" - 154; or

b. "Business Education (5101)" - 154;

3. Family and Consumer Science:

a. "Family and Consumer Sciences (0121)" - 162; or

b. "Family and Consumer Sciences (5121)" - 162; or

4. Engineering and Technology Education: "Technology Education (0051)" - 159.

(b) An applicant for Industrial Education shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(9) An applicant for a restricted base certificate in the following area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) English as a Second Language:

1. "English to Speakers of Other Languages (0361)" - 157; or

2. "English to Speakers of Other Languages (5361)" - 157.

(b) Speech/Media Communications: "Speech Communication (0221)" - 146; or

(c) Theater: "Theatre (0641)" - 162.

(10) An applicant for an endorsement in the following content area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) American Sign Language: "American Sign Language Proficiency Interview (ASLPI)" administered by the Gallaudet[Galludet] University - 3+;

(b) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;

(c) Learning and Behavior Disorders, grades 8 - 12:

1. "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158; or

2. "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;

(d) Literacy Specialist:

1. "Reading Specialist (0301)" - 164; or

2. "Reading Specialist (5301)" - 164;

(e) Gifted Education, grades primary - 12: "Gifted Education (0357)" - 152; or

(f) Reading Primary through Grade 12:

1. "Teaching Reading (0204)" - 153; or

2. "Teaching Reading (5204)" - 153.

Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy test and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy test.

(1) An applicant for Elementary certification (grades primary - 5) shall take one (1) of the following tests and achieve the corresponding passing score or higher:

- (a) "Principles of Learning and Teaching: Grades kindergarten - 6 (0622)" – 160; or
- (b) "Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" – 160.

(2) An applicant for certification at the middle school level (grades 5 through 9) shall take one (1) of the following tests and achieve the corresponding passing score or higher:

- (a) "Principles of Learning and Teaching: Grades 5 - 9 (0623)" – 160; or
- (b) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" – 160.

(3) An applicant for certification at the secondary level (grades 8 through 12) shall take one (1) of the following tests and achieve the corresponding passing score or higher:

- (a) "Principles of Learning and Teaching: Grades 7 - 12 (0624)" – 160; or
- (b) "Principles of Learning and Teaching: Grades 7 - 12 (5624)" – 160.

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take one (1) of the following tests and achieve the corresponding passing score or higher:

- (a) "Principles of Learning and Teaching: Grades kindergarten - 6 (0622)" – 160;
- (b) "Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" – 160;
- (c) "Principles of Learning and Teaching: Grades 5 - 9 (0623)" – 160;
- (d) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" – 160;
- (e) "Principles of Learning and Teaching: Grades 7 - 12 (0624)" – 160; or
- (f) "Principles of Learning and Teaching: Grades 7 - 12 (5624)" – 160.

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades 5 through 12 shall take one (1) of the following tests and receive the identified passing score:

- (a) "Principles of Learning and Teaching: Grades kindergarten - 6 (0622)" – 160;
- (b) "Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" – 160;
- (c) "Principles of Learning and Teaching: Grades 5 - 9 (0623)" – 160;
- (d) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" – 160;
- (e) "Principles of Learning and Teaching: Grades 7 - 12 (0624)" – 160; or
- (f) "Principles of Learning and Teaching: Grades 7 - 12 (5624)" – 160.

Section 4. Assessment Recency. (1) A passing score on a test established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established at the time of administration shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

- (a) The Educational Testing Service; or
- (b) The agency established by the Education Professional

Standards Board as the authorized test administrator.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service or other authorized test administrator for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these tests.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: October 28, 2013

FILED WITH LRC: November 5, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 30, 2013 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, January 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for teacher certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to teacher candidates of the assessment requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of

legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 delegates to the Education Professional Standards Board the responsibility of selecting the assessments and setting the corresponding minimum acceptable scores for the assessments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required teacher certification assessments and their corresponding minimum acceptable scores.

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

(a) How the amendment will change this existing administrative regulation: This amendment replaces outgoing assessments and adopts corresponding passing scores for the following newly developed tests: English Language Arts: Content and Analysis (5039); Mathematics: Content Knowledge (5161); Middle School English Language Arts (5047); Middle School Mathematics (5169); and, Physical Education: Content and Design (0095/5095). This amendment also adopts the option of computer-delivered tests when available. Finally, this amendment removes outdated language to ensure clarity in the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky teacher certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more closely aligns assessment options with teacher preparation program requirements and opportunities within an actual school setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to the Education Professional Standards Board's website for current assessment requirements. Applicants will need to continue to refer to the Education Professional Standards Board's website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of teachers who are competent in their content area.

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

(a) Initially: None

(b) On a continuing basis: None

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

implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities, and the 173 public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and KRS 161.030

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be 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? This regulation should not generate any additional revenue.

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is neither a fee generating nor revenue costing regulation. This regulation merely establishes the testing requirements for teacher candidates to obtain certification.

GENERAL GOVERNMENT CABINET

Board of Nursing (Amendment)

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 218A.205(3)(g)2, 314.011, 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 218A.205(3)(g)2, 314.042(7), 314.131(1), 314.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. This administrative regulation establishes the

requirements for licensure, renewal, and reinstatement, programs, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)(a) Complete an "Application for Licensure as an Advanced Practice Registered Nurse" as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active Registered Nurse license or validation of Registered Nurse licensure if the state of licensure does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(d) Comply with the requirements established in KRS 314.042 and ~~Sections 2 and 4 through 10 of~~ this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) 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;

(b) 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;

(c) A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (5)(a) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(g)2 and any relevant data on the applicant is received.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An applicant for licensure as an advanced practice registered nurse shall complete an organized postbasic program of study and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program~~the following criteria in order to be acceptable to the board. The program shall:~~

~~(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;~~

~~(b) 1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or~~

~~2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;~~

~~(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced practice registered nursing designation;~~

~~(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;~~

~~(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;~~

~~(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;~~

~~(g) Include a supervised clinical experience that includes application of all the didactic components; and~~

~~(h) Upon successful completion, award a diploma or certificate).~~

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study after

January 1, 2005, the applicant shall hold a master's degree, or doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of this section.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a specialty areas of clinical practice consistent with the population focus as required by and defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board on Certification and Recertification of Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners; and

(g) American Association of Critical-Care Nurses Certification Corporation.

~~(3) [The following certification examinations for nurse practitioners (NP) and clinical nurse specialists (CNS) offered by the national certifying organizations identified in subsection 2 of this section shall be deemed to meet the definition of population focus of KRS 314.011(20):~~

~~(a) Acute Care NP;~~

~~(b) Adult NP;~~

~~(c) Adult Psychiatric and Mental Health NP;~~

~~(d) Family NP;~~

~~(e) Family Psychiatric and Mental Health NP;~~

~~(f) Gerontological NP;~~

~~(g) Neonatal NP;~~

~~(h) Pediatric NP;~~

~~(i) Pediatric/Primary Care NP;~~

~~(j) Pediatric/Acute Care NP;~~

~~(k) Women's Health NP;~~

~~(l) Adult Health CNS;~~

~~(m) Adult Psychiatric and Mental Health CNS;~~

~~(n) Child and Adolescent Psychiatric and Mental Health CNS;~~

~~(o) Gerontological CNS;~~

~~(p) Pediatric CNS;~~

~~(q) Adult Acute Care CNS;~~

~~(r) Pediatric Acute Care CNS; and~~

~~(s) Neonatal Acute Care CNS.~~

(4) The board recognizes the Oncology Nursing Certification Corporation only for those individuals who received certification prior to December 15, 2010~~the effective date of this administrative regulation~~ and who have continually renewed their Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse

temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.".

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed "Annual Licensure Renewal Application: RN and APRN" or a completed "Annual APRN Licensure Renewal Application for APRN with RN Compact License (not Kentucky)" form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed "Application for Licensure as an Advanced Practice Registered Nurse" form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and

(c) Maintain current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(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;

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) Certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) Letter of explanation that addresses each conviction, if applicable.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse shall maintain current certification or recertification from one (1) of the national organizations recognized

in Section 3 of this administrative regulation throughout the licensure period.

(b) The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section.

(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b) An APRN whose certification or recertification lapses prior to the expiration of the APRN license and who does not provide evidence of current certification or recertification after a request by the board shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation.

(3) An advanced practice registered nurse who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) A postbasic educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to be licensed as an advanced practice registered nurse if his practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the specialty to which he has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures set in KRS 314.091.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013.

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, January 2, 2014. 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, 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 licensure as an Advanced Practice Registered Nurse (APRN) and recognizes certain national certifying organizations for APRNs.

(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 brings the regulation into conformity with changes in the enabling statutes. It also updates the regulation based on changes in the examinations offered by national certifying bodies.

(b) The necessity of the amendment to this administrative regulation: The changes in the statutes and environment necessitated these changes.

(c) How the amendment conforms to the content of the authorizing statutes: It brings the regulation into conformity with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: By bringing the regulation into conformity and updating other provisions due to changes in the environment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APPRN applicants, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:061. Approval of Doctor of Nursing Practice (DNP) degree programs.

RELATES TO: KRS 314.111, 164.295, 164.298[2010 Ky. Acts ch.-80]

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.298[2010 Ky. Acts ch.-80] requires the Board of Nursing to collaborate with the Council on Postsecondary Education to establish standards for the doctor of nursing practice (DNP) degree. This administrative regulation establishes those standards.

Section 1. Notification and Initial Approval for Accredited Programs. (1)(a) A postsecondary education institution that is currently accredited by the National League for Nursing Accrediting Commission (NLNAC), now known as the Accreditation Commission for Education in Nursing (ACEN), or the Commission on Collegiate Nursing Education (CCNE) and wishes to offer the doctor of nursing practice (DNP) degree shall notify the board in writing of its intent.

(b) The notification letter shall be accompanied by the fee required by 201 KAR 20:240, Section 1(2)(p)-(q).

(2) The notification letter shall include the following:

(a) The desired date for the admission of the first class;

(b) That the Council on Postsecondary Education has been notified;

(c) That the postsecondary education institution intends to apply for additional accreditation for the DNP degree; and

(d) How the proposed track or degree complies with the provisions outlined in Section 2(2) of this administrative regulation;

(3) When the notification letter is received by the board, the board shall grant the institution initial approval.

Section 2. Application and Initial Approval for Nonaccredited Programs. (1) An institution not presently accredited by NLNAC or CCNE that desires to establish a DNP degree shall meet the following requirements:

(a) It shall be accredited as outlined in 201 KAR 20:260, Section 1;

(b) It shall submit an application to establish a DNP degree which shall be accompanied by the fee required by 201 KAR 20:240;

(c) At the time that the application is submitted to the board, the program shall also begin the application process with NLNAC or CCNE;

(d) An application shall be submitted to the board no less than twelve (12) months prior to the first intended admission of students;

(e) An application shall be completed under the direction of the registered nurse who shall serve as the designated chief nursing academic officer~~[nursing-unit administrator]~~ as defined in 201 KAR 20:062; and

(f) The program shall not advertise or enroll students until such time that the board has granted initial approval status.

(2) The application shall include:

1. General information about the institution including:

1. Mission;

2. Ownership;

3. Method of financing;

4. Accreditation;

5. Enrollment;

6. Area served

7. Institutional faculty qualifications; and

8. Resources that are sufficient to support defined outcomes and goals;

(b) An organizational chart of the institution and a written plan which describes the organization of the program of nursing and its relationship to the institution;

(c) A designation of NLNAC or CCNE as the national nursing accrediting body to be used in the development of the program;

(d) A description and rationale for the proposed DNP degree;

(e) Approval from the governing body of the institution proposing the DNP degree or other empowered approval bodies as applicable;

(f) A copy of the curriculum vitae of the registered nurse identified as the chief nursing academic officer~~[designated head of the nursing unit]~~;

(g) Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;

(h) Evidence of support from the community of interest;

(i) A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;

(j) A description of physical or virtual resources adequate to meet the needs of the faculty and students;

(k) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(l) The philosophy of the DNP program and program outcomes for graduates;

(m) Curriculum design for each identified track to include:

1. Proposed course sequence;

2. Description of courses; and

3. Credit hours delineating those credits assigned to theory and practice;

(n) Availability of experiential practice activities sufficient to accommodate the number of students and program outcomes;

(o) A five (5) year plan for recruiting and retaining qualified nurse faculty; and

(p) A recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

(3) A proposed DNP program that has met all the requirements of this administrative regulation including evidence that it has applied for accreditation from NLNAC or CCNE shall be granted initial approval. This designation shall be for no more than a two (2) year period of time pending review and approval by NLNAC or CCNE.

(4) If initial approval has been granted by the board, the program may proceed with implementation including the admission of students. It shall be the responsibility of the designated chief nursing academic officer~~[head of the nursing unit]~~ to notify the board of the admission and graduation of the first class.

(5) The initial approval of a DNP program shall expire eighteen (18) months from the date of approval if a class of students is not admitted.

(6) All formal communication between the DNP program and the national nursing accrediting body shall be forwarded to the board within thirty (30) days of receipt.

(7) The designated chief nursing academic officer~~[head of the nursing unit]~~ shall notify the board within five (5) business days of any change in accreditation status.

(8) The designated chief nursing academic officer~~[head of the nursing unit]~~ shall notify the board of pending visits by the national nursing accrediting body~~[and a representative of the board shall arrange a joint site visit with the national nursing accrediting body representative to evaluate on-site materials included in the program proposal. Prior to the site visit, the program of nursing shall submit requested materials that provide evidence of program compliance with the standards established by the state and the national nursing accrediting body].~~

(9) The designated chief nursing academic officer shall provide the board with a copy of the national nursing accrediting body's report within ten (10) days of its receipt by the program~~[Following the site visit, a report shall be prepared and shared with the designated head of the nursing unit for review and correction of factual data. The representatives' site visit report shall not be construed as affirming that the proposed program plan meets requirements.~~

~~(10) The governing institution shall be notified in writing of action taken by the board on the site visit report].~~

Section 3. Standards and Final Approval. (1) In order to receive final approval, a postsecondary education institution shall provide to the board evidence that it has met the accreditation standards for doctoral education of either:

(a) The National League for Nursing Accrediting Commission; or

(b) The Commission on Collegiate Nursing Education.

(2) This evidence shall be in the form of a copy of the letter of accreditation from either organization identified in subsection (1) of this section.

(3) A postsecondary education institution that has offered a DNP degree prior to the effective date of this administrative regulation may receive final approval from the board by submitting a copy of its letter of accreditation from either organization identified in subsection (1) of this section.

(4) Failure to maintain accreditation standards may result in withdrawal of approval by the board.

Section 4. Advanced Practice Registered Nurse Tracks. A postsecondary education institution that offers tracks within the DNP degree that lead to licensure as an advanced practice registered nurse (APRN) shall meet the standards in 201 KAR 20:062 in addition to the standards set forth in this administrative regulation.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, January 2, 2014. 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, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for universities to offer the DNP degree.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and 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 makes several housekeeping changes and eliminates unnecessary requirements. Specifically, it removes the requirement that the Board conduct a site visit with the accrediting body.

(b) The necessity of the amendment to this administrative regulation: The need for the Board to make site visits in addition to the accrediting body had been questioned. It was determined that such visits were unnecessary.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.

(d) How the amendment will assist in the effective administration of the statutes: By eliminating an unnecessary requirement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Universities wishing to offer a DNP degree, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.111, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(3) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for Advanced Practice Registered Nurse (APRN) licensure and to monitor standards for APRN competency under KRS Chapter 314. This administrative regulation establishes APRN programs of nursing standards.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse program of nursing" means the educational unit that prepares a person for practice and licensure as an advanced practice registered nurse and includes secondary or distance learning sites, if applicable.

(2) "APRN program coordinator" means that individual who is responsible for the organization of the educational component and is licensed as an APRN in the designated role.

(3) "Designated chief nursing academic officer" means that individual who has academic and administrative authority for the overall nursing program.

(4) "National nursing accrediting body" means National League for Nursing Accreditation Commission (NLNAC), now known as the Accreditation Commission for Education in Nursing (ACEN), or the Commission for Collegiate Nursing Education (CCNE).

Section 2. Requirements for Advanced Practice Registered Nursing Programs. (1) An educational institution that offers an advanced practice registered nursing program shall ensure that the program:

(a) Is offered by or affiliated with a college or university that is accredited under 201 KAR 20:260, Section 2(1);

(b) Is a formal educational program, that is part of a doctoral, masters program, or a post-masters program in nursing with a

concentration in an advanced practice registered nursing and population foci as required for licensure in KRS 314.011;

(c) Has presented evidence that it has applied for nursing program accreditation and meets accreditation standards; and

(d) Offers a curriculum that covers the scope of practice for both the category of advanced practice registered nurse as specified in KRS 314.011 and the population foci.

(2) The clinical practice component of the curriculum shall be congruent with current national professional organizations and nursing accrediting body standards applicable to the APRN role and population focus;

(3) The program shall notify the board of any changes in hours of clinical practice or accreditation status and respond to board requests for information.

(4) The program shall have financial resources sufficient to support the educational goals of the program.

(5) The program shall establish academic and professional standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational guidelines and recognized standards of professional conduct.

(6) The program shall notify the board regarding any plans to expand the program to additional locations or increase the student enrollment by more than fifty (50) percent from the previously admitted cohort.

(7) Voluntary closure of a program shall be in accordance with 201 KAR 20:360, Section 5.

~~Section 3.[Currently Existing APRN Programs of Nursing. (1) APRN programs of nursing in existence as of July 15, 2010, shall seek approval from the board prior to July 15, 2011. The following materials shall be submitted along with the fee identified in 201 KAR 20:240:~~

~~(a) Details regarding each program presently enrolling students, to include:~~

- ~~1. The name of the institution;~~
- ~~2. The address of the institution;~~
- ~~3. Contact information for the chief nursing academic officer;~~
- ~~4. The degree offered; and~~
- ~~5. All designated clinical tracks;~~

~~(b) A copy of the most recent self-study submitted for the most recent accreditation or reaccreditation by a national nursing accrediting body; and~~

~~(c) Copies of all communication between the program and the national nursing accrediting body since the time of the site visit.~~

~~(2) The program shall meet all requirements established for curriculum, organizational structure, faculty and students as identified in this administrative regulation.~~

~~(3) Following submission of the materials, the application shall be placed on the next education committee agenda.~~

~~(4) The designated chief nursing academic officer, along with the APRN program coordinator, shall be available during the discussion of the report at the education committee to provide clarification. The committee shall make a recommendation to the board.~~

~~(5) The decision to grant full approval by the board shall be based on review of the following:~~

~~(a) Achievement and continued approval by a national nursing accrediting body; and~~

~~(b) Adherence to all requirements of this administrative regulation.~~

~~(6) The approval period shall not exceed the approval period of the national nursing accrediting body.~~

~~(7)(a) An educational institution that is denied approval of an advanced practice registered nursing program shall meet with representatives of the board to determine actions needed;~~

~~(b) Following the meeting referenced in paragraph (a) of this subsection, the institution may request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order denying its application for approval.~~

~~Section 4.] Establishing a New APRN Program of Nursing. (1) An institution may receive consultation from the board prior to~~

~~establishing an APRN program of nursing.~~

~~(2) An institution that desires to establish and conduct an APRN program of nursing shall be accredited as outlined in 201 KAR 20:260.~~

~~(3) An institution shall submit an application to establish an APRN program of nursing along with the fee required by 201 KAR 20:240.~~

~~(4) At the time that the application is submitted to the board, the institution shall also begin the application process with a national nursing accrediting body.~~

~~(5) The application shall be submitted to the board no less than twelve (12) months prior to the first intended admission of students.~~

~~(6) The application shall be completed under the direction of the registered nurse who shall serve as the designated chief nursing academic officer or the APRN program coordinator and who meets the qualifications of an APRN program coordinator as outlined in this administrative regulation.~~

~~(7) The institution shall not advertise or enroll students until the board has granted developmental approval status.~~

~~(8) The application shall include:~~

~~(a) General information about the governing institution including the:~~

- ~~1. Mission;~~
- ~~2. Ownership;~~
- ~~3. Method of financing;~~
- ~~4. Accreditation;~~
- ~~5. Enrollment;~~
- ~~6. Area served~~
- ~~7. Institutional faculty qualifications; and~~
- ~~8. Resources that are sufficient to support defined outcomes and goals;~~

~~(b) An organizational chart of the institution and a written plan which describes the organization of the program of nursing and its relationship to the institution;~~

~~(c) A designation of the current or desired national nursing accrediting body to be used in the development of the program;~~

~~(d) A description and rationale for the proposed type of APRN program to include the certificate or degree to be awarded and the population foci;~~

~~(e) Approval from the governing body of the institution proposing the APRN program of nursing or other empowered approval bodies as applicable;~~

~~(f) A copy of the curriculum vitae of the registered nurse identified as the APRN Program coordinator;~~

~~(g) Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;~~

~~(h) Evidence of support from the community of interest;~~

~~(i) A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;~~

~~(j) A description of physical or virtual resources adequate to meet the needs of the faculty and students;~~

~~(k) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;~~

~~(l) The philosophy of the APRN program and program outcomes for graduates;~~

~~(m) Curriculum design for each identified track to include:~~

- ~~1. Proposed course sequence;~~
- ~~2. Description of courses; and~~
- ~~3. Credit hours delineating those credits assigned to theory and practice;~~

~~(n) The availability of clinical experiences sufficient to accommodate the number of students to include the total number of clinical hours designated for each track or population foci;~~

~~(o) A five (5) year plan for recruiting and retaining qualified nurse faculty; and~~

~~(p) Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.~~

~~(9) Developmental approval shall be the designation granted to an APRN program of nursing that has met all the requirements of this administrative regulation including evidence that it has applied~~

for accreditation from a national nursing accrediting body. This designation shall be for no more than a two (2) year period of time pending review and approval by a national nursing accrediting body.

(10) When developmental approval has been granted by the board, the program may proceed with implementation including the admission of students. It shall be the responsibility of the APRN program of nursing to notify the board of the admission and graduation of the first class.

(11) Developmental approval of an APRN program shall expire eighteen (18) months from the date of approval if a class of students is not admitted.

(12) All formal communication between the APRN program of nursing and the national nursing accrediting body shall be forwarded to the board within thirty (30) days of receipt.

(13) The APRN program coordinator shall notify the board within five (5) business days of any change in accreditation status.

~~(14)(a)~~ The APRN program coordinator shall notify the board of pending visits by the national nursing accrediting body ~~[and a representative of the board shall arrange a joint site visit with the national nursing accrediting body representative to evaluate on-site materials included in the program proposal. (b) Prior to the site visit, the program of nursing shall submit requested materials that provide evidence of program compliance with the standards established by the state and the national nursing accrediting body].~~

~~(15) The APRN program coordinator shall provide a copy of the report of the national nursing accrediting body to the board within ten (10) days of its receipt by the program.~~~~(a) Following a site visit, a report shall be prepared and shared with the APRN program coordinator for review and correction of factual data. The representatives' site visit report shall not be construed as affirming that the proposed program plan meets requirements].~~

~~(16)~~~~The institution shall be notified in writing of action taken by the board on the site visit report.~~

~~(17)~~ The decision to grant full approval by the board shall be based on review of the following:

(a) Achievement and continued full approval by a national nursing accrediting body; and

(b) Site visit reports by the board representative conducted to evaluate program compliance with administrative regulations.

~~(17)(148)~~ The board may grant full approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 4[5]. Administrative Structure of Program. (1) The designated chief nursing academic officer shall hold the following qualifications:

(a) A current, active, unencumbered registered nurse license or privilege to practice in Kentucky;

(b) A doctoral degree earned from a university accredited by the United States Department of Education;

(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration;

(d) At least two (2) years of clinical experience; and

(e) Current knowledge of APRN practice.

(2) The qualifications for the APRN program coordinator shall include:

(a) A current, active, unencumbered APRN license or privilege to practice in Kentucky;

(b) A minimum of a ~~master's~~~~[masters]~~ degree in nursing or health-related field in the clinical specialty from an accredited college or university which accreditation is recognized by the U.S. Department of Education;

(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration; and

(d) At least two (2) years of clinical experience.

(3) The board shall be notified in writing of a vacancy or pending vacancy in the position of the APRN program coordinator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the APRN program coordinator vacates the position, the nursing unit administrator shall submit to

the board in writing:

(a) The effective date of the vacancy;

(b) The name of the APRN who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae; and

(c) Status reports from the APRN program of nursing national nursing accrediting body.

(4) If there shall be a lapse between the date of the vacancy and the date the newly-appointed APRN program coordinator assumes duties, the designated nursing unit administrator or the head of the governing institution shall submit a plan of transition to insure the continuity of the program;

(5) Progress reports shall be submitted if requested by the board;

(6) The length of the appointment of an interim APRN program coordinator shall not exceed six (6) months.

~~(7) Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position. [(8) If the individual to be appointed as the interim APRN program coordinator is not qualified pursuant to the APRN program of nursing national nursing accrediting body's standards, the designated nursing unit administrator shall petition the board for a waiver prior to the appointment.]~~

Section 5[6]. Faculty, Adjuncts, and Clinical Preceptors. (1) The qualifications for nursing faculty within the program leading to licensure as an APRN shall be as follows:

(a) A current, active, unencumbered APRN license to practice in Kentucky, unless the nurse faculty member will teach solely on-line and will not physically practice in this state in which case the nurse faculty member shall hold a current, active, unencumbered APRN license in the state in which they are located.

(b) A minimum of a master's degree in nursing or health related field in the clinical specialty;

(c) Two (2) years of APRN clinical experience; and

(d) Current knowledge, competence and certification as an APRN in the role and population foci consistent with teaching responsibilities.

(2) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching as designated in subsection (1) of this section.

(3) Other qualified individuals may teach a non-clinical course or assist in teaching a clinical course in an advanced practice registered nursing program within their area of expertise.

(4) Clinical preceptors may be used to enhance faculty-directed clinical learning experiences. Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and shall serve as a role model and educator to the student. Clinical preceptors shall be approved by faculty and meet the following requirements:

(a) Holds an unencumbered active license or multistate privilege to practice as a registered nurse and advanced practice registered nurse or a physician in the state in which the preceptor practices or, if employed by the federal government, holds an unencumbered active registered nurse and advanced practice registered nurse or physician license in the United States; and

(b) Has a minimum of one (1) year full time clinical experience in current practice as a physician or as an APRN within the role and population focus.

(5) A clinical preceptor shall function as a supervisor and teacher and evaluate the student's performance in the clinical setting. The program faculty shall retain ultimate responsibility for student learning and evaluation.

(6) The preceptor may be a practicing physician or other licensed, graduate-prepared health care provider with comparable practice focus. A majority of the preceptors shall be nurses.

(7) A clinical preceptor who is an APRN shall hold:

(a) National certification in the advanced practice category in which the student is enrolled; or

(b) Current board licensure in the advanced practice category in which the student is enrolled.

~~(8) [If a preceptor cannot be found who meets the~~

~~requirements, educational and experiential qualifications as determined by the nursing program, the Board of Nursing shall be notified and a waiver requested. (9)] A complete list of faculty members, clinical faculty, adjuncts, and preceptor appointments shall be reported to the board in writing annually.~~

Section 6[7]. Curriculum. (1) An education program offered by an accredited college or university that offers a graduate degree or post-masters certificate with a concentration in the APRN role and at least one (1) population foci shall include the following components:

(a) Clinical supervision as specified by the national certifying organizations applicable to the APRN role and population focus set forth in 201 KAR 20:056, Section 3(2); and

(b) Curriculum that is congruent with:

1. "AACN Essentials for Masters Education for Advanced Practice Nursing" if the program grants a master's degree or post-master's certificate or "AACN Essentials for Doctoral Education for Advanced Nursing Practice" if the program grants a doctoral degree; or

2. "NLNAC Standards and Criteria Master's and Post-Master's Certificate" if the program grants a master's degree or post-master's certificate or "NLNAC Standards and Criteria Clinical Doctorate" if the program grants a doctoral degree.

(2) APRN programs preparing for two (2) population foci or combined nurse practitioner/clinical nurse specialist shall include content and clinical experience in both functional roles and population foci.

(3) Each instructional track shall have a minimum of 500 supervised clinical hours directly related to the role and population foci, including pharmacotherapeutic management of patients.

(4) The curriculum shall contain the following three (3) separate graduate level courses in addition to APRN core courses:

(a) Advanced physiology/pathophysiology, including general principles that apply across the lifespan;

(b) Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches; and

(c) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad categories of agents.

(5) Content specific to the role and population focus in the APRN core area shall be integrated throughout the other role and population didactic and clinical courses.

(6) The curriculum shall include:

(a) Diagnosis and management of diseases across practice settings including diseases representative of all systems and caused by major morbidities;

(b) Preparation that provides a basic understanding of the principles for decision making in the identified role; and

(c) Role preparation in one (1) of the six (6) population foci of practice identified in 201 KAR 20:056.

(7) Preparation in a specialty area of practice is optional, but if included, it shall build on the APRN role/population-focus competencies. Clinical and didactic coursework shall be comprehensive and sufficient to prepare the graduate to practice in the APRN role and population focus.

Section 7[8]. Students. (1) A student entering into the APRN program shall have an active, unencumbered registered nurse license.

(2) A student who wishes to complete a clinical experience in this state but is enrolled in an out of state APRN program pursuant to Section 11 of this administrative regulation shall have an active, unencumbered RN license in another jurisdiction, either in the U.S. or in another country. The following criteria shall be met:

(a) The APRN program of nursing is accredited by a national nursing accrediting body;

(b) The graduate program advises the student of expectations regarding student practice and required supervision;

(c) The graduate program provides direct supervision of the clinical experience and informs faculty, preceptors and clinical facilities that the student is practicing under this limited exemption;

and

(d) The student limits practice to what is required for completion of the graduate program requirements.

Section 8[9]. Ongoing Approval. (1) Approved APRN programs of nursing accredited by a national nursing accrediting body ~~may~~shall be subject to a site visit at intervals associated with their national nursing accreditation.

(2) The board requires continuous accreditation by a national nursing accrediting body.

~~(3)[A joint site visit date shall be established in collaboration with the APRN program of nursing and representatives of the respective national nursing accrediting body. A specific list of information required for review shall be sent to the program at the time that the site visit date is established.]~~

~~(4) Prior to the site visit, the program of nursing shall submit requested materials that provide evidence of compliance with the standards set forth by the APRN program of nursing national nursing accrediting body.~~

~~(5)] Factors that may indicate the need for a focused site visit and jeopardize program approval status:~~

(a) Reported deficiencies in compliance with this administrative regulation;

(b) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives, outcomes, or policies;

(c) Continual failure to submit records or reports to the board within the designated time frame;

(d) Failure to provide sufficient clinical learning opportunities for students to achieve stated outcomes;

(e) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(f) Failure to submit communication from the accrediting agencies within the time frames identified in Section 4 of this administrative regulation;

(g) Withdrawal of accreditation for either the college or university or the national nursing accrediting body, or if accredited for less than the maximum accreditation period, the program may require additional reports regarding noncompliance;

(h) Failure to obtain approval of a change that requires approval prior to implementation;

(i) Providing false or misleading information to students or the public concerning the program of nursing;

~~(j)[A change in or the inability to secure or retain a qualified APRN program coordinator or faculty as required by their national nursing accrediting body;~~

~~(k) Evidence of a high student or faculty attrition rate as compared to the state average;~~

~~(h)] A change in the ownership or organizational restructuring of the governing institution; or~~

~~(k)[(m)] As deemed necessary by the board or the APRN program of national nursing accrediting body to determine compliance with referenced standards.~~

~~(4)[(6)] If the APRN program of nursing achieves reaccreditation and the board determines that all requirements have been met, the program shall be eligible for continuing full approval.~~

~~(5)[(7)] The board shall have the authority to visit a program of nursing on an announced or unannounced basis.~~

~~(6)[(8)] Board action following a site visit:~~

(a) The board shall evaluate a program of nursing in terms of its compliance with this administrative regulation~~[at the same time as the national nursing accrediting body].~~

(b) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the APRN program coordinator for review and correction of factual data.

(c) The APRN program administration shall be available during the discussion of the report at the board committee to provide clarification.

(d) Following the board's review and decision, a letter shall be sent to the APRN program coordinator and the head of the governing institution regarding the approval status of the program of nursing and any requirements to be met along with required

timelines.

(e) A program has the right at any time to present evidence to the board that any deficiencies have been corrected and may petition the board to restore full approval.

Section ~~9~~[10]. Approval Status and Withdrawal of Approval. (1) The board shall approve an APRN program of nursing if the program meets the requirements of this administrative regulation. The board may grant developmental approval for a period of two (2) years or less to an APRN program of nursing.

(2) Full approval may be granted for the same period of time that is designated by the national nursing accrediting body.

(3)(a) The APRN program coordinator of a nursing program that has its continuing approval status rescinded by the board shall meet with representatives of the board to determine actions needed.

(b) Following this meeting, the program may request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order rescinding continuing full-approval status.

(4) Conditional approval shall be the designation granted to a program of nursing if one (1) or more of the standards have not been met.

(a) Following the decision of the board to place a program of nursing on conditional status, the program coordinator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.

(b) The APRN program coordinator shall, within thirty (30) days of the notice of deficiencies being sent, file a plan to correct each of the deficiencies.

(c) The APRN program coordinator may, within thirty (30) days of the notice of the deficiencies, request to appear before the board to contest the board's determination of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies being sent are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

(e) If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to probational.

(5) Probational approval shall be the designation granted to a program of nursing if one or more standards have continued to be unmet.

(a) Following the decision of the board to place a program of nursing on probational status, the program coordinator shall be notified of the continued areas of deficiency. A new student shall not be admitted until the time the program of nursing comes into compliance. This period of time shall not exceed one academic year.

(b) The APRN program coordinator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan to correct each of the identified deficiencies.

(c) The APRN program coordinator may, within thirty (30) days, of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

(6) If the program of nursing has not corrected the deficiencies within one (1) academic year of being placed on probational status, a hearing pursuant to KRS Chapter 13B shall be conducted to determine whether to withdraw approval of the program of nursing.

(7) If the board decides to withdraw approval of a program of nursing, upon the effective date of the decision the program of nursing shall be removed from the official approved status listing. A program of nursing whose approval has been withdrawn shall:

(a) Allow a student who is currently enrolled in a nursing class to complete the program of nursing; or

(b) Assist a currently enrolled student to transfer to an

approved program of nursing.

(8) A program of nursing whose approval has been withdrawn but continues to operate pursuant to subsection (7) of this section shall be continuously monitored by the board until the program closes.

(9) The board may return an APRN program to full approval status if the program attains and maintains adherence to this administrative regulation.

Section ~~10~~[11]. Out-of-State APRN Programs Seeking Clinical Placements in Kentucky. (1) A nursing program, located in another state or territory of the United States that wishes to provide clinical experiences in Kentucky shall seek permission from the Kentucky Council of Postsecondary Education before enrolling, offering or conducting these sessions for citizens of the Commonwealth.

(2) For out-of-state nursing programs, a program shall be currently accredited in good standing with a national nursing accrediting body.

(3) An applicant who is denied approval to conduct clinical instruction in Kentucky may request a meeting with board representatives or request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order.

(4) The board may rescind approval held by an out-of-state nursing program to conduct clinical instruction in Kentucky based on factors identified in Section 9 of this administrative regulation.

(5) A program seeking individual clinical placements of students shall submit the following at least three (3) months prior to beginning of the experience:

(a) Designated university with relevant nursing accreditation status;

(b) Student name;

(c) The clinical practice setting;

(d) The credentials of the coordinating faculty member at the out-of-state institution;

(e) Credentials of the clinical preceptor, consistent with the qualifications outlined in this administrative regulation;

(f) Evidence of the student's qualifications for participation consistent with criteria outlined in Section 8 of this administrative regulation; and

(g) Evidence of agreement of the health care facility hosting the clinical experience.

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

(a) "AACN Essentials for Master's Education for Advanced Practice Nursing", 1996 Edition, American Association of Colleges of Nursing;

(b) "AACN Essentials for Doctoral Education for Advanced Nursing Practice, 2006 Edition, American Association of Colleges of Nursing;

(c) "NLNAC Standards and Criteria Master's and Post-Master's Certificate", 2008 Edition, National League for Nursing Accrediting Commission; and

(d) "NLNAC Standards and Criteria Clinical Doctorate", 2008 Edition, National League for Nursing Accrediting Commission.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to

comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 2, 2014. 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 Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for APRN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and 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 makes several housekeeping changes and eliminates unnecessary requirements. Specifically, it removes the requirement that the Board conduct a site visit with the accrediting body.

(b) The necessity of the amendment to this administrative regulation: The need for the Board to make site visits in addition to the accrediting body had been questioned. It was determined that such visits were unnecessary. It also eliminates the requirement that out of state programs report clinical placements in Kentucky to the Board.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.

(d) How the amendment will assist in the effective administration of the statutes: By eliminating unnecessary requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for APRN programs of nursing, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.142(1)(b), 314.161

STATUTORY AUTHORITY: KRS 61.874(3), 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), and 314.073(7) require the board to establish fees for licensure, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure Applications. (1) The board shall collect a fee for:

(a) An application for licensure; and

(b) Licensure renewal or reinstatement.

(2) The fee for an application shall be:

(a) Licensure by endorsement as a registered nurse - \$150[.]

(b) Licensure by endorsement as a licensed practical nurse - \$150[.]

(c) Licensure by examination as a registered nurse - \$110[.]

(d) Licensure by examination as a licensed practical nurse - \$110[.]

(e) Renewal of license - forty (40) dollars[.]

- (f) Retired status - twenty-five (25) dollars;[-]
- (g) Reinstatement of license - \$120;[-]
- (h) Paper copy of an application - forty (40) dollars;[-]
- (i) Full verification of licensure, credential or registration history - fifty (50) dollars;[-]
- (j) Duplicate license or registration card or letter - thirty-five (35) dollars;[-]
- (k) Licensure as an advanced practice registered nurse - \$150;[-]
- (l) Renewal of licensure as an advanced practice registered nurse - forty (40) dollars;[-]
- (m) Reinstatement of licensure as an advanced practice registered nurse - \$120;[-]
- (n) Name change - twenty-five (25) dollars;[-]
- (o) Application to establish a registered nurse or licensed practical nurse prelicensure program of nursing pursuant to 201 KAR 20:280 or 201 KAR 20:290 - \$2,000;[-]
- (p) Application to establish a doctor of nursing practice program pursuant to 201 KAR 20:061, Section 1 - \$250;[-]
- (q) Application to establish a doctor of nursing practice program pursuant to 201 KAR 20:061, Section 2 - \$2,000; or[-]
- ~~(r) Application to approve an advanced practice registered nurse program pursuant to 201 KAR 20:062, Section 3 - \$250.~~
- ~~(s) Application to establish an advanced practice registered nurse program pursuant to 201 KAR 20:062, Section 4 - \$2,000.~~
- (3) An application shall not be evaluated unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:

- (1) Initial provider approval - \$400;[-]
- (2) Reinstatement of provider approval - \$400;[-]
- (3) Renewal of approval - \$200; or[-]
- (4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:

- (a) Validation of the current status of a temporary work permit, provisional license, license, or credential:
 - 1. If requested in writing in individual nurse format - fifty (50) dollars; or[-]
 - 2. If requested in writing in list format - fifty (50) dollars for the first name and twenty (20) dollars for each additional name;[-]
- (b) Copy of an examination result or transcript - twenty-five (25) dollars;[-]
- (c) Nursing certificate - thirty (30) dollars; or[-]
- (d) Release of NCLEX results to another state board of nursing - seventy-five (75) dollars.

(2) An applicant for licensure who takes or retakes the licensure examination shall pay:

- (a) The current examination fee required by the national council of state boards of nursing; and
- (b) Application for licensure fee pursuant to Section 1 of this administrative regulation.
- (3) A graduate of a foreign school of nursing shall be responsible for:
 - (a) Costs incurred to submit credentials translated into English;
 - (b) Immigration documents; and
 - (c) Other documents needed to verify that the graduate has met Kentucky licensure requirements.

(4) A programs of nursing that requires a site visit pursuant to 201 KAR 20:270, Section 2(4), shall pay the cost of the site visit to the board.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

- (1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;[-]
- (2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board

office; or[-]

(3) For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, or credential shall be issued the appropriate approval, license, or credential without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners. (1) The application fee shall be \$120.

(2) The credential renewal fee shall be thirty-five (35) dollars.

(3) The credential reinstatement fee shall be \$120.

Section 7. A payment for an application fee that is in an incorrect amount shall be returned and the application shall not be posted until the correct fee is received.

Section 8. Bad Transaction Fee. Any transaction, including paper or electronic, submitted to the board for payment of a fee which is returned for nonpayment shall be assessed a bad transaction fee of thirty-five (35) dollars.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, January 2, 2014. 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, 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 fees.

(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 fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting fees.

(2) If 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 would require a program of nursing to pay the costs of a site visit by the Board if a site visit is required by regulation.

(b) The necessity of the amendment to this administrative regulation: In order to be fiscally responsible in this tight budget times, the Board believes that if a program of nursing requires a site visit because of a potential violation of the regulations, then the program of nursing should be responsible for the cost of the site visit. The cost would include the expenses (travel, lodging, and meals) of the Board's representatives.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set fees.

(d) How the amendment will assist in the effective administration of the statutes: By providing for the recovery of this cost.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: programs of nursing requiring a site visit, 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 be responsible for paying the cost of a site visit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of the site visit will vary, but will include actual expenses (travel, lodging, and meals).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It establishes the fee of site visit costs.

(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? Unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown.

(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:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.

RELATES TO: KRS 314.041(1)

STATUTORY AUTHORITY: KRS 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs.

Section 1. Definitions. (1) "NCLEX" means the National Council Licensure Examination.

(2) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse and includes secondary[or distance] learning sites, if applicable.

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program who is qualified pursuant to 201 KAR 20:310;

2. Assure that at least fifty (50) percent of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing, up to 100 percent. [a.] A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

a. [(i)] The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

b. [(ii)] If the exemption is granted, it shall be for one (1) academic year. During this time, the governing institution shall not open a new program of nursing and shall not increase enrollment at an existing program of nursing[~~-b. The program administrator's time to be dedicated to completion of the duties specified in this administrative regulation shall not be less than twenty-five (25) percent for each program of nursing;~~];

3. Establish administrative policies;

4. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

5. Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

6. Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

7. Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

8. Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, promotion, retention, and tenure;

9. Involve the nurse faculty in determining academic policies

and practices for the program of nursing; and

10. Provide for the security, confidentiality, and integrity of faculty employment records.

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and
2. Available to the board for review.

(b) The board shall be notified in writing of a vacancy or pending vacancy in the position of the program administrator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the program administrator vacates the position, the head of the governing institution shall submit to the board in writing:

1. The effective date of the vacancy;
2. The name of the registered nurse who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae;

3.a. If there is to be a lapse between the date of the vacancy and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to insure the continuity of the program.

b. Progress reports shall be submitted if requested by the board;

4.a. The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position; and

5.a. If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment.

b. A waiver shall be granted if the individual to be appointed meets at least the minimum requirements established in 201 KAR 20:310 for nurse faculty.

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Within thirty (30) days of appointment to the program of nursing, submit the qualifications of all nurse faculty and clinical instructors;

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate the implementation of written program policies

for the following:

1. Student admission;
2. Student readmission and advance standing;
3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on and off campus;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporate the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h)1. To coordinate the development and negotiation of contracts with clinical facilities, the number and variety of which shall be adequate to meet curricular outcomes; and

2. To coordinate the development of selection and evaluation criteria for clinical facilities and ensure that the criteria will be utilized by the program of nursing;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients-clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or preceptored experiences. Observational experiences shall include an assignment where a student observes nursing and where the student does not participate in direct patient or client contact but has access to a clinical instructor as needed.

3. This ratio shall not apply to on campus skill lab experiences;

(j) The submission of the Certified List of Kentucky Program of Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma or certificate;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies are current and replaced in a timely manner;

(n) To ensure that the nurse faculty has sufficient time to accomplish those activities related to the teaching-learning process and program outcomes;

(o) To coordinate[øf] an orientation to the roles and responsibilities of full-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program are achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials provide accurate and complete information to prospective students about the program including the:

1. Nature of the program, including course sequence, prerequisites, corequisites, and academic standards;

2. Length of the program;

3. Current cost of the program; and

4. Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and support staff

according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend a Board of Nursing Program Administrators Orientation within one (1) year of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program; and

(w) To ensure that the curriculum is implemented as submitted to the board;

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings. These records shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the faculty orientation requirements established in 201 KAR 20:310, Section 3(5); and

3. Performance evaluation for faculty employed more than one (1) year;

(d) Systematic plan of evaluation;

(e) Graduates of the program of nursing; and

(f) Administrative records and reports from accrediting agencies; and

(5) Official publications including:

(a) A description of the governing institution and program of nursing;

(b) Policies on admission, progression, dismissal, graduation, and student grievance procedures;

(c) A description of student services;

(6) Clerical assistance.

1. The number of clerical assistants shall be determined by the number of students and faculty.

2. There shall be secretarial and clerical assistants sufficient to meet the needs of the nursing program for the administrator, faculty, and students at the designated primary location, as well as clerical support for secondary and distance learning sites, if applicable.

(7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:

(a) Plan, implement, evaluate, and update the program;

(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools to measure the progression of the student's cognitive, affective, and psychomotor achievement in course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

(i) Establish clinical outcomes within the framework of the course;

(j) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;

(k) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis; and

(l) Evaluate the student's experience, achievement, and progress in relation to course or outcomes, with input from the clinical instructor and preceptor, if applicable; and

(8) Clinical instructors with governance to:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member:

1. The role of the preceptor;

2. The course responsibilities;

3. The course or clinical outcomes;

4. A course evaluation tool; and

5. Situations in which collaboration and consultation are needed; and

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes.

Section 3. Notification of Increased Enrollment. (1) A program of nursing shall submit a request for~~notify the board of~~ an increase in enrollment by twenty (20) percent or more of the last cohort enrolled or ten (10) students, whichever is greater.

(a) The request~~notification~~ shall be sent in writing not later than six (6) months prior to the increase.

(b) The request~~notification~~ shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment.

(2) The board shall~~conduct a site visit to~~ determine if the program has sufficient resources.

(3) The board shall not grant approval for the increase in enrollment unless the program has:

(a) Full approval status; and

(b) Program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 2, 2014. 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, 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for prelicensure programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and 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 makes several housekeeping changes.

(b) The necessity of the amendment to this administrative regulation: The Board periodically reviews the education regulations to insure currency and relevancy.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.

(d) How the amendment will assist in the effective administration of the statutes: By updating requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing, currently there are approximately eighty-six (86).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:270. Programs of nursing site visits.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.11

requires that site visits be made by a board representative to evaluate compliance with board standards by agencies offering or planning to offer programs of nursing. This administrative regulation establishes procedures and requirements for site visits to programs of nursing.

Section 1. Evaluation of a program of nursing by a national nursing accrediting body. (1) The board may accept accreditation by a national nursing accrediting body recognized by the United States Department of Education as evidence of compliance with the standards of 201 KAR 20:260 through 20:360 in lieu of a site visit. The program of nursing shall submit to the board a copy of the self-evaluation report submitted to the national nursing accrediting body.

(2) A program of nursing that seeks accreditation from a national nursing accrediting body shall submit evidence of that accreditation to the board within thirty (30) days of receiving the report from the national nursing accrediting body. The program of nursing shall submit notice of any change in its accreditation to the board within thirty (30) days of receipt of the notice from the national nursing accrediting body. Failure to submit notice of accreditation results within thirty (30) days may result in a site visit.

(3) A program of nursing that has been granted approval based on a national nursing accrediting body's accreditation shall comply with 201 KAR 20:260 through 20:360.

(4) The program administrator shall submit to the board any report from the national nursing accrediting body citing deficiencies or recommendations when the report is received by the program of nursing.

(5) The program of nursing shall submit copies of interim reports requested by the national nursing accrediting body to the board.

(6) If the program of nursing receives notice from the national nursing accrediting body addressing an interim report, a copy of any communication shall be sent to the board within thirty (30) days of receiving the report.

(7) If the program of nursing is accredited for less than the maximum accreditation period, the program shall provide the board with a copy of the report addressing the items of noncompliance within thirty (30) days of receipt from the national nursing accrediting body. The board may require additional reports regarding noncompliance.

(8) The board may grant full approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 2. Programs of Nursing Site Visits. (1) Programs of nursing not accredited by a national nursing accrediting body shall be subject to a site visit at least every eight (8) years.

(2) A site visit date shall be established in collaboration with the program of nursing. A specific list of information required for

review shall be sent to the program of nursing prior to the site visit.

(3) Prior to the site visit, the program of nursing shall submit a self-evaluation report that provides evidence of compliance with the standards set forth in 201 KAR 20:260 through 20:360.

(4) Site visits to programs of nursing holding full approval status may be scheduled~~[rescheduled]~~ based upon any of the following:

(a) A complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through 20:360;

(b) Denial, withdrawal, or change in the program accreditation status by a national nursing accrediting body or a general academic accrediting agency;

(c) Failure to obtain approval of a change that requires approval prior to implementation, such as a change in program administrator as required by 201 KAR 20:260 or a change in curriculum as required by 201 KAR 20:320;

(d) Providing false or misleading information to students or the public concerning the program of nursing;

(e) Violation of 201 KAR 20:260 through 20:360;

(f) A change in or the inability to secure or retain a qualified program administrator or faculty as required by 201 KAR 20:310;

(g) Failure to provide clinical experiences necessary to meet the outcomes of the program of nursing;

(h) Evidence of a high student or faculty attrition rate as compared to the state average;

(i) Failure to maintain an annual NCLEX pass rate for first-time testers as set by 201 KAR 20:360, Section 2(4) for two (2) consecutive years;

(j) A change in the ownership or organizational restructuring of the governing institution; or

(k) As deemed necessary by the board to determine compliance with 201 KAR 20:260 through 20:360.

(5) The scheduling of site visits during initial approval shall be based on board required reports and on evaluations submitted by the program administrator and as required by administrative regulation.

(6) The scheduling of site visits of governing institutions planning to establish a program of nursing or a secondary~~[or distance learning]~~ site shall be based upon the information submitted within the proposal for the new program as required by 201 KAR 20:280 and 20:290.

(7) The board shall have the authority to visit a program of nursing on an announced or unannounced basis.

Section 3. Board Action Following Site Visits. (1) The board shall evaluate a program of nursing in terms of its compliance with administrative regulations 201 KAR 20:260 through 20:360.

(2) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(3) Following the board's review and decision, a letter shall be sent to the program administrator and the head of the governing institution regarding the approval status of the program of nursing as outlined in 201 KAR 20:360.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments shall be accepted until close of business January 2, 2014. 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, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for prelicensure programs of nursing site visits.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and 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 makes several housekeeping changes.

(b) The necessity of the amendment to this administrative regulation: The Board periodically reviews the education regulations to insure currency and relevancy.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.

(d) How the amendment will assist in the effective administration of the statutes: By updating requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing, currently there are approximately 86.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

**GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)**

201 KAR 20:280. Standards for initial approval of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3), 314.131(2)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 requires the board to review, approve and possibly withdraw approval for schools of nursing. This administrative regulation establishes the standards for the development and approval of programs which prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

Section 1. Establishment of a Program of Nursing. (1) The governing institution may receive consultation from the board prior to establishing a program of nursing.

(2) The governing institution that desires to establish and conduct the program of nursing shall be accredited as outlined in 201 KAR 20:260, Section 1.

Section 2. Letter of Intent. (1) The governing institution shall submit to the board a letter of intent to establish a prelicensure program of nursing and the fee required by 201 KAR 20:240. [The letter of intent and any additional information shall be submitted to the board no less than one (1) year prior to the anticipated opening date for the program.]

(2) The letter of intent [proposal] shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as outlined in 201 KAR 20:310.

(3) The letter of intent shall include:

(a) Approval from the governing body of the institution proposing the program of nursing or other empowered approval bodies as applicable;

(b) The results of a feasibility study that includes the following information related to the need for the program of nursing:

1. Population data within the past three (3) years of both the state and the geographic area to be served;

2. Workforce supply and demand data from the past year;

3. The rationale for why the particular geographic area was

chosen;

4. A survey of all hospitals, nursing homes, and other health-related facilities where graduates of the program could be hired. The letter of intent shall include copies of the completed survey forms. The survey forms shall include the following questions:

a. How many registered nurses (RNs) and licensed practical nurses (LPNs) are employed;

b. What is the attrition rate for the nurses employed each year for the past three (3) years and why does this attrition occur;

c. How many openings for RNs and LPNs are available at the time of the survey;

d. How many positions for RNs and LPNs are budgeted for the next three (3) years; and

e. Is the facility expecting to increase or decrease the number of beds in the next three (3) to five (5) years;

5. A description of the characteristics of the population in the community to be served to include current and emerging health needs based on statistical studies to include age groups and socioeconomic status;

6. A summary of how the market in this area will support the need for the program with an analysis of data and percentages;

7. A description of the applicant pool that is being targeted and how this population will be reached; and

8. The availability of qualified staff, including faculty, within a fifty (50) mile radius [Data that documents the need for the level of nurses in the areas to be served by the proposed program];

(c) Results of an investigation into the projected impact on the operation of programs of nursing within a fifty (50) mile radius, which shall include information on the wait list for these programs for the last three (3) years, and evidence that an introductory letter has been sent to the impacted programs;

(d) Documentation from cooperating healthcare agencies in the community that they will provide support for the creation of the program of nursing; This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the program;

(e) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources;

(f) A timeline for the hiring of a full time program administrator, admission of students, and projected graduation of the first class;

(g) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(h) A copy of the curriculum vitae of the registered nurse involved in the planning; and

(i) Description and rationale for the proposed type of program of nursing.

(4)(a) If concerns are raised about the need for the program or about the ability of the program to obtain appropriate clinical sites, a hearing shall be held before the board's education committee to act upon the letter of intent.

(b) At the conclusion of the hearing, the committee shall recommend to the board whether or not to approve the letter of intent.

(c) If the letter of intent is approved [Upon approval of the letter of intent] by the board, the governing institution shall be notified in writing that it may move to the proposal phase. [During the proposal phase:] The governing institution shall appoint a qualified program administrator and provide appropriate resources, consultants, and faculty to develop the proposed program plan.

Section 3. Proposal Phase. (1) A completed program proposal shall be submitted to the board by the governing institution for approval no less than one (1) year [eight (8) months] prior to the anticipated opening date for a program of nursing.

(2) The program shall not be announced, advertised, or students admitted to the program of nursing until developmental approval status has been granted by the board.

(3) The program proposal shall include the following information:

(a) Philosophy, mission, and learning outcomes of the

governing institution;

(b) Organizational chart of the governing institution and written plan which describes the organization of the program of nursing and its relationship to the institution;

(c) Proposed philosophy, mission, and learning outcomes for the proposed program;

(d) Curriculum design including proposed course sequence and credit hours delineating those credits assigned to theory and clinical;

(e) Recruitment plan and five (5) year projection for student enrollment;

(f) A five (5) year plan for recruiting and retaining qualified nurse faculty;

(g) Proposed job description for the program administrator reflecting authority and responsibility;

(h) Description of faculty offices, classrooms, clinical skills laboratory, library facilities, conference rooms and learning resources;

(i) Description of support services for students, to include provision of health services or evidence of an emergency plan for care, academic advisement, student services, mechanism for obtaining learning resources, and financial aid;

(j) Availability and willingness of accredited agencies to provide clinical experiences across the curriculum. This information shall include:

1. The shifts and days students will work;

2. The number of students each agency can accept;

3. The clinical experience that will be available from each agency;

4. The other nursing programs that utilize this agency; and

5. The plan how not to displace students from existing programs;

(k) Policies and procedures for student selection and progression, including the plan to retain students so as to maintain a low attrition rate;

(l) Plan for clerical support available to the program for planning, implementing, and maintenance of the program;

(m) General plan for an on-going, research based planning and evaluation process that incorporates a systematic review of the program that results in continuing improvement; and

(n) Description of financial resources to support the program including a budget for the first three years with projected revenues and expenditures and the amount of resources going to institutions or organizations for contractual or support services.

(4) A representative of the board shall arrange a site visit to the governing institution and the program of nursing to clarify, verify, and amplify materials included in the proposed program plan. Prior to approval being granted, a written report shall be submitted to the board by the board representative who conducts the site visit. This site visit shall not be construed as affirming that the proposed program plan meets requirements.

(5) The governing institution shall be notified in writing of action taken by the board on the proposal and the site visit report. If the board determines that all requirements have been met, the program shall be granted developmental status. If the board determines that all requirements have not been met, the program may be granted developmental status based on compliance with the terms and conditions identified in the site visit report. If the program does not comply with the terms and conditions identified in the site visit report, the program shall be denied approval.

(6) Approval to establish a program of nursing may be withdrawn if program requirements are not met and if a class is not enrolled within eighteen (18) months after the board granted developmental approval. If the board determines that a proposed program does not comply with all administrative regulations of the board, developmental[or initial] approval may be withdrawn. The governing institution shall be notified in writing of the withdrawal of developmental[or initial] approval.

(7) Students shall not be admitted to the program of nursing until developmental approval has been granted by the board.

(8) Failure to submit board required reports within the designated time period may result in the rescinding of developmental[or initial] approval status.

(9) Employment of program administrator and faculty.

(a) The program administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to submission of the proposal to the board.

(b) The faculty as outlined in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.

(10) Any deviation from the initial curriculum plan approved within the proposal shall be approved by the board before the first class begins course requirements.

(11) Written contracts for use of clinical facilities shall be executed prior to admission to the first nursing course.

(12) The program of nursing shall submit quarterly progress and evaluation reports which demonstrate implementation of the approved proposal as required by the board.

(13) Site visits may be conducted as deemed necessary by the board.

Section 4. Approval Status. (1) The status of the program shall move automatically from developmental to initial approval upon admission of the first class. It shall be the responsibility of the program of nursing to notify the board of the admission of the first class.

~~(2) [Full approval shall be the designation granted to a program of nursing that has implemented the approved proposal and that continues to meet standards.]~~

~~(3) A program with initial approval shall be eligible for full approval upon graduation of the first class providing there is evidence that standards have been met.~~

(4) The program shall notify the board in writing thirty (30) days prior to the graduation of the first class.

~~(3) [(5)]~~ Within ninety (90) days of graduation of the first class, the faculty

shall conduct a self-study that evaluates the establishment of the program of nursing to the approved proposal and submit a written report to the board prior to consideration for full approval.

~~(4) [(6)]~~ The decision to grant full approval shall be based on review of the following:

(a) The program evaluation by the faculty and the program administrator;

(b) Site visit report by the board representative conducted to evaluate program compliance with administrative regulations; and

(c) Other facts that pertain to the program and reports deemed necessary to document that standards have been met.

(5) After receipt of the self-study, the board shall determine the approval status of the program as set forth in 201 KAR 20:360, Section 1(3).

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on December 23, 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 December 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 2, 2014. 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, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for initial approval of prelicensure programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and 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 makes several housekeeping changes.

(b) The necessity of the amendment to this administrative regulation: The Board periodically reviews the education regulations to insure currency and relevancy.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.

(d) How the amendment will assist in the effective administration of the statutes: By updating requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for a prelicensure program of nursing, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:290. Standards for prelicensure registered nurse and practical nurse secondary[or distance learning] sites.

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes standards for the development and approval of secondary sites[or distance learning programs].

Section 1. Definition. "Secondary[or distance learning] site" means a nonmain location where educational activities are conducted and that meets the requirements of Section 2(2) of this administrative regulation.

Section 2. Establishment of a Nursing Secondary[or Distance Learning] Site. (1) The addition of a secondary[or distance learning] site shall not be considered unless the program of nursing meets the following:

(a) The governing institution that establishes and conducts the program of nursing shall be accredited as outlined in 201 KAR 20:260, Section 1;

(b) The program of nursing shall hold full approval for a minimum of three (3) years; and

(c) First time test takers from the program of nursing shall have achieved an overall pass rate as set by 201 KAR 20:360, Section 2(4) on the NCLEX examination for a minimum of three (3) consecutive years.

(2) The addition of a secondary[or distance learning] site shall not be considered unless one (1) of the following is met:

(a) A student may obtain at the site fifty (50) percent or more of the necessary credits towards a degree or diploma program;

(b) A student may obtain at the site fifty (50) percent or more of the necessary credits towards a degree or diploma program via an electronic method; or

(c) Students at the site utilize services provided at the main campus that oversees the site because of the site's geographic closeness to the main campus.

Section 3. Letter of Intent. (1) The governing institution shall submit to the board a letter of intent to establish a secondary[or distance learning] site along with the fee required by 201 KAR 20:240. The letter of intent and additional preliminary information shall be supplied to the board at least six (6) months prior to the desired admission of the first class.

(2) The letter of intent shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as outlined in 201 KAR 20:310.

(3) The letter of intent shall include: (a) The name of the governing institution accredited by an accrediting body recognized by the United States Department of Education;

(b) The consent of the approving board or body of the governing institution;

(c) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources;

(d) Documentation of the need for the level of nurses in the area to be served by the secondary[or distance learning] site;

(e) Documentation from cooperating healthcare agencies in the community that will provide support for the creation of the secondary[or distance learning] site. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the site;

(f) Investigation of the projected impact on the operations of all programs of nursing within a fifty (50) mile radius of the site. Evidence that an introductory letter was sent to the impacted programs shall be included; and

(g) A timeline for the admission of students and graduation of the first class.

(4) Upon approval of the letter of intent by the board, the governing institution shall be notified in writing.

Section 4. Proposal Phase. (1) The secondary[or distance learning] site shall not be announced, advertised, or students admitted until the proposal has been approved and developmental status has been granted by the board.

(2) Developmental status shall be granted to the proposal to establish a secondary[or distance learning] site upon presentation to the board of evidence of the following:

(a) Participation by the program administrator in planning the secondary[or distance learning] site;

(b) The name and qualifications of the program administrator;

(c) The name and qualifications of the assistant program administrator as defined in 201 KAR 20:310;

(d) Philosophy, purpose, and objectives of the governing institution, program of nursing, and the proposed secondary[or distance learning] site;

(e) Administrative and academic policies of the governing institution, program of nursing, and the proposed secondary[or distance learning] site;

(f) Identification of any differences between the policies to be utilized at the secondary[or distance learning] site as compared to the primary location;

(g) Organizational plan and administrative policies for implementation of the secondary[or distance learning] site;

(h) Adequacy and availability of student services consistent with those at the main campus;

(i) Plan for employment of qualified faculty who shall be employed sufficiently in advance of the opening date to provide for program planning and development and for orientation to the facilities;

(j) An identified curriculum and conceptual or organizing framework to be used and any planned revisions;

(k) The availability and willingness of accredited agencies to provide clinical experiences across the curriculum;

(l) Evidence of availability of adequate finances to support the secondary[or distance learning] site which shall include:

1. Sufficient financial resources as identified in an approved budget for the secondary[or distance learning] site;

2. The source of the funding identified;

3. The stability of the source of funding to maintain the operation of the secondary[or distance learning] site; and

4. Any stipulations for use of any special finances;

(m) The availability of adequate classrooms, laboratories, conference rooms, and library resources appropriate for the needs of the secondary[or distance learning] site which shall include:

1. Sufficient space and equipment allocated for use of faculty

and students as outlined in 201 KAR 20:350; and

2. Library and learning resources that support achievement of meeting curricular objectives and future plans for maintaining these resources;

(n) A plan for evaluation of the secondary[or distance learning] site consistent with 201 KAR 20:360; and

(o) The effects of the secondary[or distance learning] site on the governing institution and the program of nursing.

Section 5. Proposal Review Process. (1) A completed program proposal shall be submitted to the board by the governing institution no less than six (6) months prior to the anticipated opening date for the secondary[or distance learning] site.

(2) A representative of the board shall conduct a site visit to the secondary[or distance learning] site and submit a written report to the board.

(3) The governing institution shall be notified in writing of action taken by the board on the proposal and the site visit.

(4)(a) If the board determines that the requirements of 201 KAR 20:260 through 20:360 have been met, the program shall be granted developmental status.

(b) If the board determines that all of the regulatory requirements have not been met, the program may be granted developmental status based on compliance with the terms and conditions identified.

(c) If the program does not comply with the terms and conditions identified, approval shall be denied.

(5) Students shall not be admitted to the secondary[or distance learning] site until developmental status has been granted by the board.

(6)(a) Approval to establish a secondary[or distance learning] site may be withdrawn if the requirements of 201 KAR 20:260 through 20:360 are not met or if a student class is not enrolled within eighteen (18) months.

(b) If the board determines that a proposed program does not comply with all of the regulatory requirements[s], developmental or initial approval may be withdrawn.

(c) The governing institution shall be notified in writing of the withdrawal of developmental or initial approval.

Section 6. Approved Secondary[or Distance Learning] Sites. (1) Reports shall be submitted to the board in accordance with 201 KAR 20:360.

(2) The status of the proposal shall automatically move from developmental to initial approval upon admission of the first class. The program of nursing shall notify the board of the admission of the first class.

(3) Full approval shall be the designation granted to a secondary[or distance learning] site that has implemented the proposal and that continues to meet standards of 201 KAR 20:260 through 20:360.

(4) A secondary[or distance learning] site shall be eligible for full approval upon graduation of the first class if there is evidence that the regulatory standards have been met in accordance with subsection (7) of this section.

(5) The program of nursing shall notify the board in writing at least thirty (30) days prior to the graduation of the first class.

(6) Within ninety (90) days of graduation of the first class, the faculty shall conduct a self study that evaluates the establishment of the secondary[or distance learning] site according to the proposal and shall submit a written report to the board prior to consideration for full approval.

(7) The decision to grant full approval shall be based upon a review of the following:

(a) The program evaluation by the faculty and the program administrator;

(b) The site visit report by the board representative conducted to evaluate compliance with 201 KAR 20:260 through 20:360; and

(c) Other facts that pertain to the secondary[or distance learning] site and reports deemed necessary to document that standards have been met.

(8) The retention of full approval of a secondary[or distance learning] site shall be contingent on meeting standards as set forth

in 201 KAR 20:260 through 20:360.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 2, 2014. 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, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for prelicensure programs of nursing secondary sites.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and 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 makes several housekeeping changes. In particular, it deletes the phrase "distance learning" from the title of the site. That phrase is outdated.

(b) The necessity of the amendment to this administrative regulation: The Board periodically reviews the education regulations to insure currency and relevancy.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.

(d) How the amendment will assist in the effective administration of the statutes: By updating requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for secondary sites of prelicensure programs of nursing, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, 314.470

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. This administrative regulation establishes standards for faculty of programs of nursing which prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Definition. "Nursing experience" means employment in a position that requires the individual to hold an active nursing license, such as nursing clinical practice, nursing administration, nursing education, or nursing research.

Section 2. Faculty for Prelicensure Registered Nurse and Practical Nurse Programs. (1)(a) The faculty shall include a program administrator and shall include at least two (2) nurse faculty (one (1) of whom may also serve as program administrator). The faculty may include clinical instructors in the major areas of nursing practice. The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the students, the number of students and classes admitted annually, and any additional secondary site, or continuing education programs conducted, and the educational technology utilized.

(b) The program administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.

(c) A program of nursing shall designate an assistant program administrator for a secondary site. At least twenty (20) percent of the assistant program administrator's time shall be dedicated to complete administrative duties.

(d) A program shall develop and implement a plan of organization and administration that clearly delineates the lines of authority, accountability, and responsibility among all program locations and assistant program administrators.

(2) The program administrator for a Registered Nurse program shall have the following qualifications:

(a) A minimum of a master's[masters] or higher degree in nursing from an accredited college or university;

(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and demonstrated leadership experience;

(c) A minimum of two (2) years of full time teaching experience at or above the academic level of the program of nursing; and

(d) An unencumbered current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.

(3) The program administrator for a Practical Nurse program shall have the following qualifications:

(a) A baccalaureate or higher degree with a major in nursing from an accredited college or university;

(b) A minimum of five (5) years of nursing experience within the past ten (10) years with demonstrated leadership experience;

(c) Current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.

(d) A minimum of two (2) years full time teaching experience at or above the academic level of the program of nursing; and

(e) A current knowledge of nursing practice at the practical or vocational level.

(4)(a) Nurse faculty or an assistant program administrator in a baccalaureate degree prelicensure registered nurse program shall hold a degree from an accredited college or university which shall include:

1. A master's[masters] degree within the discipline of nursing or have completed that portion that would be equivalent to a master's[masters] in nursing degree; or

2. A baccalaureate degree with a major in nursing and a master's[masters] degree in a related field which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's[masters] degree.

(b) Nurse faculty or an assistant administrator in an associate degree prelicensure registered nurse program shall hold a degree from an accredited college or university which shall include:

1. A master's[masters] degree within the discipline of nursing or have completed that portion of a nursing program that would be equivalent to a master's[masters] in nursing degree;

2. A baccalaureate degree with a major in nursing and a master's[masters] degree in a related field which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's[masters] degree; or

3. A baccalaureate degree with a major in nursing or have completed that portion of a state approved program of nursing that would be equivalent to a baccalaureate degree, and the nurse

faculty member shall complete within five (5) years of hire a master's[masters] degree commensurate with either subparagraph 1 or 2 of this paragraph.

(c) Nurse faculty or an assistant administrator in a practical nurse program shall have a minimum of a baccalaureate degree with a major in nursing from an accredited college or university.

(d) The nurse faculty shall hold a temporary work permit or a current license or privilege to practice as a registered nurse in the Commonwealth of Kentucky.

(e) The nurse faculty shall document a minimum of two (2) years full time or equivalent experience as a registered nurse within the immediate past five (5) years and shall maintain expertise appropriate to teaching responsibilities.

(f) The nurse faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(g) Nurse faculty shall maintain expertise in the clinical or functional area of responsibility.

(h) Nurse faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(i) Nonnurse faculty members who teach nursing courses required within the curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate. Nonnurse faculty shall be required to collaborate with a nurse faculty member in order to meet the nursing course outcomes.

(j) Nurse faculty who teach on-line and will not physically practice within the state shall hold an unencumbered active nursing license or multistate privilege to practice as a registered nurse in the state where they are located.

Section 3. Clinical Preceptors. (1) A clinical preceptor may be used to enhance clinical learning experiences, after a student has received clinical and didactic instruction from the program faculty in all basic areas for the course or specific learning experience.

(2) A clinical preceptor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in Kentucky or in the state of the student's clinical site. In a practical nursing program, a clinical preceptor may hold a current unencumbered license, privilege or temporary work permit to practice as a licensed practical nurse in Kentucky or in the state of the student's clinical site.

(3) A clinical preceptor shall have evidence of clinical competencies related to the area of assigned clinical teaching responsibilities and serve as a role model to the student.

(4) A clinical preceptor shall not be used to replace clinical instructors. Clinical instructors or nurse faculty retain responsibility for student learning and confer with the clinical preceptor and student for monitoring and evaluating learning experiences.

(5) There shall be documentation of orientation to the course, program outcomes, student learning objectives, evaluation methods to be utilized, and documented role expectations of faculty, preceptor, and student.

Section 4. Evaluation of Registered Nurse Program and Practical Nurse Program Faculty. (1) Evaluation of faculty records. The program administrator shall submit to the board the qualifications of nurse faculty and clinical instructors upon appointment.

(a) Official academic transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.

(c) Faculty appointments shall be reported to the board in writing.

(d) The program administrator shall report a change in faculty composition within thirty (30) days of appointment or vacancy.

(2) Reevaluation of faculty records. The board shall review annually the qualifications of the faculty employed in the program of nursing.

Section 5. Faculty Supervision of Student Clinical Practice. (1) The ratio of students to a nurse faculty member or clinical instructor is set by 201 KAR 20:260, Section 2(3)(i).

(2) The clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(3) For Registered Nurse educational programs, the educational preparation of the clinical instructor shall at least equal the level of the appointing program.

(4) The clinical instructor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in Kentucky or in the state of the student's clinical site.

(5) A clinical instructor shall have a minimum of two (2) years full time or equivalent experience within the functional area as a registered nurse within the immediate past five (5) years and evidence of clinical competence.

Section 6. Faculty Waiver. (1) All nurse faculty members are expected to meet qualifications as set forth in this administrative regulation. The program administrator may request a time-limited temporary waiver if a program of nursing meets the following criteria:

(a) Full approval status;

(b) Program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent;

(c) The program has not requested a waiver for the previous two (2) years; and

(d) Faculty turnover for the past academic year does not exceed thirty (30) percent.

(2) A maximum of two (2) faculty waivers shall be permitted at any one (1) time per program.

(3) The waiver shall be requested by the program administrator. The faculty appointment shall not be implemented by the program until the board has approved it.

(4) A waiver shall be limited to one (1) time for any individual.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 2, 2014. 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, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for faculty for prelicensure programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and 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 makes several housekeeping changes.

(b) The necessity of the amendment to this administrative regulation: The Board periodically reviews the education regulations to insure currency and relevancy.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.

(d) How the amendment will assist in the effective administration of the statutes: By updating requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Faculty of prelicensure programs of nursing, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

**GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)**

201 KAR 20:320. Standards for curriculum of prelicensure nursing programs.

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) requires that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse programs.

Section 1. Definitions. (1) "Associate degree program" means a program of nursing organized and administered by a community college, or a four (4) year college or university which awards the graduate an associate degree in nursing upon meeting the requirements of the governing institution.

(2) "Baccalaureate degree program" means a program of nursing organized and administered by a senior college or university which awards the graduate a baccalaureate degree in nursing upon meeting the requirements of the governing institution.

(3) "Masters degree program" means a program leading to a masters degree which is the individual's first professional degree in nursing and is conducted by an educational unit in nursing within the structure of a senior college or university.

(4) "Multiple Entry-Exit program" or "MEEP" means a program which allows a student to challenge the NCLEX-RN or NCLEX-PN examinations when the student has completed sufficient course work in a professional nursing program that meets all requirements for the examination.

(5) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level which awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(6) "Prelicensure nursing education program" means an educational entity that offers the courses and learning experiences that prepare graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN or NCLEX-PN examinations.

(7) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning which awards a degree upon meeting requirements of the program. A registered nursing program is considered to be any program that culminates in the graduate being eligible for licensure. Examples of registered nurse programs are associate degree programs, baccalaureate degree programs, masters degree programs, and multiple entry-exit programs.

Section 2. General. (1) An applicant for licensure shall

complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an assessment to validate that identified outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(d) The organizing framework shall serve as a foundation for level of progression, level of outcomes, and course sequencing.

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the prelicensure nursing education program shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale, and organizing framework, which describes the organization and development of the curriculum.

(b) The curriculum design shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes planned instruction, learning activities, and method of evaluation. Each course shall be implemented in accordance with the established course syllabi. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical, sequential, and demonstrate an increase in difficulty and complexity as the student progresses through the program.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by law, current standards for nursing practice, and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities

to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310, including the utilization of clinical preceptors.

(e) The curriculum shall have written, measurable program competencies that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A prelicensure nursing education program that is not accredited by a national nursing ~~accrediting~~~~[accrediting]~~ body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation. A request for curriculum revision shall include the present plan, the proposed change with rationale and expected outcomes. The board shall be available to assist when curriculum revisions are being considered. Major curriculum revisions include:

1. A change in the philosophy, mission or outcomes which result in a reorganization or re-conceptualization of the entire curriculum;

2. The addition of tracks or alternative programs of study which provide educational mobility; or

3. The initiation of ~~on-line~~~~[distance]~~ learning where a student may obtain fifty (50) percent or more of the nursing credits needed to meet program completion requirements.

(b) An accredited program of nursing shall submit to the board a copy of any curriculum revision submitted to an accrediting agency within thirty (30) days. The program of nursing shall submit a copy of all correspondence related to program accreditation from the accrediting agency to the board.

(c) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session during the last semester or quarter of a nursing program.

(10) All prelicensure nursing programs shall implement the integrated practicum requirement into their curriculum for students entering the program on or after July 1, 2004.~~[(11) Distance learning programs:~~

~~(a) A program of nursing that delivers didactic instruction by distance learning methods shall insure that the methods of instruction are compatible with the program curriculum and enables a student to meet the goals, competencies, and outcomes of the educational program and the standards set by the board.~~

~~(b) A distance learning program shall establish a means for assessing individual student and program outcomes, including minimum student retention, student satisfaction, and faculty satisfaction.~~

~~(c) The nurse faculty shall be licensed in the state of origination of a distance learning program.~~

~~(d) A distance learning program shall provide students with access to technology, resources, technical support, and the ability to interact with peers and faculty.]~~

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 2, 2014. 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, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for the curriculum of prelicensure programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and 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 makes several housekeeping changes.

(b) The necessity of the amendment to this administrative regulation: The Board periodically reviews the education regulations to insure currency and relevancy.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set requirements.

(d) How the amendment will assist in the effective administration of the statutes: By updating requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing, currently there are 86.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not impose any new actions that applicants would be required to do.

(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 be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 create the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026 requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program. KRS 314.025 also allows the Nursing Incentive Scholarship Fund to issue grants for nursing workforce competency development. This administrative regulation provides criteria for submitting grant requests.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing or graduate nursing program, a twelve (12) month period beginning with a fall session; and for a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1).

(3) "Committee" means the Kentucky Nursing Incentive Scholarship Fund Grant Review Committee.

(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(11).

(5) "Program of nursing" means either a prelicensure, BSN completion or graduate nursing program.

(6) "Successful academic progression" means:

(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of fifteen (15) credit hours per academic year of published requirements for the program of nursing and

maintenance of a minimum grade point average which would allow continuation in a program of nursing; or

(b) For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

(c) The provisions of paragraphs (a) and (b) of this subsection shall not apply during the last academic year preceding graduation.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit a completed "Nursing Incentive Scholarship Application" by June 1 to apply for a scholarship for the following academic year.

(3) An applicant shall attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need.

Section 3. The Committee. (1) A member of the committee shall serve for two (2) years and may be reappointed.

(2) The committee shall meet as needed to review grant requests submitted pursuant to Section 11 of this administrative regulation.

(3) A member of the committee shall:

(a) Serve without compensation; and

(b) Be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The board shall consider the following criteria in evaluating an application and shall award points as follows:

(1) Preference categories as specified in KRS 314.025(2):

(a) Licensed practical nurses, twenty-five (25) points;

(b) Registered nurses pursuing graduate nursing education, twenty-five (25) points; and

(c) Financially-needy Kentucky residents, twenty-five (25) points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid.

(2) Potential for academic success, as follows: high school, vocational school, college or university grade point average for whichever institution the applicant most recently attended:

(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and

(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points.

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of twenty-five (25) points.

Section 5. Amount of Award. (1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)(a) The board shall first make awards to those recipients who:

1. Received an award in the previous year; and

2. Remain eligible to receive an award pursuant to Section 7 of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 6. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient.

(2) Disbursement shall be made annually.

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each

semester, that the recipient:

- (a) Has enrolled; and
- (b) Is in good standing in the nursing program.

Section 7. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:

- (a) Maintains successful academic progression through the program; and
 - (b) Submits to the board a completed "Nursing Incentive Scholarship Fund Application" form by June 1.
- (2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.
- (3) An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.

Section 8. Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a "Nursing Incentive Scholarship Fund Contract".

- (2) The recipient shall sign a "Nursing Incentive Scholarship Fund Promissory Note" for each year in which funds are disbursed.

Section 9. Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

- (a) Nursing program in which he is enrolled within the time specified by the program of nursing; or
 - (b) Required employment as specified in the contract.
- (2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness or accident which prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression. This deferment shall apply for one (1) academic year. If the student fails to achieve successful academic progression after that time, repayment shall be due. If the student achieves successful academic progression within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the board on a "Nursing Incentive Scholarship Fund Request for Deferment" form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the form shall be accompanied by a physician's statement.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) When a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5) shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

Section 10. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

Section 11. Grant Requests. (1) No more than forty (40) percent of available revenues received from fines levied by the Cabinet for Health Services shall be expended for grants in any given year.

(2) The deadline for grant requests shall be May 1 and November 1 annually.

(3) The grant request shall include the following:

- (a) A problem statement or purpose related to improving nursing workforce competency;
- (b) The proposed workforce development activity and how it has general applicability to the entire nursing workforce in the state;
- (c) The proposed timelines and outcomes;
- (d) The outcome measurement criteria to be used;
- (e) The amount requested with a supporting budget;
- (f) Any matching or in kind budget contributions to be received; and

(g) The preferred funding cycle of either all funds given initially or partial funds given initially and the remainder at specified intervals.

(4) The following are the reporting requirements for grants that are funded:

(a) An initial report shall be submitted to the board six (6) months following funding or at the midpoint of the grant timeline if that is sooner than six (6) months from the funding date or as directed by the board.

(b) Interim reports shall be submitted at six (6) month intervals or as required by the board for the duration of the project funded.

(c) A final report shall be submitted to the board within three (3) months of completion of the project. The final report shall document outcome achievements and their relationship to the funds spent.

(5) Any money that is unused for the purpose of the grant shall be returned to the fund, unless otherwise directed by the board.

Section 12. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Nursing Incentive Scholarship Fund Application (12/01)";
- (b) "Nursing Incentive Scholarship Fund Request for Deferral (10/96)";
- (c) "Nursing Incentive Scholarship Fund Contract (10/13) [(10/96)]"; and
- (d) "Nursing Incentive Scholarship Fund Promissory Note (10/13) [(10/96)]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: October 17, 2013

FILED WITH LRC: November 14, 2013 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 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.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 2, 2014. 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, 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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements the Nursing Incentive Scholarship Fund.

(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 two required forms.

(b) The necessity of the amendment to this administrative regulation: These forms require periodic revision.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to revise these forms.

(d) How the amendment will assist in the effective administration of the statutes: By revising these forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for scholarships, 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 forms 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 forms.

(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:

GENERAL GOVERNMENT CABINET Kentucky Department of Veterans' Affairs Kentucky Veterans' Program Trust Fund (Amendment)

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, administration of fund.

RELATES TO: KRS 40.310(3), (7), 40.353(5)[14A.055], 40.460(2)(b), 141.444, 186.162(2), 186.168, 434.444(5)

STATUTORY AUTHORITY: KRS 40.310(3), (7), 40.450(3), 40.460(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.450(3) requires the department to promulgate administrative regulations required for the effective administration of KRS 40.410 through 40.560. KRS 40.310(3) authorizes the Department of Veterans' Affairs to accept gifts, grants, and other contributions from a governmental unit and authorizes the department to administer these funds through the use of trust and agency accounts. KRS 40.410(7) requires to department to manage the fund and authorize expenditures once the board has approved a request for funds. KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund[and authorizes the Kentucky Department of Veterans Affairs to administer the fund and programs financed by the proceeds and interest derived from the fund]. This administrative regulation establishes a board of directors to administer the fund and establishes criteria for expenditures made from[programs financed by] the fund.

Section 1. Definitions. (1) "Board" means the Board of Directors of the Kentucky Veterans' Program Trust Fund.

(2) "Commissioner" means the Commissioner of the Kentucky Department of Veterans[Veterans] Affairs.

(3)[(2)] "Fund" means the Kentucky Veterans' Program Trust Fund.

(4)[(3)] "Honorably separated veteran" means an individual discharged or released from the military with an honorable discharge, a discharge under honorable conditions, or a general discharge.

Section 2. Expenditures and Fundraising. (1) Upon board approval in accordance with this subsection and subsection (2) of this section, money appropriated from the fund shall be expended for a program or request that provides assistance that directly benefits a veteran, including the following veterans and activities:

(a) A homeless veteran;

(b) An indigent veteran in need of emergency assistance;

(c) An incarcerated veteran in need of emergency assistance that cannot otherwise be provided by the criminal justice system;

(d) A wounded, disabled, or other veteran who needs transportation to a VA medical facility and who cannot arrange for transportation because of a lack of financial means;

(e) Assist a veteran to obtain employment through job fairs, training programs, job placement services, other similar programs, or a combination of these;

(f) A wounded or disabled veteran as determined by the U.S. Department of Veterans Affairs, and including those veterans diagnosed with post-traumatic stress disorder arising from military service;

(g) A wounded or disabled veteran returning from combat in need of specialized therapeutic services that cannot be provided by the U.S. Department of Veterans Affairs or the Kentucky Department of Veterans' Affairs;

(h) Dissemination of veteran benefit information through circulars, brochures, and other media;

(i) Services or goods for a veteran who is a resident in a long-term care facility operated by the Kentucky Department of Veterans' Affairs that cannot otherwise be provided by the department but that will improve the veteran's quality of life;

(j) Services or goods for state veterans' cemeteries operated by the Kentucky Department of Veterans' Affairs that cannot otherwise be provided by the department, but that will enhance the dignity, solemnity, and respect shown for each veteran interred at the cemetery;

(k) Other assistance to ensure that each veteran interred in a state veterans' cemetery receives burial honors befitting of the veteran's service to the Commonwealth and country;

(l) Assistance to a veterans' service organization for training members to assist veterans; and

(m) Programs, events, memorials, monuments, and other projects that bring public recognition and awareness to the sacrifices, needs, and contributions of Kentucky's veterans.

(2) Money appropriated from the fund shall not be expended for:

(a) Construction, renovation, or maintenance of a meeting hall, clubhouse, or similar facility for use by a veterans' organization;

(b) Entertainment costs;

(c) A benevolent or charitable endeavor that does not primarily benefit veterans;

(d) Support of a federally administered facility if the support is prohibited by law; or

(e) A program that is already funded by the state or federal government.

(3) [Criteria for Programs. (1) Money derived from the fund may be expended for an approved program that:

(a) Provides an item for recreation use, services a center, or is for an organization that provides a service to a veteran if the item is not provided by a program, center, or organization established by federal or state law or appropriation;

(b) Organizes and fosters a program that assists a veteran, including assistance in the use of existing resources, that do not duplicate assistance available from a program established by federal or state law or appropriation;

(c) Encourages and assists a veteran to volunteer for a program dealing with a problem encountered by the veteran;

(d) Works with the public and private sectors to honor and recognize the service and sacrifice of veterans;

(e) Provides a service, supply, program, equipment or other expenditure essential to the operation of the Kentucky Veterans Center other Kentucky veterans nursing homes that would otherwise not be available; or

(f) Provides financial support to the construction or operation of state veterans cemeteries if the support would not otherwise be available.

(2) Fundraising. If fundraising on behalf of the fund, [(a)] the fund may accept a gift, donation, or grant from an individual, a corporation, or government entity. [(b) Solicitation of funds or fundraising on behalf of the fund shall be made unless approved by the commissioner in accordance with KRS 11A.055.]

Section 3. Board of Directors. (1) The board of directors shall consist of eleven (11) members, including:

(a) The commissioner;

(b) The commissioner's designee from Kentucky Department of Veterans' Affairs;

(c) A member of the:

1. Joint Executive Council of Veterans Organizations of Kentucky; and

2. Governor's Advisory Board for Veterans' Affairs;

(d) A representative of the following organizations appointed by the Governor pursuant to subsection (3) of this section:

1. The American Legion, Department of Kentucky;

2. The Veterans of Foreign Wars, Department of Kentucky;

3. The Disabled American Veterans, Department of Kentucky; [and]

4. AMVETS, Department of Kentucky; and

5. The Kentucky National Guard; and

(e) Two (2) [Three (3)] at-large members appointed by the Governor.

(2)(a) The commissioner shall serve as chair[chairman] of the board of directors.

(b) The board of directors shall hold an election to fill the position of vice-chair[vice-chairman].

(3)(a) An organization specified in subsection (1)(d) of this section shall recommend two (2) members of that organization for appointment to the board of directors.

(b) The governor shall appoint one (1) member of each organization from the names submitted by the organization.

(4) At least one (1) [A] member of the board of directors shall be an honorably separated veteran.

(5) Terms of members.

(a) The initial appointments to the board of directors shall be as established in subparagraphs 1. through 3. of this paragraph. [follows:]

1. A member appointed pursuant to subsection (1)(c) of this section shall serve for a period of three (3) years.

2. A member appointed pursuant to subsection (1) [(2)] (d) of this section shall serve for a period of two (2) years.

3. A member appointed pursuant to subsection (1) [(2)] (e) of this section shall serve for a period of one (1) year.

(b) After the initial appointments established pursuant to [under] paragraph (a) of this section, a member shall serve for a period of three (3) years.

(c) A member shall serve until the member's [his] successor is appointed.

(6) The board of directors shall:

(a) Meet at the call of the commissioner [chairman];

(b) Inform organizations represented on the board of each action considered or taken by the board;

(c) Review projects and recommend approval or disapproval;

(d) Prioritize projects;

(e) Investigate the need for a specific project or program;

(f) Establish guidelines for a project;

(g) Make a recommendation to the commissioner for the utilization and control of funds in the [Veterans' Program Trust] fund; and

(h) Prepare an annual report providing an accounting of the [Veterans' Program Trust] fund assets and financial activity for each fiscal year.

(7) The commissioner [chairman] of the fund shall assign duties as appropriate to department [his] staff or members of the board for the conduct of business by the board including maintaining the records of the fund that are required for the administration of the Veterans' Program Trust Fund and approved projects.

Section 4. Board Procedures. (1) Board meetings shall be conducted in a civil and cordial manner.

(a) A quorum for voting purposes shall be reached upon six (6) directors being present.

(b) A request may be approved if a simple majority of those present vote in favor of the request.

(c) Abstentions, votes indicating "present", and any other form of vote other than "yes" or "no" shall not be permitted.

(d) In the case of a tie vote, the chair may call for more discussion and a second vote. If a tie results on the second vote, the request shall be tabled and only brought before the board by a new request at a future meeting.

(e) Each director may discuss procedural matters with an applicant prior to a board meeting, but shall not attempt to influence other directors on how to vote until the chair convenes the board meeting, the applicant makes a presentation, and discussion takes place.

(f) Votes on every issue shall be recorded in the minutes indicating the nature of the request, the final vote, the name of each voting member who voted, and how that member voted.

(2)(a) For alternatives to in-person voting, the chair shall authorize meetings via telephone conference call as well as proxy voting if the chair concludes special circumstances warrant an alternative such as the requester is outside the country or is disabled.

(b) Any person, agency, or organization requesting funds from the fund shall make a request in person to the Board of Directors at a scheduled board meeting unless the chair authorizes presentation by electronic means.

(3)(a) Once funds are authorized, the requesting person, agency, or organization shall file a written report detailing how the money requested fulfilled the purpose of the request within thirty (30) days of fulfilling the purpose of the request.

(b) Funds shall not be transferred to the person, agency, or organization until the funds are immediately needed to satisfy the purpose of the request.

KENNETH R. LUCAS, Commissioner

APPROVED BY AGENCY: November 13, 2013

FILED WITH LRC: November 13, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2013, at 11:00 a.m., at 1111B Louisville Road. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on January 2, 2014. 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: Dennis W. Shepherd, Staff Attorney, Office of the Commissioner, Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dennis W. Shepherd

(1) Provide a brief summary of:

(a) What this administrative regulation does: provides for administration of Veterans Program trust fund through the Department of Veterans Affairs and creates a board comprised of members of veterans' service organizations to review expenditure requests.

(b) The necessity of this administrative regulation: KRS 40.460(2)(b) creates Veterans Program Trust Fund. This regulation is necessary to impose rules for expenditures, to provide for administration of fund, and to create and maintain a trust fund board of directors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 40.310(3) authorizes the Department of Veterans' Affairs to accept gifts, grants, and other contributions from governmental units and authorizes the department to administer these funds through the use of trust and agency accounts. KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund. KRS 40.310(7) authorizes the Kentucky Department of Veterans' Affairs to manage this Trust Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will continue to assist in the effective administration of KRS 40.460(2)(b) and KRS 40.310(7) by providing rules for expenditures and for a trust fund board.

(2) If 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 provide clear direction—but also flexibility—in Veterans Program Trust Fund expenditures. The amendment also cleans up minor errors in the language and leaves it gender-neutral. It also sets rules of procedure such as the required number of Board members to have a quorum, and creates rules of accountability to ensure the money expended is used according to the regulation.

(b) The necessity of the amendment to this administrative regulation: The regulation as currently written broadly permits expenditures that may not benefit veterans. Particularly Section 2(1)(d) provides for funds to a program that "Works with the public and private sectors to honor and recognize the service and sacrifice of veterans." Invites requests that are worded in this way, but aren't for programs that aren't of real benefit to veterans. In addition, there are currently no rules for making a presentation, for alternative means of voting (proxy, teleconference, etc.), or any guidelines for accountability.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation as amended more closely conforms to content of authorizing statutes by more clearly delineating extent of permissible expenditures. Also the amendment eliminates reference to KRS 11A.055, which only relates to fundraising for 501c organizations and other specific programs, and not to fundraising for veterans or for the Veterans Program Trust Fund.

(d) How the amendment will assist in the effective administration of the statutes: See response to (c), above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only organizations that request funds from Veterans Program Trust Fund will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Organizations that request funds from Veterans Program Trust Fund will need to establish that the program meets the criteria in the regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualifying programs that provide services to veterans can receive assistance from Veterans Program Trust Fund, with approval of the board and the Commissioner of the Department of Veterans Affairs.

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

(a) Initially: Trust fund is already operational and board is in place.

(b) On a continuing basis: Minimal transportation expenses for board operation; Department of Veterans Affairs maintains the trust fund accounts and conducts day-to-day administration of fund.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Veterans Program Trust Fund receives portions of fees for veteran-related license plates sold pursuant to KRS 186.162, voluntary donations of state income tax refunds pursuant to KRS 141.444, and individual donations. Fines for misrepresenting military status would go into fund too, pursuant to KRS 434.444(5).

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

increase of funding necessary for this modification of an existing regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established, directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why or why not) No. This regulation affects only the Department of Veterans Affairs, the Veterans Program Trust Fund, its board, and those who make requests to board to fund programs for veterans. No government entities, businesses or organizations that are not intended to be subject to the regulation are affected 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? Only (Kentucky) Department of Veterans Affairs and Veterans Program Trust Fund board 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 40.310(3); KRS 40.460(2) (b)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect. The Veterans Program Trust Fund is already in place. Regarding (a) – (d) below, the Veterans Program Trust Fund is an off-budget account, with revenues coming primarily from portions of fees for veteran-related license plates sold pursuant to KRS 186.162. The fund also receives voluntary donations of state income tax refunds pursuant to KRS 141.444, and individual contributions. The amendment will have no effect on the amount of money the fund receives and no substantial effect on what the fund distributes.

(a) How much 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? N/A.

(d) How much will it cost to administer this program for subsequent years? N/A.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the

frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

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

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

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser:

(a) Beginning on Thanksgiving Day for four (4) consecutive days; and

(b) For fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose:

(a) Eastern, Pennyriple, and Western Goose Zones, beginning on Thanksgiving Day and continuing until the last day in January.

(b) Northeast Goose Zone:

1. Beginning on January 1 for thirty-one (31) consecutive days.

(3) White-fronted and brant geese, beginning on Thanksgiving Day and continuing until the last day in January.

(4) Light goose:

(a) Beginning on Thanksgiving Day and continuing until the last day in January; and

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through March 31, except:

a. The season shall be closed during the first full weekend in February; and

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

2. Eastern Duck Zone from February 1 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Zone that is established in 301 KAR 2:224:

(1) A person hunting waterfowl shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks: The daily limit shall be six (6), that shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) One (1) black duck;

(e) Two (2) redheads;

(f) Two (2) pintails;

(g) Three (3) ~~Four (4)~~ scaup;

(h) One (1) mottled duck; or

(i) Two (2) ~~One (1)~~ canvasback.

(2) Coot: Daily limit fifteen (15).

(3) Merganser: Daily limit five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose: Daily limit five (5), that shall not include more than:

- (a) ~~Three (3)~~~~Two (2)~~ Canada geese;
- (b) Two (2) white-fronted geese; or
- (c) One (1) brant.
- (5) Light goose: Daily limit twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.
- (6) The possession limit shall be ~~triple~~~~double~~ the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

- (1) 2 p.m. if hunting geese in the Northeast Goose Zone during a Canada goose season;
- (2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or
- (3) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) Season dates:

- (a) Light goose: November 5 through January 31;
- (b) Light Goose Conservation Order season:
 - 1. Western Duck Zone: from February 1 through March 31, except:
 - a. The season shall be closed during the first full weekend in February; and
 - b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.
 - 2. Remainder of state: from February 1 through March 31; and
 - (c) Other waterfowl: November 5 through January 31.
 - (2) Daily limit: three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.
 - (3) Possession limit: six (6) waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

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

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

BENJY KINMAN, Deputy Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 2, 2013

FILED WITH LRC: October 21, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2013, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business January 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

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

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2013-2014 waterfowl hunting seasons in accordance with the USFWS.

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

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation manages waterfowl populations and hunting opportunity consistent with national and international management goals.

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

(a) How the amendment will change the existing administrative regulation: This amendment will increase the daily bag limit for Canada geese from two (2) to three (3), which is consistent with population management objectives recommended by the Mississippi Flyway Council and adopted by the USFWS. In addition these regulations will adjust waterfowl daily bag and possession limits to reflect that permitted by federal waterfowl season frameworks under the current season structure.

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

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

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

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

4. Will this administrative regulation impose stricter

requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

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

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

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

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

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

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

(5) "Party" means:

(a) A person hunting alone; or

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

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

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

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

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

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

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

Section 2. Shot requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

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

(2) Containing:

(a) Lead shot;

- (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
- (c) Shot larger than size "T".

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

- (a) A person hunting waterfowl shall not:
 - 1. Establish or hunt from a permanent waterfowl blind;
 - 2. Hunt within 200 yards of:
 - a. Another occupied hunt site;
 - b. Another legal waterfowl hunting party; or
 - c. An area closed to waterfowl hunting;
 - (b) A person shall not hunt in a designated recreation area or access point;
 - (c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and
 - (d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.
- (2) ~~In order~~~~[A person wanting]~~ to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:
- (a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;
 - (b) May designate one (1) other person as a partner; and
 - (c) Shall not hold more than one (1) permit per area.
- (3) A person who participates in a drawing for a hunt site permit shall:
- (a) Be at least eighteen (18) years of age; and
 - (b) Possess:
 - 1. A valid Kentucky hunting license;
 - 2. A Kentucky waterfowl permit; and
 - 3. A federal duck stamp.
 - (4) The holder of a hunt site permit shall:
 - (a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;
 - (b) Not lock a waterfowl blind; and
 - (c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.
 - (5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.
 - (6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

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

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

- (3) A person shall not:
 - (a) Hunt on an area marked by a sign as closed to hunting;
 - (b) Enter an area marked by signs as closed to public access;or
- (c) Hunt a species on an area marked by signs as closed to hunting for that species.
- (4) On Wildlife Management Areas in Ballard County:
 - (a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:
 - 1. The daily bag limit for ducks is greater than three (3); and
 - 2. The daily bag limit for Canada goose is greater than or equal to two (2).
 - (b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site at Ballard or Boatwright WMA.
- (5) At Ballard WMA:
 - (a) The duck, coot, merganser, and goose season shall be the

first Wednesday in December^[5] through the last Sunday in January^[27];

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

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

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

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

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

(a) A party shall:

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

2. Obtain a daily check-in card by 8 a.m. before entering the area from the first Wednesday in December^[5] through the last Sunday in January^[27]; and

3. Check out the same day by:

- a. Visiting the designated Check station prior to 8 a.m.; or
- b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

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

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January^[27];

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

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season^[-];

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

- 1. During periods of flood if no other access is possible; or
- 2. A mobility-impaired hunter may hunt from a boat^[-];

(g) A party shall only hunt waterfowl:

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

(h) On the Peal unit:

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

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

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

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

(i) On the Swan Lake Unit:

1. A person shall not hunt waterfowl from Thanksgiving Day^[November-22] through the first Tuesday in December^[4];

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

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

(7) Lake Barkley WMA.

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

(b) Waterfowl refuge areas shall be:

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

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

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

1. On Duck Island; or
2. Within 200 yards of Duck Island.

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

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

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

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

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

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

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

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

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

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

(12) Doug Travis WMA.

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

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

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

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

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

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

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

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

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; ~~or~~ [and]

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

(14) Green River Lake WMA.

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

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

(15) Kaler Bottoms WMA.

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

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

(16) Land Between the Lakes National Recreation Area.

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

1. Long Creek Pond;

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

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

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

1. The Environmental Education Center; and

2. Energy Lake.

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

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

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

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

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

1. On an inland area; or

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

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

(17) Obion Creek WMA.

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

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

(18) Ohio River Islands WMA.

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

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

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

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

(19) Peabody WMA.

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

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

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

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

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

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

(21) Sloughs WMA.

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

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

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

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

1. Shall hunt:

a. From a department blind; or

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

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

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

1. Shall hunt:

a. From a department blind;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Waterfowl from November 1 through March 15; and
2. The modern gun deer season.

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

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

(22) South Shore WMA.

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

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(23) Taylorsville Lake WMA.

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

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

(24) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(25) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(26) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(27) Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(28) J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply ~~through the vendor supplied by the department~~ by:

1. Calling~~calling~~ 1-877-598-2401 and completing the telephone application process~~;~~ or by

2. Completing~~completing~~ the online application process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

(a) Barren River~~;~~

(b) Grayson Lake~~;~~

(c) Greenbo Lake~~;~~

(d) Lake Barkley~~;~~

(e) Lincoln Homestead~~;~~

(f) Nolin Lake~~;~~

(g) Paintsville Lake~~;~~

(h) Pennyryle Lake~~;~~

(i) Rough River Lake~~;~~ and

(j) Yatesville Lake~~[State Parks]~~.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

(5) Statewide waterfowl hunting requirements shall apply.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(4) A mobility-impaired person shall also submit a mobility-impaired access permit.

(5) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(6) Each youth shall not be accompanied by more than one (1) adult.

(7) One (1) adult may accompany two (2) youths.

(8) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(9) A person:

(a) Shall hunt from an established blind; and

(b) Shall not change blinds.

(10) A blind shall not be used by more than four (4) hunters.

(11) A person shall only discharge a firearm from a blind.

(12) A person shall not possess more than fifteen (15) shotshells.

(13) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(14) A person shall encase a firearm if traveling to and from a blind.

(15) A hunter shall:

(a) Cease hunting by~~[Hunting shall end at]~~ noon~~;~~ and

(b) Exit~~[hunters shall exit]~~ the area by 1 p.m.

(16) All decoys and equipment shall be removed at the end of each day's hunt.

(17) A hunter shall report harvest by depositing a completed hunt permit at the designated location.

BENJY KINMAN, Deputy Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 2, 2013

FILED WITH LRC: October 21, 2013 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 close of business January 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and

Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400 fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2013-2014 waterfowl hunting requirements in accordance with the USFWS and Kentucky Department of Fish and Wildlife Resources management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state, national and international management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This amendment sets hunting dates on Ballard and the Swan Lake Unit of Boatwright WMAs and sets daily stop times for waterfowl hunting on Cedar Creek, Dix River and J.C. Williams WMA.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide adequate public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional or amended costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity for quality waterfowl hunting on public areas.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no additional cost to the Kentucky Department of Fish and Wildlife

Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees directly or increase fees indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation amendment for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation amendment in subsequent years.

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred in the administration of this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal

mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public lands managed by the Department. The Department imposes more restrictive hunting regulations on these lands in effort to meet waterfowl management objectives while still providing quality hunting opportunity.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Community and Mental Health Services
(Amendment)

505 KAR 1:130. Department of Juvenile Justice Policies and Procedures[Manual]: juvenile services in community.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", November 14, 2013~~[June 14, 2014]~~, is incorporated by reference and includes the following:

- 600 Policy Definitions (Amended 11/14/13~~[6/44/11]~~)
- 601 Initial Contact and Court Support for Public Offenders (Amended 11/14/13~~[5/43/11]~~)
- 601.1 Initial Contact and Court Support for Youthful Offenders (Amended 11/14/13~~[6/44/11]~~)
- 602 Individual Client Record (Amended 11/14/13~~[6/44/11]~~)
- 603 Service Complaints (Amended 11/14/13~~[6/44/11]~~)
- 604 Individual Treatment Plans (Amended 11/14/13~~[5/43/11]~~)
- 605 Community Supervision (Amended 11/14/13~~[6/44/11]~~)
- 606 Probation of Public Offenders (Amended 11/14/13~~[6/44/11]~~)
- 607 Commitment of Public Offenders (Amended 11/14/13~~[6/44/11]~~)
- 608 Drug Screening and Testing (Amended 11/14/13~~[6/44/11]~~)
- 609 Children's Benefits (Amended 11/14/13~~[6/44/11]~~)
- 609.1 Title IV-E Foster Care Maintenance Payments (Amended 11/14/13~~[5/43/11]~~)
- 609.2 Trust Funds (Amended 11/14/13~~[2/45/11]~~)
- 610 Transportation of Committed Youth (Amended 11/14/13~~[2/45/11]~~)
- 610.1 Out-of-State Travel (Amended 11/14/13~~[2/45/11]~~)
- 611 Electronic Monitoring (Amended 11/14/13~~[6/44/11]~~)

- 612 Authorized Leave for Public Offenders and Youthful Offenders in Placement (Amended 11/14/13~~[6/44/11]~~)
- 613 Supervised Placement Revocation (Amended 11/14/13~~[5/43/11]~~)
- 614 Intensive Aftercare Program (Amended 11/14/13~~[6/44/11]~~)
- 615 Juvenile Intensive Supervision Team (JIST) (Amended 11/14/13~~[Added 2/45/11]~~)
- 616 Youthful Offenders-Confined, Shock Probated, and Transferred to the Department of Corrections (Amended 11/14/13~~[6/44/11]~~)
- 616.1 Probation of Youthful Offenders (Amended 11/14/13~~[6/44/11]~~)
- 616.2 Parole of Youthful Offenders (Amended 11/14/13~~[Added 2/45/11]~~)
- 617 Incident Reports (Amended 11/14/13~~[2/45/11]~~)
- 618 AWOL or Escape (Amended 11/14/13~~[5/43/11]~~)
- 620 Use of Force and Searches (Amended 11/14/13~~[6/44/11]~~)
- 621 Mental Health Services, Referrals, and Psychiatric Hospitalization (Amended 11/14/13~~[6/44/11]~~)
- 622 Community Mental Health Operations (Amended 11/14/13~~[5/43/11]~~)
- 623 Health and Safety for Community and Mental Health Services (Amended 11/14/13~~[6/44/11]~~)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

A. HASAN DAVIS, Commissioner

APPROVED BY AGENCY: November 12, 2013

FILED WITH LRC: November 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2013 at 10:00a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 16, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 2, 2014. 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: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice, including the rights and responsibilities of the Department of Juvenile Justice employees and the community populations.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 605.150, 635.095 and 635.100.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing

clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

(2) If 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 shall bring the Department of Juvenile Justice into compliance with ACA Standards and show actual practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 605.150, 635.095 and 635.100.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1,800 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice.

(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: By providing and implementing these policies and procedures, the Department of Juvenile Justice will be providing services more effectively and consistently.

(a) List 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 agency employees will provide services to the youth in all programs in accordance with the procedures outlined in the regulation and the materials incorporated by reference. The youth in all programs will receive services in accordance with the procedures outlined in the regulation and materials incorporated by reference. All visitors and volunteers will be engaged in accordance with the regulation and materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation, no monetary costs will be incurred by the youth, the visitors or volunteers, or the Department of Juvenile Justice employees. All costs of implementation of this regulation and materials incorporated by reference will be paid out of budgeted monies by the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth shall receive services more effectively and efficiently. Department of Juvenile Justice employees, visitors, and volunteers will more clearly and concisely understand the services to be provided by the Department of Juvenile Justice.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$5,000 for training staff.

(b) On a continuing basis: \$5,000 for training staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly, increased any fees: None

(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. Disparate treatment of any person or entity subject to this

administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated, as well as the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Response: Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065, 15A.067, 15A.160, 15A.210, 15A.305(5), 200.115, 605.150, 635.095, 635.100, 640.120, and 645.250.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Response: 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? Response: None.

(c) How much will it cost to administer this program for the first year? Response: See narrative provided below.

(d) How much will it cost to administer this program for subsequent years? Response: See narrative provided below.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No revenue will be generated from this regulation.

Expenditures (+/-): Expenditures relate to training staff and auditing programs to ensure compliance.

Other Explanation: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency. The only expense regarding this regulation is the cost of staff training, which for the first year is approximately \$5000.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and ~~159.010~~^{159.030} establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. Daily attendance. (1) Daily attendance of pupils in

elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil[student] entry and exit log at each school.

(2) Daily attendance of pupils in middle and high schools[school] shall be determined by taking attendance by class period and maintaining a pupil[student] entry and exit log at each school.

(3) The pupil[student] entry and exit log shall include the date, pupil[student] name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils[students] who are signed out, the pupil[student] entry and exit log shall also include a signature of:

- (a) A parent;
- (b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A pupil[student] may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil[student] initially enrolled in the class or block if the pupil[student] demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 5(2)(b) or (3);

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(e) The pupil [student] has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(f) The pupil[student] has an individual education plan (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 5(2)(b) and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305, Section 2. A pupil[student] may be counted in attendance for performance-based credit for a class or block for the year or semester in which the pupil[student] initially enrolled in the class or block if the pupil[student] demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 5(3); or

(h) The pupil participates in a school that is authorized by the commissioner[of Education] to design and deliver an educational program so that all graduation requirements are based on pupil[student] proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 5.

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. Calculation of attendance. [The guidelines in this section shall be used to calculate student attendance for state funding purposes through June 30, 2010.]

(1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly-scheduled school day for the pupil's grade level.

~~(2) A tardy shall be recorded for a pupil who is absent sixty (60) minutes or less of the regularly-scheduled school day for the pupil's grade level.~~

~~(3) The actual percentage of the school day shall be recorded for attendance of a pupil absent for more than sixty (60) minutes of the regularly-scheduled school day for the pupil's grade level.~~

~~(4) A full day absence shall be recorded for a pupil who is absent 100 percent of the regularly-scheduled school day for the pupil's grade level.~~

~~(5) The percentages described in this section shall apply to the regularly-scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12). Section 3.-] The guidelines in this section shall be used to calculate pupil[student] attendance for state funding purposes[after June 30, 2010].~~

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

Section 3. Shortened school day. [4.-] A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060, or local board of education policy. The time a pupil[student] is in attendance shall be included in calculating the district's average daily attendance.

Section 4. Dual enrollment. [5.-] A local board of education may permit an arrangement in which a pupil pursues part of the pupil's[student's] education under the direction and control of one (1) public school and part of the pupil's[student's] education under the direction and control of another public or nonpublic school. The time a pupil[student] is served by each public school shall be included when calculating the district's average daily attendance.

Section 5. Private school placement. [6.-] If a local school district, under the provisions of KRS 157.360(7) [~~157.360(6)~~], enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of pupil. [7.-] (1) Prior to the 2017-18 school year, if a local school district enrolls in the entry level program a pupil[~~in the entry level program~~] who will not be five (5) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance. Beginning with the 2017-18 school year, if a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) Prior to the 2017-18 school year, if a local school district enrolls in the second level of the primary program a pupil[~~in the second level of the primary program~~] who will not be six (6) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in this subsection. Beginning with the 2017-18 school year, if a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in this subsection.

(a) The local board of education shall have determined that the

pupil[student] is eligible for enrollment in[into] the second level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of pupil[student] work samples, including evidence of pupil[student] self-reflection; and
3. Standardized test results.

(b) The team shall be comprised of three (3) members who have knowledge of the pupil[s][student's] developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists.

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.

(d) If a pupil[student] is recommended by the local board of education for accelerated placement into the second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years [of age] who wishes to enroll. The days attended after the pupil's twenty-first (21st)[student's 21st] birthday shall not be included in the calculation of the district's average daily attendance.

Section 7. Due Dates for Certain Reports. (1)[8-] The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9)[157-360(8)] shall be submitted to the department[of Education] within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department by June 30 of each year.

Section 8. Nonresident pupils.[9-] (1)(a) A written agreement executed by local boards of education[execute] for enrollment of nonresident pupils as provided by KRS 157.350(4)(a) shall be filed in both the attending district and the resident district no later than February 1 of the year prior to the school year to which it will apply.

(b) The written agreement shall include the specific terms to which the districts have agreed.

(c) A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year covered by the agreement.

(d)[(2)] A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district no later than June 30 of each year.

(2) A list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(b) and who are not covered by the nonresident agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year.

Section 9. Weather-related low attendance days.[10-] The[Superintendent's Annual Attendance Report (SAAR)] shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320(17).

Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 10. Health and safety closings. The SAAR shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated instructional days for school districts that have missed an average of twenty (20) or more days in the previous three (3) years on days a school district is closed for health and safety reasons, and certification that the low attendance was due to health and safety reasons in accordance with KRS 158.070(10). Documentation that the low attendance was due to health and safety reasons shall be retained at the central office. Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.

Section 11. Original source of attendance data. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, pupil[student] entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and pupil[student] entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. Enrollment codes. The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W06, W07, W13, W16, or W18 during the 2004-2005 school year or as a W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(9) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;

(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1)[4(4)], accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil[student] is too ill to participate in regular school attendance or local homebound instructional services, or if the pupil[student] has obtained a doctor's statement

certifying the condition. The reentry code to use with W07 shall be R06;

(12) W08 - A pupil withdrawn due to death;

(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(14) W17 - An entry level pupil[student] in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;

(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(17) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil[student] records has been received or enrollment has been substantiated[~~or a pupil who is known to have moved out of the United States~~];

(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated;

(20) W25 - Prior to the 2017-18 school year, a pupil who is at least the local board policy's minimum age for withdrawal and has withdrawn from public school; beginning with the 2017-18 school year, a pupil who is at least eighteen (18)[sixteen (16)] years of age and has withdrawn from[dropped out of] public school;

(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(22) W27 - A pupil who has withdrawn from school and subsequently received a GED;

(23) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma[certificate of attainment];

(24) W29 - A pupil who has moved out of state or out of the United States;

(25) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;

(26) C01 - A pupil who completes the school year in the school of the most current enrollment;

(27)[(25)] G01 - A pupil who graduates in less than four (4) years;

(28)[(26)] G02 - A pupil who graduates in four (4) years;

(29)[(27)] G03 - A pupil who graduates in five (5) or more years;

(30)[(28)] G04 - A pupil who graduates in six (6) or more years; and

(31)[(29)] NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. Suspension. (1) For a pupil[student] who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. Ethnicity. The ethnicity of each pupil[student] shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial category codes. One (1) or more of the following racial codes shall be used to indicate the racial category

of pupils:

(1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(2) Black or African American - A person having origins in any of the black racial groups of Africa;

(3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

(4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America),[and] who maintains cultural identification through tribal affiliation or community attachment; and

(5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and transfer records. (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010.~~[Dropout data shall be reported to the Department of Education on the Nonacademic Report that is submitted to the Department each year.]~~

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's[student's] permanent file.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Home/Hospital Program Form", November 2013[2008-2009];

(b) "Student Dropout Questionnaire", November 2013[December 2000];

(c) "Growth Factor Report", November 2013[November 2009]; and

(d) "Superintendent's Annual Attendance Report (SAAR)", November 2013[November 2009]; and

(e) "Nonacademic Report", October 2008].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education,~~[Division of Finance,]~~ 15th Floor, Capital Plaza Tower, 500 Mero Street, 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.

ROGER MARCUM, Chairperson

APPROVED BY AGENCY: November 15, 2013

FILED WITH LRC: November 15, 2013 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 23, 2013, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business January 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate

Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines average daily attendance for pupils for funding purposes in the Support Education Excellence in Kentucky (SEEK) program through a uniform method of recording pupil attendance.

(b) The necessity of this administrative regulation: KRS 157.320 defines average daily attendance of pupils for funding purposes under the SEEK Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.030 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes a uniform method of recording pupil attendance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the required guidelines for the uniform recording of and accounting for pupil attendance.

(2) If 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 updates the administrative regulation to conform to changes in state statute and regulations including the stepped increase in compulsory attendance age from sixteen (16) - eighteen (18), and adds more detailed description to pupil withdrawal codes to align with the graduation cohort model promulgated by the agency.

(b) The necessity of the amendment to this administrative regulation: Updates were necessary to align with changes to agency's administrative regulations regarding the new accountability model for high school graduation and updates to Kentucky law including the stepped increase in compulsory attendance age from sixteen (16) - eighteen (18).

(c) How the amendment conforms to the content of the authorizing statute: The amendment conforms to KRS 156.035 and 156.070 that require the KBE to promulgate an administrative regulation to ensure the proper accounting of pupil attendance for school district budgeting purposes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is updated to conform to new requirements in KRS 158.030, 158.100, and 159.030 that establish the age for compulsory school attendance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The administrative regulation will impact all schools and districts due to the impact on pupil attendance calculation in SEEK funding.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts shall provide training and resources to school and district personnel to ensure a correct accounting of pupil attendance.

(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 to current operations.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): State funding (SEEK) is tied directly to pupil attendance. School districts must record attendance accurately to receive their share of the funding and no more.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied per the SEEK laws and regulations that help to equalize funding for poorer school districts with lower local tax bases and/or higher numbers of students qualify for free or reduced price lunch.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All Kentucky public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 157.320, KRS 157.360, KRS 158.030, KRS 158.070, KRS 158.100, KRS 158.240, 159.030, KRS 159.035, KRS 161.200.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? This administrative regulation provides the means to determine the average daily attendance (ADA) for calculating each district's annual SEEK allocation. To the extent that this administrative regulation allows for tracking student attendance, any change in student ADA will directly impact the SEEK calculation.

(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:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Amendment)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 209.020(4),

216.530, 216.557(1), 216.750(2), 216.765(2), [216B.010-216B.131,] Chapter 216B, 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(3) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(4) "Department" means the Department for Community Based Services or its designee.

(5)[(4)] "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(7)[(5)] "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 1:011.

(8) "Qualified mental health professional" is defined by KRS 202A.011(12).

(9) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(10)[(6)] "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(11)[(7)] "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment

for the month of December 1973; and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9[6, 7, and 8] of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(7), (8), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(9); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9[8] of this administrative regulation; and

(c)1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);[or]

3. Receives caretaker services and is at least eighteen (18) years of age; or

4. a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;[or]

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10[9] of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10[9] of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals

by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration

supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), fourth (4th) edition or edition currently in use;

(c) Impair or impede the individual's functioning in at least one (1) major area of living; and

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant or recipient's care coordinator to establish how:

(a) Often services are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) \$2000 for an individual; or

(b) \$3000 for a couple.

Section 8.[7-] Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 9[8] of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. The applicant or recipient; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar[dollars] general exclusion shall not be an allowable deduction from income.

Section 9.[8-] Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

(a) For a resident of a personal care home on or after:

1. January 1, 2013, \$1,230; or

2. January 1, 2014, \$1,241;

(b) For a resident of a family care home on or after:

1. January 1, 2013, \$882; or

2. January 1, 2014, \$893;

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after:

a. January 1, 2013, \$772; or

b. January 1, 2014, \$783;

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after:

a. January 1, 2013, \$1,127; or

b. January 1, 2014, \$1,143; or

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after:

a. January 1, 2013, \$1,181; or

b. January 1, 2014, \$1,197; or

(d) For an individual who resides in a private residence and has SMI on or after:

1. November 1, 2013, \$1,230; or

2. January 1, 2014, \$1,241.

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar[dollars] personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar[dollars] personal needs allowance that shall be retained by the client.

Section 10.[9-] Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following

health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11.[40-] Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 12.[44-] Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13.[42-] Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID[MI/MR] Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is thirty-five (35) percent mental illness or intellectual disability[mental retardation] clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability[mental retardation] including mild or moderate, or other ranges of intellectual disability[retardation] whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 15(2)[44(2)] through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability[mental retardation] supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 15(6)[44(6)] of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or

Intellectual Disability (MI/ID)~~[Mental Retardation (MI/MR)]~~ Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or intellectual disability~~[mental retardation]~~ diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or intellectual disability~~[mental retardation]~~ diagnosis and is a recipient of state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability~~[mental retardation]~~ percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. [43]. Mental Illness or Intellectual Disability (MI/ID)~~[Mental Retardation]~~ Basic Training. (1)(a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse[,] or individual who has successfully completed certified medication technician training shall attend the mental illness or intellectual disability~~[mental retardation]~~ basic training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or intellectual disability~~[mental retardation]~~ basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability~~[mental retardation]~~;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability~~[mental retardation]~~; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability~~[mental retardation]~~.

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or intellectual disability~~[mental retardation]~~ basic training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability~~[mental retardation]~~ basic training workshop at the closest location.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) sessions per day, and each session shall be three (3) hours in duration.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or intellectual disability~~[mental retardation]~~.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID~~[MI/MR]~~ Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 15. MI/ID~~[44. MI/MR]~~ Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID~~[MI/MR]~~ Supplement Program.

(a) The personal care home's initial MI/ID~~[MI/MR]~~ Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID~~[MI/MR]~~ Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 14(1)~~[43(1)]~~ through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability~~[mental retardation]~~ basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

a. Demonstrates a knowledge of psychotropic drug side

affects; and

b. Is on duty as specified in Section 13(1)(c)3[42(1)(c)3] of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID[MI/MR] Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or intellectual disability[mental retardation] clients, as specified in Section 13(1)(c)2[42(1)(c)2] of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability[mental retardation] population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a)[42(6)(a)] of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID[MI/MR] Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6[42(1)(c)6] of this administrative regulation, for the next following quarter.

Section 16[45] Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17[46] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Application for Benefits", 01/14[edition 4/09];

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Program Notice of Decision to Personal Care Home", 01/14[edition 4/09];

(c) "STS-3, Mental Illness or Intellectual Disability

(MI/ID)[Mental Retardation (MI/MR)] Supplement Program Monthly Report Form", 01/14[edition 4/09]; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID)[Mental Retardation (MI/MR)] Supplement Certification Survey", 01/14[edition 4/12].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 6, 2013

FILED WITH LRC: November 14, 2013 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2014. 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(s): Justin Dearing, and Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Supplement Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplementation Program for persons who are aged, blind, or have a disability.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will create a new living arrangement category to support individuals with serious mental illness in private residences who meet other existing technical and financial eligibility requirements for the State Supplementation Program. The amendment to this administrative regulation will also increase the standards of need in the State

Supplementation Program to reflect the cost of living adjustment (a.k.a., COLA) to be implemented in calendar year 2014 by the Social Security Administration for Supplemental Security Income (SSI) recipients. Lastly, the amendment updates terminology within the body of the administrative regulation and its incorporated materials. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with terms of the interim settlement agreement entered between the Cabinet for Health and Family Services and the Division of Protection and Advocacy to avoid federal suit. The new living arrangement category is one of many steps negotiated between the agencies in effort to achieve the goals of community integration and self-determination for individuals with serious mental illness who are living in, or at risk of living in, a personal care home. In addition, this amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to pass along the cost of living adjustment in Supplemental Security Income (SSI) benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration announced the amount of the Supplemental Security Income (SSI) cost of living adjustment on October 30, 2013. The announcement was delayed due to the federal government shutdown. Terms used in the administrative regulation and its incorporated material were also updated to reflect terminology changes made to the statutes during the 2012 Regular Session, specifically the replacement of "mental retardation" with "intellectual disability".

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes through its establishment of a new living arrangement category, as permitted by 20 C.F.R. 416.2030 and guidance received from the Social Security Administration, to prevent the unnecessary institutionalization of individuals with serious mental illness. The amendment also conforms to authorizing statutes by complying with an agreement between Kentucky and the federal government to pass along the cost of living adjustment for Supplemental Security Income (SSI) to State Supplementation Program through an increase in the program's standards of need for all recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by: (1) establishing State Supplementation Program eligibility and benefits to facilitate the most integrated setting and the provision of the most appropriate services to meet the needs of individuals with serious mental illness, (2) passing along the 2014 cost of living adjustment for the Supplemental Security Income (SSI) benefit by modifying the standards of need for all levels of care for the State Supplementation Program; and (3) making terminology used within the administrative regulation consistent with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For calendar year 2012, there were 3,677 individuals who received State Supplementation Program benefits. The number of recipients with serious mental illness in personal care homes or at risk of entering personal care homes is unavailable through existing databases maintained by the department.

(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: Assistance through the cabinet and the Division of Protection and Advocacy will be provided to existing State Supplementation recipients with interest and preliminary qualifications for the new living arrangement category. The new living arrangement category will also be an ongoing option for

qualifying State Supplementation applicants and recipients with serious mental illness. Regulated entities will realize an increase in the standards of need for each level of care in the State Supplementation Program effective January 1, 2014.

(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 regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals with serious mental illness will be able to qualify for the State Supplementation Program through a new living arrangement category. In addition, the State Supplementation Program's standards of need will increase by the 2014 cost of living adjustment implemented for the Supplemental Security Income (SSI) Program by the Social Security Administration. Benefit amounts in the State Supplementation Program are the difference between the applicable standard of need and countable income.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no new cost to the administrative body anticipated to initially implement the new living arrangement category. Other technical and financial eligibility requirements of the program were unchanged. There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2014 SSI cost of living adjustment. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

(b) On a continuing basis: There is no new cost to the administrative body anticipated for future years. There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2014 SSI cost of living adjustment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds/Agency Funds are used to fund the State Supplementation Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416
2. State compliance standards. KRS 194A.050 (1), 205.245
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for

Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 (1), 205.245, 42 U.S.C. 1382e-g, 20 C.F.R. Part 416

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are projected to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are projected to administer this program during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:090. Simplified assistance for the elderly program or "SAFE".

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures specified in:

- (a) 921 KAR 3:020, Financial Requirements;
- (b) 921 KAR 3:025, Technical Requirements;
- (c) 921 KAR 3:030, Application Process; and
- (d) 921 KAR 3:035, Certification Process.

(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with

eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:

- (a) Is a Kentucky resident;
- (b) Is:
 - 1. A current SSI recipient; or
 - 2. SSI eligible, but SSI benefits are currently in suspense;
 - (c) Is age sixty (60) or older;
 - (d) Is not institutionalized;
 - (e) Is:
 - 1. Single, widowed, divorced, or separated; or
 - 2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and
- (f) Purchases and prepares food separately from another individual ~~who if the other individual~~ shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.

(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.

(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:

- (a) Shall not be eligible for SAFE; and
- (b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.

(4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP benefits instead of SAFE benefits.

(5) An individual shall not receive SAFE benefits and regular SNAP benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

(a) Identify SSI participants who are potentially eligible for SAFE; and

(b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.

(2) A SAFE application shall be considered filed if the SF-1 is:

- (a) Signed; and
- (b) Received at the Department for Community Based Services, Division of Family Support.

(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.

(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.

(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

Section 6. SAFE Benefits. (1) The cabinet shall provide a

SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service[and listed in the SF-1].

(2) The standard SAFE benefit amounts shall be based on:

- (a) Shelter costs;
- (b) Household size; and

(c) The average benefits received by a similar household in the regular SNAP.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.

(2) The cabinet shall process changes in household circumstances based on information received from SDX.

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

- (a) Name;
- (b) Date of birth; or
- (c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 11/13[04/13]; and

(b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 04/13.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
921 KAR 3:090

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 22, 2013

FILED WITH LRC: October 30, 2013 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Simplified Assistance for the Elderly (SAFE) Program, a demonstration project administered by the Cabinet for Health and

Family Services' Department for Community Based Services to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for the SAFE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department for Community Based Services has responsibility under 7 C.F.R. 271.4 to administer SNAP, which includes the SAFE Program, a demonstration project.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the SAFE Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reduce the monthly benefit allotments contained on the form, SF-1, Simplified Assistance for the Elderly (SAFE) Application. The form is incorporated by reference and used in the application process.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary due to the sunset of an increase to the SNAP maximum benefit allotment to help people affected by the recession as originally authorized by the American Recovery and Reinvestment Act of 2009 (ARRA). The Healthy Hungry Free Kids Act of 2010 established the November 1, 2013, sunset of the increase. Although SAFE does not have a maximum benefit allotment, the Department for Community Based Services was informed on September 13, 2013, by the U.S. Department of Agriculture's Food and Nutrition Service that the SAFE standardized allotments must also be reduced. Benefits through the SAFE Program, a demonstration project under SNAP, must be adjusted to ensure that SAFE benefits are cost neutral in comparison to benefits that are available through regular SNAP. This change is necessary to comply with federal laws and instruction to maintain the SAFE Program, a demonstration project, in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by implementing the application requirements of 7 C.F.R. 273.2.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by aligning SAFE monthly benefit allotments with SNAP benefit allotments, a condition to maintain the demonstration project.

(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 13,500 households that are currently participating in the SAFE Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require any additional actions on the part of SAFE Program applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will reduce SAFE benefits as follows:

One (1) person households with monthly shelter expenses of \$199 or less will have their monthly benefit reduced from fifty-four (54) dollars to forty-three (43) dollars (- eleven (11) dollars);

One (1) person households with monthly shelter expenses of \$200 or more will have their monthly benefit reduced from \$101 to ninety (90) dollars (- eleven (11) dollars);

Two (2) person households with monthly shelter expenses of \$107

or less will have their monthly benefit reduced from ninety (97) dollars to seventy-seven (77) dollars (- twenty (20) dollars); and Two (2) person households with monthly shelter expenses of \$108.00 or more will have their monthly benefit reduced from \$143 to \$123 (- twenty (20) dollars).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will ensure that the SAFE program remains an option for regulated entities to improve access to SNAP benefits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional funding is required initially to implement the administrative regulation.

(b) On a continuing basis: No additional funding is required on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP/SAFE benefits are 100 percent federally funded by the U.S. Department of Agriculture. Program administrative costs are funded fifty (50) percent federal and fifty (50) percent state and have been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to amend this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

2. State compliance standards. KRS 194.050 (1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2

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 revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? This administrative regulation will not generate revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division for Protection and Permanency

(Amendment)

922 KAR 1:330. Child protective services.

RELATES TO: KRS 13B.050, 13B.120, 13B.140, 13B.150, [61-870-61.884,] 159.140, 194A.005(1), 202A.011, 214.036, 431.600(1), (8), 503.110(1), 529.010(5), (13), 600.010, 600.020, 605.090(3), 605.130, 610.010(2)(d), (9)[610.010(4)(e), (8)], 620.010-620.050, 620.070, 620.350, 620.990, 42 U.S.C. 5106a[; EO-2003-064]

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.[KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse.] KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services. In addition, 42 U.S.C. 5106a(b) establishes eligibility requirements for a state to receive a grant for a child abuse and neglect prevention and treatment program.[EO-2003-064 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.] This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or family-in-need-of-services assessment of abuse, neglect, or dependency.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1) and 600.020(6).

(2) "Caretaker" means a parent, guardian, or other person exercising custodial control or supervision[is a person who is responsible for the supervision and well-being] of a child.

(3) "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected, or dependent child;

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

(d) Strengthening family life; and

(e) Assisting a parent or other person responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of the child.

(4) "Family-in-need-of-services assessment" or "FINSA" is a process of collecting information and evaluating risk factors[~~in order~~] to determine:

(a) If a child:

1. Has been abused or neglected; or

2. Is dependent; and

(b) The strengths and needs of the child's[a] family.

(5) "Human trafficking" is defined by KRS 529.010(5).

(6) "Initial determination" means an evaluation of risk factors to determine immediate safety and risk of harm resulting in a decision whether to proceed with:

(a) An investigation; or

(b) A FINSA[~~family-in-need-of-services assessment~~].

(7)[(6)] "Investigation" means a process[~~:- (a)~~] of collecting information and evaluating risk factors to determine if a child:

(a) Has been abused or neglected;[~~:-~~] or

(b) Is dependent[~~:- and~~]

(b) Based upon the initial determination that moderate to high risk factors exist[~~:-~~].

(8)[(7)] "Preponderance of evidence" means that[~~:-~~] evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined in KRS 600.020(1).

(9) "Sexual abuse" is defined by KRS 600.020(56).

(10) "Sexual exploitation" is defined by KRS 600.020(57).

(11)[(8)] "Social service worker" is defined by KRS 600.020(58)[~~KRS 600.020(57)~~].

(12)[(9)] "Substantiated" means:

(a) An admission of abuse, neglect, or dependency by the person responsible;

(b) A judicial finding of child abuse, neglect, or dependency; or

(c) A preponderance of evidence exists that abuse, neglect, or dependency was committed by the caretaker[~~person alleged to be responsible~~].

(13)[(10)] "Unable to locate" means that:

(a) Identifying information about the family is insufficient for locating them; or

(b) The family has moved and their new location is not known.

(14)[(11)] "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse, neglect, or dependency.

(15) "Victim of human trafficking" is defined by KRS 529.010(13).

Section 2.[~~Receiving~~] A Report of Child Abuse, Neglect, or Dependency. (1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i)[~~5106a(b)(2)(A)(i)~~], the cabinet shall accept reports of alleged child abuse, neglect, or dependency made pursuant to KRS 620.030.

(a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:

1. Child abuse, neglect, or dependency; or

2. Human trafficking of a child.

(b) Cabinet staff shall attempt to elicit from the person reporting suspected child abuse, neglect, [or] dependency, or human trafficking as much information about the child's circumstances, as possible, including:

1. Specific information as to the nature and extent of:

a. Abuse, neglect, or dependency; or

b. Human trafficking;

2. The cause of the abuse, neglect, or dependency;

3. The location of the child and family;

4. Knowledge or suspicion of a previous incident;

5. Identifying information regarding a witness to the alleged incident that resulted in the child's condition;

6. An action taken by the reporting person, if applicable;

7. Present danger or threat of danger to the child or cabinet staff; and

8. Information in accordance with KRS 620.030(2) and (3)[~~(a)~~ through ~~(e)~~].

(c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.

(d) The cabinet shall investigate or accept as a FINSA an anonymous report that provides sufficient information regarding an incident involving a child and alleged:

1.[~~:- and a report of child~~] Abuse, neglect, or dependency perpetrated by a caretaker; or

2. Human trafficking of the child[~~:- shall be investigated or accepted as a family-in-need-of-services assessment~~].

(e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii)[~~5106a(b)(2)(A)(iv)~~] and KRS 620.050(1) and (2).

(2) The cabinet shall not undertake an investigation or FINSA[~~family-in-need-services assessment~~] for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking[~~non-caretaker~~] but shall refer the matter in compliance with KRS 620.030(1).

(3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion[~~criteria~~] for an investigation or FINSA[~~family-in-need-of-services assessment~~] the cabinet shall:

(a) Not accept the report for investigation or FINSA[~~family-in-need-of-services assessment~~];

(b) Refer the caller to a community resource that may meet family needs if available; and

(c) Keep a record of the report, in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii)[~~5106a(b)(2)(A)(viii)~~].

(4) Acceptance Criteria for an Investigation or FINSA[~~criteria for investigation or family-in-need-of-services assessment~~]. The cabinet shall:

(a) Investigate or conduct a FINSA[~~Undertake an investigation or family-in-need-of-services assessment~~] upon the receipt of a report of physical abuse, if the report alleges:

1. An injury that is, or has[~~Marks that are or have~~] been, observed on a child that was[were] allegedly inflicted nonaccidentally by a caretaker;

2. Physical abuse if no current observable injury is[~~marks are~~] seen;

3. A child being hit in a critical area of the body, such as the head, [face,] neck, genitals, abdomen, and back[kidney areas]; or

4. a. Physical injury to a child, as defined by[at] KRS 600.020(46)[~~600.020(45)~~], that is the result of an altercation between the child and the caretaker.

b. The cabinet shall explore the following:

(i) Age of the child;

(ii) Precipitating factors;

(iii) Degree of appropriateness of force used by the caretaker; and

(iv) Need for further services to assist in eliminating violent behavior in the home.

(b) Investigate or conduct a FINSA[~~family-in-need-of-services assessment~~] upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child in the following areas:

1. Hygiene neglect if:

a. A child has physical symptoms that require treatment due to poor care; or

b. The child's physical health and safety are[is] negatively affected due to an act or omission by the caretaker;

2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;

3. Food neglect if a child shows symptoms of:

a. Malnutrition;

b. Dehydration; or

c.[~~Food poisoning~~; or

d.] Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;

4. Clothing neglect if a child suffers from:

a. Illness;

b. Exposure; or
c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;
5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;
6. Educational neglect if the:
a. School system ~~has exhausted~~~~[exhausts]~~ its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and
b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;
7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C)~~[5106a(b)(2)(B)]~~, if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or disability that if left untreated may:
a. Be life-threatening;
b. Result in permanent impairment;
c. Interfere with normal functioning and worsen; or
d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;
8. At risk of harm due to an act described at KRS 600.020(1), if a child is:
a. Born exposed to drugs or alcohol, as documented by a health care provider pursuant to:
(i) 42 U.S.C. 5106a(b)(2)(B)(ii)~~[5106a(b)(2)(A)(ii)]~~; and
(ii) KRS 620.030(2);
b. Involved in an incident of domestic violence;
c. Permitted to use drugs or alcohol under circumstances that create a risk to the emotional or physical health of the child;
d. In a situation if the factors provided in a report indicate that:
(i) An act of sexual abuse, sexual exploitation, or prostitution involving a child may occur; or
(ii) The child exhibits physical or behavioral indicators of sexual abuse; or
e. In a situation where the circumstances are such that a child is likely to be physically abused; ~~or~~
9. ~~[A report that alleges]~~ Emotional injury or risk of emotional injury to a child by a caretaker, pursuant to KRS 600.020(25); or
10. Exploitation neglect if the:
a. Caretaker has used a child or child's financial resources for personal gain;
b. Caretaker has enticed a child to become involved in criminal activities; or
c. Child is a victim of human trafficking~~[KRS 600.020(24)]~~.
(c)1. Receive and investigate a report that alleges sexual abuse of a child committed or allowed to be committed by a caretaker.
2. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease.
(d) Receive and investigate or complete a ~~FINSA~~~~[family-in-need-of-services assessment]~~ upon the receipt of a report that alleges a child is dependent, pursuant to KRS 600.020(19).
(5) The following criteria shall be used in identifying a report of abuse, neglect, or dependency not requiring a child protective services investigation or ~~FINSA~~~~[family-in-need-of-services assessment]~~:
(a) The victim of the report of abuse, neglect, or dependency is age eighteen (18) or over at the time of the report;
(b) There is insufficient information to locate the child or to explore leads to locate;
(c) The problem described does not meet the statutory definitions of abuse, neglect, or dependency;
(d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
(e) The report concerns custody changes, custody related issues, or lifestyle issues, without allegations of abuse, neglect, or dependency;
(f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise,

or substantial risk of harm;
(g) The report concerns a newborn infant abandoned pursuant to KRS 620.350; ~~or~~~~[and]~~
(h) An allegation of spouse abuse to a married youth~~[,]~~ under the age eighteen (18).
(6) A report of spouse abuse to a married youth under the age of eighteen (18) shall be forwarded to cabinet staff for action pursuant to 922 KAR 5:102~~[5:070]~~.
(7) A report of corporal punishment described in subsection (5)(f) of this section shall be reported to and assessed by the cabinet, if alleged to be committed by a caretaker parent who:
(a) Provides foster, ~~pre-adoptive~~~~[adoptive]~~, or respite care services for a child in the custody of the cabinet; and
(b) Is approved pursuant to 922 KAR 1:310 or 922 KAR 1:350.

Section 3. Initial Investigation or ~~FINSA~~~~[Family-in-Need-of-Services Assessment]~~. (1) Based upon an accepted report of child abuse, neglect, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) ~~or~~ (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv)~~[5106a(b)(2)(A)(iv)]~~ make an initial determination as to the immediate safety and risk of harm to a child.
(2) An investigation shall be initiated within one (1) hour of the report if the report indicates:
(a) Child abuse, neglect, or dependency and imminent danger for the child;
(b) Human trafficking of a child; or
(c) Sexual abuse of a child~~[If the report of child abuse, neglect, or dependency indicates imminent danger, the investigation shall be initiated within one (1) hour].~~
(3) If the report of child abuse, neglect, or dependency indicates nonimminent danger of physical abuse, efforts shall be made to have face-to-face contact with the child and family within twenty-four (24) hours.
(4) If the report of child abuse, neglect, or dependency indicates nonimminent danger, not involving physical abuse, efforts shall be made to have face-to-face contact with the child and family within forty-eight (48) hours.
(5) ~~Unable to locate shall be documented in the investigative or family-in-need-of-services narrative.~~
(6) An investigation or a ~~FINSA~~~~[family-in-need-of-services assessment]~~ shall be initiated within forty-eight (48) hours of receipt of ~~the~~~~[a]~~ report of dependency, if a child is not in imminent danger.
(6) Unable to locate shall be documented in the investigative or family-in-need-of-services narrative.
(7) The social service worker shall advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii)~~[5106a(b)(2)(A)(xviii)]~~.
(8) A written assessment shall:
(a) Be completed by the cabinet on every investigation and FINSA; and
(b) Document efforts if the cabinet is unable to locate the family~~[family-in-need-of-services assessment]~~.
(9) The cabinet shall provide or make a referral to any community based service:
(a) Available to a child, caretaker, or a child's family:
1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v), (vi), (ix), (xi), or (xxi); or
2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and
(b) [42 U.S.C. 5106a(b)(2)(A)(v)(vi)(ix)(xi)(xxi);] Necessary to:
1. [(a)] Reduce risk to a child; and
2. [(b)] Provide family support.
(10) The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi)~~[5106a(b)(2)(A)(xxi)]~~ for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.
(11) (a) The cabinet may develop a Prevention Plan at any point during an investigation or a FINSA to protect the health and safety of a child.
(b) The Prevention Plan shall be:
1. Completed in hardcopy;
2. Developed in conjunction with a family and the family's

identified support system;

3. Agreed upon by the participants; and

4. Signed by all parties identified to participate in the prevention plan, unless a party is unwilling or unable to sign.

(12) If an investigation or a FINSA[family-in-need-of-services assessment] is conducted as a result of a child being referred pursuant to Section 2(4)(b)8 of this administrative regulation, the cabinet shall develop a Prevention Plan[safe plan of care] in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii)[5106a(b)(2)(A)(iii)].

[(12) The Prevention Plan shall be:

(a) Completed, in hard copy, for a family-in-need-of-services assessment or an investigation, if the cabinet determines that abuse or neglect is substantiated or a family-in-need-of-services assessment determines a family needs service if:

1. A child remains in the home; and

2. A protection case is to be opened due to risk in the home;

(b) Developed in conjunction with a family and the family's identified support system;

(c) Agreed upon by the participants; and

(d) Signed by all parties identified to participate in the prevention plan, if possible.]

(13) Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050[, and 42 U.S.C. 5106a(b)(2)(A)(viii)(ix)].

(14)(a) A medical or psychological examination may be required if a report of child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.

(b) A medical examination shall be conducted in accordance with KRS 620.050(14).

(15) Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 920 KAR 2:040[922 KAR 1:440], in accordance with KRS 620.040(6) and (7).

(16) Pursuant to KRS 620.030(5)[620.030(3)], an agency, institution, or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or FINSA[family-in-need-of-services assessment].

(17) Photographs may be taken of a child or a child's environment during a protective services investigation or FINSA[family-in-need-of-services assessment], in accordance with KRS 620.050(14).

(18) An interview with a child shall be conducted pursuant to KRS 620.040(6).

(19)(a) A child sexual abuse or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi)[5106a(b)(2)(B)(A)(vii)].

(b) The cabinet's primary responsibility shall be the protection of the child.

(20) If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:

(a) From law enforcement; or

(b) Through a request for a court order pursuant to KRS 620.040(5)(a).

(21)(a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.

(b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.

(22) At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):

(a) Provide assistance in interviewing an alleged child abuse victim in a noncaretaker report; and

(b) Not be the lead investigator in a noncaretaker investigation.

(23) In accordance with 42 U.S.C. 5106a(b)(2)(B)(v)[5106a(b)(2)(A)(v)], the cabinet may refer a child or a child's family to a state or[and] community resource[resources], according to the identified need of the child

and family[, a report of abuse, neglect, or dependency that does not require a mandatory child protection services investigation or family-in-need-of-services assessment].

Section 4. Alleged Perpetrators of Abuse, Neglect, or Dependency Age Twelve (12) to Eighteen (18). (1) A report of child abuse, neglect, or dependency involving alleged perpetrators in a care-taking role age twelve (12) to eighteen (18), shall be subject to investigation or a FINSA[family-in-need-of-services assessment].

(2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Reports of Child Abuse, Neglect, or Dependency in Cabinet-approved Homes or Licensed Facilities. (1) Pursuant to KRS 620.030(5)[620.030(3)], the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, or dependency in a:

(a)[Licensed] Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;

(b)[Licensed] Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;

(c) Child-care center licensed in accordance with 922 KAR 2:090;

(d) Family child-care home certified in accordance with 922 KAR 2:100;

(e) Child care provider registered in accordance with 922 KAR 2:180; or

(f)[Licensed or certified day-care facility; or (d)] Resource home approved pursuant to 922 KAR 1:350.

(2) If a report of alleged child abuse, neglect, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is received, the designated cabinet staff shall:

(a)[Supervisor shall] Immediately contact the service region administrator or designee; and

(b)[Designated regional cabinet staff shall] Assign staff to conduct the investigation.

(3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider[child-care home or a licensed child day-care facility] is received, cabinet staff shall:

(a) Notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed; and

(b) Conduct an investigation.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care[day-care] center is received, cabinet staff shall:

(a) Notify the Office of the Inspector General, Division of Regulated[Licensed] Child Care; and

(b) Conduct an investigation.

1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated[Licensed] Child Care. However, if not possible, the cabinet shall proceed with an investigation.

2. In a joint investigation:

a. An entrance interview with the facility administrator or designee shall be conducted; and

b. The nature of the report shall be outlined without disclosing the name of the reporting source.

3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider[operator of the facility] within thirty (30) working days, unless a necessary extension is granted by the designated[regional] cabinet staff in a supervisory role.

(5) The cabinet shall share written findings of an investigation[shall be shared] with the Division of Child Care[.] for a:

(a) Licensed child-care center;

(b) Certified family child-care home; or

(c) Registered child care provider.

(6) The cabinet shall share written findings of an investigation

with the Division of Regulated Child Care for a:

- (a) Licensed child-care center;
- (b) Certified family child-care home;
- (c) Licensed child-caring facility; or
- (d) Licensed child-placing agency.

~~(7) [child day care facility. (6)]~~ As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 6. Interviewing a Child in a School Setting. (1) Pursuant to KRS 620.030(5)~~620.030(3)]~~, the cabinet may, upon receipt of a report of child abuse or neglect, initiate an investigation or a ~~FINSA~~~~[family-in-need-of-services assessment]~~ at a school, which may include the review and copying of relevant school records pertaining to the child.

~~(2) [The cabinet shall.]~~ If initiating an investigation or a ~~FINSA~~~~[family-in-need-of-services assessment]~~ at a school, the cabinet shall:

- (a) Inform appropriate school personnel of the need to interview a child regarding the report; and
- (b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 7. Investigation of an Employee of the School System. If a report of child abuse or neglect involving school personnel is received, the following shall apply:

- (1) An investigation shall be conducted;
- (2) If the allegation is made about a school employee in a caretaker role of a child~~[exercising custody and control of a child; with the incident occurring during school time or other school-related activity]~~, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:
 - (a) The child;
 - (b) The parent or legal guardian;
 - (c) The alleged perpetrator; and
 - (d) Other collateral source, if any, in accordance with Section 3(13) of this administrative regulation~~[-]~~
- (3) The findings shall be shared with the custodial parent and the alleged perpetrator~~[-]~~;
- (4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:
 - (a) That an investigation has been conducted;
 - (b) The results of the investigation; and
 - (c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480; and~~[-]~~
- (5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510~~[KRS 61.870 to 61.884]~~.

Section 8. Written Notice of Findings of Investigation. The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) or (2) and 42 U.S.C. 5106a(b)(2)(B)(ix)], as required by:

- (1) KRS 620.040(1)(c); and
- (2) 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 9. Substantiation Criteria and Submission of Findings. (1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) and "dependent child" in KRS 600.020(19)~~600.020(4)]~~ in determining if an allegation is substantiated.

(2) A finding of an investigation or a FINSA shall be based upon the:

- (a) Information and evidence collected by the cabinet during the report's investigation or FINSA; and
- (b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety, or welfare.

(3) A social service worker may find and substantiate abuse, neglect, or dependency at any point during an investigation,

~~FINSA~~~~[family-in-need-of-services assessment]~~, or prior to case closure and aftercare planning in accordance with Section 11 of this administrative regulation, if preponderance of the evidence exists.

~~(4) A cabinet finding~~~~[(3) A social service worker's determination]~~ shall not be a judicial finding.

~~(5) [(4)]~~ The social service worker's~~[cabinet's]~~ supervisor or designee shall review and approve the final finding of the investigation or ~~FINSA~~~~[family-in-need-of-services assessment]~~.

~~(6) [(5)]~~ A DPP-152, Child Protective Service (CPS) Substantiated Investigation Notification Letter, and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 3[2], shall be:

- (a) Sent to the perpetrator by certified mail; or
- (b) Given to the perpetrator, in person, with a witness signature to signing a document that the perpetrator received the notice.

~~(7) [(6)]~~ A DPP-152~~[- Child Protective Service (CPS) Substantiated Investigation Notification Letter]~~ shall be:

- (a) Sent to the child's~~[victim's]~~ parent or guardian by certified mail; or
- (b) Given to the parent or guardian, in person, with the parent or guardian and a witness signature to document~~[signing]~~ receipt of the notice.

Section 10. Appeals. (1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.

(2) If an administrative hearing is held, the Commissioner of the Department for Community Based Services shall issue the final order.

(3) A further appeal may be requested through circuit court in accordance with KRS 13B.140 and 13B.150.

(4) A person may have additional hearing rights as specified in 922 KAR 1:320.

Section 11.~~[Case]~~ Closure and Aftercare Planning. (1) A decision to close a child protective services case shall be based on:

(a) Evidence that the factors resulting in the child abuse, neglect, or dependency have been resolved to the extent that the family is able to:

- 1. Protect the child; and
- 2. Meet the needs of the child; or

(b) A lack of legal authority to obtain court ordered cooperation from the family.

(2) A child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.

(3) A family shall be:

- (a) Notified in writing of the decision to close the protective services case; and
- (b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.

(4) Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.

(5) ~~The~~~~[P&P]~~ Aftercare Plan shall be developed~~[-]~~ upon the completion of an investigation or family-in-need of services assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.

(6)(a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the ~~[P&P]~~ Aftercare Plan.

(b) The focus of ~~the~~~~[a P&P]~~ Aftercare Plan shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.

(7) The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400, 1:410, or 1:430.

(8) The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-152, Child Protective Service (CPS) Substantiated Investigation Notification Letter", [edition] 6/04;

(b) "Aftercare Plan", 2/04; and

(c) "Prevention Plan", [edition] 6/04; and

(c) "P&P Aftercare Plan", edition 2/04].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 6, 2013

FILED WITH LRC: November 7, 2013 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23rd, 2013, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures, congruent with grant eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or family in need of services assessment (FINSA) of abuse, neglect, or dependency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for child protective services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the cabinet's procedures for the intake, acceptance or referral, investigation or FINSA, and interventions involving reports alleging child abuse, neglect, and dependency.

(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 services for the protection of children.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates child victims of human trafficking within child protective services criteria in accordance with the Human Trafficking Victims Rights Act of the 2013 Regular Session of the Kentucky General Assembly. In addition, the amendment updates terminology used in the administrative regulation to improve congruency with applicable statutes and makes technical corrections, clarifications, and formatting changes in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement requirements related to child protective services reporting and response for child victims of human trafficking as established in the Human Trafficking Victims Rights Act of the 2013 Regular Session of the General Assembly. In addition, the amendment is consistent with federal funder guidance regarding services to child victims of human trafficking and multi-agency collaboration. The amendment is also necessary for conformity with applicable statutes and drafting requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its incorporation of reporting and response requirements for child victims of human trafficking in compliance with the Human Trafficking Victims Rights Act from the 2013 Regular Session of the General Assembly.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its alignment with recently enacted legislation and congruency with applicable statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: From October 1, 2012, through September 30, 2013, the cabinet received nearly 95,000 child protective services calls. Of those, nearly 58,000 reports met acceptance criteria for an investigation or FINSA. The cabinet made nearly 14,000 substantiated findings or findings of families needing services. As of October 2013, DCBS has received twenty (20) reports concerning twenty-five (25) child victims of suspected human trafficking since the enactment of the Human Trafficking Victims Rights Act on June 26, 2013.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who suspect that a child is a victim of human trafficking will be able to make a report to the cabinet, and the cabinet will be authorized to proceed in the case regardless of whether the person believed to have caused the human trafficking is the child's caretaker.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will not incur a new or additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation improves and clarifies cabinet procedures for the intake and investigation or FINSA of reports alleging child abuse, neglect, and dependency. Through this amendment, child victims of human trafficking will avoid prosecution and benefit from interventions specific to their treatment and service needs. The cabinet continues to regularly engage with the Kentucky Association of Sexual Assault Programs, Children's Advocacy Centers, Catholic Charities, law enforcements organizations, and others to improve the quality of service delivery to child victims of human trafficking.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The administrative body anticipates any cost associated with the implementation of this regulatory amendment to be absorbable or offset by the human trafficking victims fund created within the Human Trafficking Victims Rights Act.

(b) On a continuing basis: The administrative body anticipates any cost associated with the implementation of this regulatory amendment to be absorbable or offset by the human trafficking victims fund created within the Human Trafficking Victims Rights Act.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The cabinet staff's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended. (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation is applied in a like manner statewide.

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. 5106a

2. State compliance standards. KRS 194A.050(1), 620.029(2)(a), 620.180(1), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities, than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 5106a, KRS 194A.050(1), 620.029(2)(a), 620.180 (1), 605.150(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new 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? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The administrative body anticipates any cost associated with the implementation of this regulatory amendment to be absorbable or offset by the human trafficking victims fund created within the Human Trafficking Victims Rights Act.

(d) How much will it cost to administer this program for subsequent years? The administrative body anticipates any cost associated with the implementation of this regulatory amendment to be absorbable or offset by the human trafficking victims fund created within the Human Trafficking Victims Rights Act.

Note: If specific dollar estimates cannot be determined, provide

NEW ADMINISTRATIVE REGULATIONS

NONE

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 12, 2013

Call to Order and Roll Call

The November 2013 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 12, 2013 at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Johnny Bell, Co-chair, called the meeting to order, the roll call was taken. The minutes of the October 2013 meeting were approved.

Present were:

Members: Senators Perry Clark, Sara Beth Gregory, and Ernie Harris; and Representatives Johnny Bell, Robert Damron, Jimmie Lee, and Tommy Turner.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Emily Harkenrider, Karen Howard, Laura Napier, and Betsy Cupp.

Guests: Jacqueline Korengel, Travis Powell, Rae Smith, Reece Stagnolia, Council on Postsecondary Education; Maryellen Allen, State Board of Elections; Sharron Burton, Department of Insurance; Jonathan Buckley, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors; Brian Clark, Benji Kinman, Kentucky Department of Fish and Wildlife Resources; Ellen Benzing, Kentucky State Fair Board; Amy Barker, Department of Corrections; Carlos Cassady, Trevor L. Earl, Motor Vehicle Commission; Kevin Brown, Johnny Collett, Kay Kennedy, Karen Kidwell, David Wickersham, Department of Education; Kerri Schelling, Kentucky School Boards Association; Trey Hieneman, Frederick Hidgon, Steve Humphress, Department of Alcohol Beverage Control; Jeff Derouen, Gerald Wuetcher, Ann Ramser, Public Service Commission; Carrie Banahan, Stephanie Brammer-Barnes, Kevin Mudd, Stuart Owen, Connie Payne, Tabitha Burkhardt-Wilson, Elizabeth Fiehler, Phyllis Sosa, Cabinet for Health and Family Services; and Jason Nemes, Private Citizen.

The Administrative Regulation Review Subcommittee met on Tuesday, November 12, 2013, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Adult Education and Literacy

13 KAR 3:010. GED® Testing Program. Jacqueline Korengel, director of statistic initiatives; Travis Powell, general counsel; and Rae Smith, associate of GED services, represented the council.

In response to questions by Co-Chair Harris, Mr. Powell stated that the new GED® examination fee was \$120, rather than the previous sixty (60) dollar fee. The new GED® examination was computer based, and the paper examination would no longer be offered. The GED® examination fee was established by the Pearson GED® testing company and financed research and development for future versions of the examination. Other states added a state premium to the \$120 GED® examination fee, but Kentucky opted not to add any additional cost. Ms. Korengel stated that, in comparison with other professional examinations, the GED® fee was less than average and the test itself was longer than average; therefore, the fee was reasonable. Mr. Powell stated that financial and other benefits to GED® certificate recipients far outweighed the fee.

In response to questions by Representative Lee, Ms. Korengel stated that the new fee was required once the new examination was offered. There were no provisions for participants who had paid the sixty (60) dollar fee for the previous examination but were still in the process of striving for a certificate. Those participants would be required to pay the new \$120 fee independent of anything already paid toward certification. Pearson GED® established the new fee-related requirements. Mr. Powell stated that Pearson GED® was now a for-profit company. The

examination program had been losing money, and some testing facilities were closing; therefore, the program was reorganized, and a new fee established. Pearson GED® had changed from a nonprofit to a for-profit company within the last year or two (2). The council's authorizing statutes required a "GED®" examination; therefore, the council was not authorized to use a test other than the Pearson GED® examination. Ms. Smith stated that a participant who had successfully passed parts of the paper GED® examination but was not yet certified would have to start the process over again under the new GED® examination. Mr. Powell stated that, under the new GED® examination, a participant could choose to take all or parts of the GED® examination in a single examination process. Under the previous program, the financial incentive was to take all parts of the examination in a single examination process over a two (2) day period.

In response to questions by Representative Damron, Mr. Powell stated that the council determined who qualified for GED® certification. "GED®" was now a trademarked name by Pearson GED®. The council's authorizing statutes required the trademarked examination, but the council was open to the General Assembly amending those statutes to allow flexibility for other examination options. Vetting examination options would take time, and the council preferred to go forward with this administrative regulation, rather than deferring. There were organizations to assist program participants in paying for the GED® examination.

Representative Damron stated that legislators had not intended to delegate public policy to a for-profit company in the case of the GED® examination, and the changes were not foreseen when the authorizing statutes were enacted. The overall GED® certification expense was greater than the \$120 examination cost if taking into account adult education programs and related community programs. The cost still was small compared with the certification benefits; however, a for-profit company should not make public policy.

In response to questions by Co-Chair Harris, Ms. Smith stated that approximately 12,000 participants per year sought GED® certification. Mr. Powell stated that, even if the council's authorizing statutes were amended to provide more flexibility in examination options, it was possible that after vetting other examinations, the Pearson GED® may still be the most appropriate examination or even the least expensive. The council would not know until the other examinations were researched. Ms. Korengel stated that, because the new examination would be computer-based only, the council had spent funding resources to ensure that each examination facility was technologically equipped to provide that testing. Additionally, the new examination was based on the core curriculum standards established in Kentucky and other states.

In response to questions by Representative Lee, Ms. Smith stated that the Pearson GED® examination was nationally portable and recognized by other states.

Co-Chair Bell stated that the council should work diligently to address all concerns expressed by the Subcommittee.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 5 to comply with the drafting and formatting requirements of KRS Chapter 13A and for clarity. Without objection, and with agreement of the agency, the amendments were approved.

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:070 & E. Recanvass procedures. Maryellen Allen, executive director, represented the board.

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified

101 KAR 2:210 & E. 2014 Plan Year Handbook for the Public Employee Health Insurance Program. Sharon Burton, general counsel, represented the cabinet.

GENERAL GOVERNMENT CABINET: Board of Licensure for Professional Engineers and Land Surveyors: Board

201 KAR 18:020. Application forms. Jonathan Buckley, general counsel, represented the board.

In response to a question by Co-Chair Bell, Mr. Buckley stated that this administrative regulation was amended to revise the forms incorporated by reference. Additional information and clarification were required to ensure that the board has the correct, most up-to-date address for each licensee and to investigate disciplinary matters from other jurisdictions, if applicable. For example, under the previous version of this administrative regulation, the board inadvertently licensed someone who was in the process of being convicted for murder.

A motion was made and seconded to approve the following amendments: (1) to amend the agency name; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A and for consistency with the requirements for licensees in KRS Chapter 322. 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 1:130. Live bait for personal use. Brian Clark, assistant director of public affairs; Benjy Kinman, deputy commissioner; and Karen Waldrop, director of wildlife, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing

301 KAR 3:022. License, tag and permit fees.

In response to questions by Representative Damron, Mr. Kinman stated that these fee increases were anticipated to produce revenue of approximately \$2,500,000. Representative Damron stated that it was unusual for the department to expect such large fee increases while other agencies were cutting budgets because of the economic recession and while the department was experiencing investigation of issues related to financial oversight. Mr. Kinman stated that the revenue was needed to pay for increased fleet costs, technology costs, training stipends, and health insurance rates. Fees had not been increased since 2007. Over three (3) million dollars was needed for the agency to break even.

In response to questions by Co-Chair Bell, Mr. Kinman stated that the department had conducted a survey that demonstrated that the department needed to lower the amount of the proposed fee increase. Otherwise, there may be a loss of revenue if sportsmen chose not to purchase the permits based on cost. Ms. Waldrop stated that overall the nonresident deer permit fee was still being increased. The agency amendment made an incremental decrease in the originally proposed fee increase, which increased the fee from sixty (60) dollars to \$120, instead of \$160.

In response to questions by Senator Gregory, Mr. Kinman stated that a federal rule change was being proposed that would establish a threshold fee. That federal rule change proposal was currently in committee. The department anticipated the number of senior hunting and fishing permits purchased to increase by approximately four (4) percent because more baby boomers were reaching the age to qualify.

In response to a question by Representative Turner, Mr. Kinman stated that the outside consultant cost to review the impact of the nonresident deer permit fee was \$27,000. Overall, outside consultant fees, not including university consultants, was under \$100,000.

Representative Damron stated that he wanted this administrative regulation to be deferred until there was a resolution

of the federal rule change proposal. He stated that he would not support raising fees for seniors, disabled persons, or disabled veterans, especially until the investigation into the department's financial irregularities was resolved. Ms. Waldrop apologized if she had confused Subcommittee members regarding the federal rule change proposal. She stated that she did not intend to create an impression that the rule change was already effective. Mr. Kinman stated that the nine (9) member commission did not authorize him to agree to defer consideration of this administrative regulation.

Representative Turner stated that the department showed a lack of respect in its failure to agree to deferral of this administrative regulation.

Mr. Kinman stated that the department would agree to reinstate the five (5) dollar fee for a senior or disabled combination hunting and fishing license. The Subcommittee agreed to that fee reduction.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to reduce the: (a) nonresident deer permit fee from \$160 to \$120; and (b) resident senior and disabled combination hunting and fishing license from eleven (11) dollars to five (5) dollars. Without objection, and with agreement of the agency, the amendments were approved.

Wildlife

301 KAR 4:095. Buying and selling mounted wildlife specimens.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

State Fair Board: Fairgrounds and Exhibition Center

303 KAR 1:042. Repeal of 303 KAR 1:041. Ellen Benzing, policy analyst, represented the board.

In response to questions by Representative Lee, Ms. Benzing stated that the provisions established in this administrative regulation were from a 1978 policy. The board was in the process of developing new requirements, which requirements were still in draft form. The new administrative regulation may be ready for filing in approximately six (6) months.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:050. Luther Lockett Correctional Complex. Amy Barber, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and LLCC 13-02-05 to align the institution's payment policy for medical services with the department's policy, CPP 13.2, incorporated by reference in 501 KAR 6:020. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Motor Vehicle Commission: Commission

605 KAR 1:050. Dealer and salesman. Carlos Cassady, executive director, and Trevor Earl, counsel, represented the commission.

Co-Chair Bell thanked the commission for these administrative regulations and stated that transportation was a key to economic improvement.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add Section 7 to incorporate by reference the application form. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:070. Change of ownership.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add Section 6 to incorporate by reference the application form. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:090. Business names.

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 comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:130. Procedures.

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 through 9, and 11 through 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:190. Motor vehicle advertising.

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 through 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:210. Nonprofit motor vehicle dealer requirements and licensing.

Representative Lee thanked the commission for working with nonprofit organizations to assist the disadvantaged.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend the RELATES TO paragraph to add a statutory citation. Without objection, and with agreement of the agency, the amendments were approved.

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. Kevin Brown, associate commissioner and general counsel; Karen Kidwell, director of program standards; and David Wickersham, attorney, represented the department.

Office of Instruction

704 KAR 3:035. Annual professional development plan.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 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.

704 KAR 3:390. Extended school services.

In response to questions by Co-Chair Bell, Mr. Brown stated that this administrative regulation would not negatively impact schools. The new formula could make funding go up or down, but overall the total amount would remain the same as the previous formula. A

slight increase was anticipated because the prior formula used old score assessments and old dropout standards.

In response to a question by Co-Chair Harris, Mr. Brown stated that new dropout and graduation rates precipitated the formula change.

In response to a question by Senator Clark, Mr. Brown stated that the department would follow up with data regarding average daily attendance.

Co-Chair Bell stated that he did not want a school system to lose extended services, especially because no one seemed to be able to anticipate the impact of this administrative regulation. Mr. Brown stated that the department did not receive public comments during the public comment period. Some support was expressed, but there was no negative feedback received.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to clarify what constitutes a "true emergency"; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine

804 KAR 1:100. General advertising practices. Trey Hieneman, legislative liaison; Frederick Higdon, commissioner; and Steve Humphress, general counsel, represented the department. Jason Nemes, attorney, represented license holders in Somerset to request revisions to 804 KAR 9:040.

In response to a question by Representative Damron, Mr. Hieneman stated that this administrative regulation had been silent regarding the issue of advertising through social media, and the purpose of the revision was to clarify that advertising through social media was not prohibited.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 2 to add additional relevant citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 4, 5, 8, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quotas

804 KAR 9:040. Quota retail package licenses.

Mr. Nemes stated that he represented three license holders in Somerset. The administrative regulation process had worked successfully pertaining to this administrative regulation. He generally supported this administrative regulation; however, his clients still requested two (2) revisions. Rather than automatically assigning a city more than one (1) license in order to avoid a monopoly, in addition to population, the department should consider nearness to other cities with licenses. Also, Mr. Nemes requested an amendment to require evidence of ability or inability to serve the area in order to support a change in licensure.

Representative Turner stated that the sorts of problems encountered in Somerset were an example of the problems associated with reclassification of licenses.

In response to the comments by Mr. Nemes, Mr. Hieneman stated that the new administrative regulation based licenses on population solely because the department believed to do so would reflect the intention of the voting citizens.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 5, and 6 to: (1) clarify this administrative regulation's applicability to cities that have already been given quotas; (2) specify the standard to determine if a city will receive an increased quota; (3) clarify procedures for quota vacancies and reductions; (4) reorganize provisions; and (5) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:001. Rules of procedure. Jeff Derouen, executive director; Gerald Wuetcher, attorney; and Ann Ramser, attorney, represented the commission.

In response to a question by Representative Damron, Mr. Wuetcher stated that the provision for free filing for small utilities was not changed.

A motion was made and seconded to approve the following amendment: to amend Section 8 to clarify that the format for information provided in an electronic spreadsheet shall be Excel. Without objection, and with agreement of the agency, the amendment was approved.

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.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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.

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Kentucky Health Benefit Exchange: Exchange

900 KAR 10:030 & E. Kentucky Health Benefit Exchange eligibility and enrollment in a qualified health plan. Carrie Banahan, executive director, represented the cabinet.

Co-Chair Harris stated that he did not believe that the cabinet had statutory authority for this administrative regulation and requested that the cabinet defer. In response, Ms. Banahan stated that the cabinet believed it did have statutory authority for this administrative regulation and declined to defer.

A motion was made and seconded to find this administrative regulation deficient. With Co-Chair Harris, Senator Gregory, and Representative Turner voting for a finding of deficiency and Senator Clark and Representatives Damron and Lee voting not to find this administrative regulation deficient, the motion was not approved.

Representative Damron explained his vote. He stated that this administrative regulation established the federal requirements for the exchange. Without these requirements, some otherwise ineligible applicants may qualify for taxpayer provided subsidies.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 6, 7, 8, 9, 11, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Stephanie Brammer-Barnes, internal policy analyst, and Connie Payne, acting inspector general, represented the cabinet.

Department for Medicaid Services: Division of Administration and Financial Management: Medicaid Services

907 KAR 1:563. Medicaid covered services appeals and hearings unrelated to managed care. Stuart Owen, regulation coordinator, represented the cabinet.

In response to questions by Representative Damron, Mr. Owen stated that 907 KAR 17:010 was already in effect. The appeal process was essentially the same as the process for private-pay insurance participants, except that the managed care organization's internal appeals process had to be exhausted before exercising the processes in this administrative regulation. That exception was intended to prevent two (2) appeals being

processed simultaneously in two (2) different systems. Both appeal procedures have time requirements to prevent overly burdensome treatment delays.

In response to a question by Representative Lee, Mr. Owen stated that the administrative regulation's language regarding continuation of services during an appeal was taken directly from the federal requirements. The cabinet had worked with the Department of Protection and Advocacy to respond to the issue of the language for continuation of services during an appeal and determined that using the federal language directly was prudent.

In response to questions by Representative Damron, Mr. Owen stated that Medicaid contracted with a company to address issues pertaining to denials of service. This administrative regulation complied with federal requirements regarding appeals pertaining to denials of service.

Representative Damron stated that the cabinet did not seem to provide adequate independent review of appeals pertaining to denials of service. Because the cabinet was so closely related to the managed care organizations, the appropriate level of independence was absent. It was important that decisions regarding appeals pertaining to denials of service be based on medical, not financial, factors.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add definitions of "administrative hearing", "hearing officer", and "party"; (2) to amend Sections 1, 2, and 4 through 17 to: (a) clarify that references to a hearing means an administrative hearing; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 5 to specify what actions qualify for continuation of services in accordance with the established procedures; (4) to amend Section 6 to specify that an administrative hearing shall be conducted within thirty (30) days of the date of the request for an administrative hearing unless otherwise authorized by the hearing officer; (5) to amend Sections 7, 9, 10, 11, and 12 to align the administrative hearing procedures to those established in KRS Chapter 13B; and (6) to amend Section 13 to establish the maximum fee an attorney is authorized to charge an applicant or recipient for representation regarding Medicaid before the Supreme Court of Kentucky. Without objection, and with agreement of the agency, the amendments were approved.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Administration and Financial Management: Institutional Care

908 KAR 3:050. Per diem rates. Kevin Mudd, counsel, and Tabitha Burkhart – Wilson, psychology program administrator, represented the cabinet.

In response to a question by Co-Chair Harris, Mr. Mudd stated that all costs were raised, except at Oakwood, which had decreased costs.

908 KAR 3:060. "Means test" for determining patient liability.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to specify provisions; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 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.

Department for Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1:190. Nutrition program for older persons. Elizabeth Fiehler, dietician, and Phyllis Sosa, staff assistant, represented the cabinet.

In response to a question by Representative Lee, Ms. Fiehler stated that this administrative regulation removed the requirement for a minimum of five (5) dissimilar components as long as meals still met nutritional standards. Under the previous requirements, meeting the requirement often made meals less appetizing just to fill each slot in a tray.

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A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add citations; (2) to amend Section 10 to specify provisions; and (3) to amend Sections 1, 3, 4, 6, 10, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the December 10, 2013, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:140 & E. Employer's administrative duties.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality Standards

401 KAR 10:030. Antidegradation policy implementation methodology.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020 & E. Corrections policies and procedures.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: State Health Plan

900 KAR 5:020 & E. State Health Plan for facilities and services.

The Subcommittee adjourned at 3:35 p.m. until December 10, 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 LOCAL GOVERNMENT

Meeting of October 23, 2013

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of October 23, 2013, having been referred to the Committee on October 2, 2013, pursuant to KRS 13A.290(6):

815 KAR 4:030 & E
815 KAR 4:040 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 23, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL
RESOURCES AND ENVIRONMENT**

Meeting of November 7, 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 November 7, 2013, having been referred to the Committee on November 6, 2013, pursuant to KRS 13A.290(6):

301 KAR 1:132
301 KAR 1:152
301 KAR 2:049
301 KAR 2:225 & E
405 KAR 8:010
405 KAR 10:001 & E
405 KAR 10:015
405 KAR 10:070 & E
405 KAR 10:080 & E
405 KAR 10:090 & E
405 KAR 10:201E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 7, 2013 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

F - 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

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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

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the *2013 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index

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The Subject Index is a general index of administrative regulations published in VOLUME 40 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	39 Ky.R. Page No.	Effective Date	Regulation Number	39 Ky.R. Page No.	Effective Date
VOLUME 39					
The administrative regulations listed under VOLUME 39 are those administrative regulations that were originally published in Volume 38 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the 2013 <i>Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			Amended	2362	(See 40 Ky.R.)
* Statement of Consideration not filed by deadline			101 KAR 2:102		
** Withdrawn, not in effect within 1 year of publication			Amended	2365	(See 40 Ky.R.)
*** Withdrawn before being printed in Register			101 KAR 3:015		
**** Emergency expired after 180 days			Amended	2370	(See 40 Ky.R.)
(r) Repealer regulation: KRS 13A.310-on the effective date of			101 KAR 3:050		
an administrative regulation that repeals another, the			Amended	2375	(See 40 Ky.R.)
regulations compiler shall delete the repealed administrative			201 KAR 2:020		
regulation and the repealing administrative regulation.			Amended	2377	9-6-13
			201 KAR 2:030		
			Amended	2378	9-6-13
			201 KAR 2:074		
			Amended	1753	
			Amended	2175	
			As Amended	2312	6-19-13
			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	
			As Amended	2314	6-19-13
			201 KAR 20:070		
			Amended	2194	(See 40 Ky.R.)
			201 KAR 20:085		
			Amended	2196	7-17-2013
			201 KAR 20:110		
			Amended	2197	7-17-2013
			201 KAR 20:400		
			Amended	2047	(See 40 Ky.R.)
			201 KAR 20:500		
			Amended	2049	
			As Amended	2315	6-19-13
			201 KAR 31:010		
			Amended	2386	(See 40 Ky.R.)
			201 KAR 31:020		
			Amended	2387	10-4-13
			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		
			Amended	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
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(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)					
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			
Replaced	844	11-1-13			
907 KAR 3:230E	2306	5-8-13			
Replaced	848	11-1-13			
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			
Replaced	550	9-18-13			
922 KAR 1:140E	2122	3-28-13			
Replaced	554	9-18-13			
922 KAR 1:320E	2126	3-28-13			
Replaced	556	9-18-13			
922 KAR 1:400E	2130	3-28-13			
Replaced	559	9-18-13			
922 KAR 2:090E	2134	3-27-13			
Replaced	305	9-18-13			
922 KAR 2:160E	2140	3-27-13			
Replaced	571	9-18-13			
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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					

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401 KAR 10:030			906 KAR 1:160		
Amended	584		Amended	335	
Withdrawn	‡	11-19-13	As Amended	632	
401 KAR 5:320	2094	(See 40 Ky.R.)	Amended	1221	
501 KAR 6:070			907 KAR 1:055		
Amended	1949		Amended	2084	(See 40 Ky.R.)
As Amended	2316	7-5-13	907 KAR 1:070		
503 KAR 1:170			Repealed	2448	9-6-13
Amended	2066		907 KAR 1:071(r)	2448	9-6-13
As Amended	2317	7-5-13	907 KAR 1:072		
505 KAR 1:160			Repealed	2448	9-6-13
Amended	1952		907 KAR 1:090		
As Amended	2173		Repealed	2448	9-6-13
601 KAR 9:135			907 KAR 1:092		
Amended	1953		Repealed	2448	9-6-13
702 KAR 3:130			907 KAR 1:320		
Amended	1321		Repealed	2448	9-6-13
Amended	1891		907 KAR 10:017		
As Amended	2173		Repealed	2448	
702 KAR 4:160			907 KAR 10:372		
Amended	2073	(See 40 Ky.R.)	Repealed	2448	
703 KAR 5:121(r)	2098		907 KAR 10:376		
Withdrawn		6-11-13	Repealed	2448	
703 KAR 5:250	2099		907 KAR 1:563		
Withdrawn		6-11-13	Amended	2434	(See 40 Ky.R.)
787 KAR 1:010			907 KAR 1:595		
Amended	2400	9-6-13	Amended	2438	
787 KAR 1:290			907 KAR 3:225	2449	(See 40 Ky.R.)
Amended	2401	9-6-13	907 KAR 3:230	2454	(See 40 Ky.R.)
804 KAR 9:040			907 KAR 3:015	2284	(See 40 Ky.R.)
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Amended	2178		Amended	1792	
Withdrawn		7-10-13	As Amended	2322	9-19-13
804 KAR 9:050			907 KAR 17:010	1822	
Amended	1961	(See 40 Ky.R.)	Amended	2181	
815 KAR 4:027	1970		As Amended	2343	6-27-13
As Amended	2174		907 KAR 17:015	1831	
815 KAR 7:120			As Amended	2350	6-27-13
Amended	1506	(See 40 Ky.R.)	907 KAR 17:020	1836	
815 KAR 20:020			As Amended	2353	6-27-13
Amended	2203	8-2-13	907 KAR 17:025	1841	
815 KAR 20:034			As Amended	2356	6-27-13
Amended	2208	(See 40 Ky.R.)	907 KAR 17:030	1846	6-27-13
815 KAR 20:120			921 KAR 2:015		
Amended	2210	8-2-13	Amended	1813	6-19-13
900 KAR 5:020			921 KAR 3:090		
Amended	1322		Amended	2218	(See 40 Ky.R.)
Amended	1895		922 KAR 1:130		
As Amended	2174		Amended	2220	(See 40 Ky.R.)
900 KAR 10:010	2443	(See 40 Ky.R.)	922 KAR 1:140		
902 KAR 30:001			Amended	2225	(See 40 Ky.R.)
Amended	2403	(See 40 Ky.R.)	922 KAR 1:320		
902 KAR 30:120			Amended	2228	(See 40 Ky.R.)
Amended	2410	(See 40 Ky.R.)	922 KAR 1:400		
902 KAR 30:130			Amended	2233	(See 40 Ky.R.)
Amended	2413	(See 40 Ky.R.)	922 KAR 2:020		
902 KAR 30:150			Amended	2236	(See 40 Ky.R.)
Amended	2419	10-16-13	922 KAR 2:090		
902 KAR 30:160			Amended	2241	(See 40 Ky.R.)
Amended	2422	10-16-13	922 KAR 2:100		
902 KAR 30:180		(See 40 Ky.R.)	Amended	2247	(See 40 Ky.R.)
Amended	2425	10-16-13	922 KAR 2:110		
902 KAR 30:200			Amended	2256	(See 40 Ky.R.)
Amended	2428	10-16-13	922 KAR 2:120		
902 KAR 55:110			Amended	2261	(See 40 Ky.R.)
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Amended	1218		Amended	2269	(See 40 Ky.R.)

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922 KAR 2:180 Amended	2278		13A.300(4) and 13A.315(1)(d)) (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		

SYMBOL KEY:					
* Statement of Consideration not filed by deadline					
** Withdrawn before being printed in Register					
‡ Withdrawn deferred more than twelve months (KRS					

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(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

30 KAR 5:010E	219	6-28-2013
Replaced	775	11-1-13
30 KAR 5:020E	220	6-28-2013
Replaced	775	11-1-13
30 KAR 5:030E	223	6-28-2013
Replaced	777	11-1-13
30 KAR 5:040E	225	6-28-2013
Replaced	777	11-1-13
30 KAR 5:050E	228	6-28-2013
Replaced	780	11-1-13
30 KAR 5:060E	230	6-28-2013
Replaced	781	11-1-13
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
201 KAR 30:315E	935	10-10-2013
301 KAR 2:221E	1232	10-21-2013
301 KAR 2:222E	1234	10-21-2013
301 KAR 2:225E	524	8-14-2013
Replaced	1045	11-7-13
405 KAR 10:001E	236	7-03-2013
405 KAR 10:070E	240	7-03-2013
Replaced	1065	11-7-13
405 KAR 10:080E	243	7-03-2013
Replaced	1066	11-7-13
405 KAR 10:090E	245	7-03-2013
Replaced	1067	11-7-13
405 KAR 10:201E	246	7-03-2013
Repealer		11-7-2013
501 KAR 6:020E	759	8-20-2013
505 KAR 1:170E	936	10-14-2013
804 KAR 4:390E	5	6-14-2013
804 KAR 4:400E	247	6-25-2013
Replaced	811	11-1-13
804 KAR 4:410E	249	6-25-2013
Replaced	811	11-1-13
804 KAR 4:430E	7	6-14-2013
815 KAR 4:030E	250	6-25-2013
Replaced	824	10-23-13
815 KAR 4:040E	253	6-25-2013
Replaced	825	10-23-13
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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907 KAR 20:015E	956	9-30-2013
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907 KAR 20:030E	969	9-30-2013
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907 KAR 20:040E	979	9-30-2013
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907 KAR 20:075E	993	9-30-2013
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921 KAR 2:015E	1238	11-14-2013
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11 KAR 5:140 Amended	75	9-9-13
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12 KAR 1:145 Amended	101	
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Amended	334		As Amended	1017	
Amended	854		201 KAR 6:040		
As Amended	1004		Amended	631	
13 KAR 3:010			As Amended	1017	
Amended	879		201 KAR 6:050		
As Amended	1248		Amended	632	
13 KAR 3:050			As Amended	1018	
Amended	880		201 KAR 6:060		
16 KAR 3:080			Amended	633	
Amended	621		As Amended	1019	
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16 KAR 5:020			Amended	635	
Amended	1318		As Amended	1019	
16 KAR 6:010			201 KAR 6:080		
Amended	1320		Amended	637	
16 KAR 9:080			As Amended	1021	
Amended	623		201 KAR 6:090		
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30 KAR 5:010			As Amended	1022	
Amended	342		201 KAR 9:016		
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30 KAR 5:020			As Amended	785	10-16-13
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Amended	353		Amended	369	
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103 KAR 16:230			As Amended	1030	
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103 KAR 41:200			As Amended	1033	
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201 KAR 12:180			As Amended	533	10-4-13
Amended	390		201 KAR 30:125		
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201 KAR 12:190			As Amended	534	10-4-13
Amended	392		201 KAR 30:150		
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201 KAR 12:260			As Amended	534	10-4-13
Amended	393		201 KAR 30:200	182	
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201 KAR 12:270	478		201 KAR 30:315	1198	
As Amended	1039		201 KAR 31:010		(See 39 Ky.R.)
201 KAR 17:012			As Amended	536	10-4-13
Amended	394	10-16-13	201 KAR 31:040		(See 39 Ky.R.)
201 KAR 17:030			As Amended	537	10-4-13
Amended	395	10-16-13	201 KAR 31:050		(See 39 Ky.R.)
201 KAR 17:034			As Amended	537	10-4-13
Amended	397	10-16-13	201 KAR 31:060		(See 39 Ky.R.)
201 KAR 17:036			As Amended	538	10-4-13
Amended	399	10-16-13	201 KAR 31:080		(See 39 Ky.R.)
201 KAR 18:020			As Amended	540	10-4-13
Amended	886		201 KAR 31:090		(See 39 Ky.R.)
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201 KAR 18:142		(See 39 Ky.R.)	201 KAR 30:360		
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201 KAR 20:056			Withdrawn		9-13-13
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Amended	1094		As Amended	1065	11-7-13
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Amended	644		405 KAR 10:090	483	
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Amended	400		Repealed		11-7-13
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Amended	647		As Amended	802	10-3-13
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Amended	402		As Amended	803	10-3-13
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Amended	649		Amended	592	
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Amended	407		Amended	890	
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Amended	1354		As Amended	1253	
301 KAR 2:222			501 KAR 6:110		
Amended	1356		Amended	660	
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Amended	653		503 KAR 1:180		
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302 KAR 21:030	732		Amended	436	
302 KAR 21:040	733		As Amended	804	11-1-13
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302 KAR 21:060	736		Amended	664	
302 KAR 21:070	737		As Amended	1254	
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302 KAR 40:010			Amended	665	
Amended	1134		Withdrawn by agency		11-6-13
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Repealed			Amended	668	
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Amended	1173		SYMBOL KEY:		
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Recodified from 907 KAR 1:655		9-30-13	** Withdrawn, not in effect within 1 year of publication		
Amended	1178		*** Withdrawn before being printed in Register		
907 KAR 20:040			‡ Withdrawn deferred more than twelve months (KRS		
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907 KAR 20:045			administrative regulation that repeals another, the regulations		
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