

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 41, NUMBER 1  
TUESDAY, JULY 1, 2014

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 13, 2014.

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## **MEETING NOTICE: ARRS**

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet July 8, 2014, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 1-2 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2014 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**VOLUME 41, NUMBER 1 – JULY 1, 2014**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, JULY 8, 2014, at 1:00 p.m., Room 149 Capitol Annex**

**EDUCATION PROFESSIONAL STANDARDS BOARD**

**Certification Procedures**

16 KAR 4:060. Certificate renewals and teaching experience. (Not Amended After Comments)

**GENERAL GOVERNMENT CABINET  
Board of Dentistry**

**Board**

201 KAR 8:550. Anesthesia and sedation. (Amended After Comments)

201 KAR 8:571. Registration of dental assistants. (Not Amended After Comments)

**Kentucky Real Estate Commission**

**Commission**

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

201 KAR 11:105. Advertising listed property; advertising public information about specific property; when consent and authorization of owner or principal broker is required.

201 KAR 11:121. Improper conduct.

**Board of Licensure for Massage Therapy**

**Board**

201 KAR 42:035. Application process, exam, and curriculum requirements. (Not Amended After Comments) (Deferred from June)

201 KAR 42:040. Renewal. (Not Amended After Comments) (Deferred from June)

201 KAR 42:060. Code of ethics and standards of practice for massage therapists. (Not Amended After Comments) (Deferred from June)

201 KAR 42:080. Programs of massage therapy instruction. (Deferred from April) (Deferred from June)

201 KAR 42:110. Continuing education requirements. (Not Amended After Comments) (Deferred from June)

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

**Fish**

301 KAR 1:201. Taking of fish by traditional fishing methods.

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

**Office of the Secretary**

501 KAR 6:110. Roederer Correctional Complex.

**Department of Juvenile Justice**

**Child Welfare**

505 KAR 1:110. Department of Juvenile Justice Policies and Procedures: program services.

**TRANSPORTATION CABINET  
Kentucky Bicycle and Bikeways Commission**

**Motorcycle and Bicycle Safety**

601 KAR 14:020. Bicycle Safety standards. (Not Amended After Comments) (Deferred from June)

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

**Office of Instruction**

704 KAR 3:346. Repeal of 704 KAR 3:345.

704 KAR 3:370. Professional Growth and Effectiveness System. (Amended After Comments)

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

**Occupational Safety and Health**

803 KAR 2:300. General.

803 KAR 2:306. Occupational health and environmental controls.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:309. General environmental controls.

803 KAR 2:314. Machinery and machine guarding.

803 KAR 2:317. Special industries.

803 KAR 2:318. Electrical.

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

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

803 KAR 2:406. Signs, signals, and barricades.

803 KAR 2:412. Fall protection.

803 KAR 2:421. Adoption of 29 C.F.R. Part 1926.950-968.

803 KAR 2:423. Adoption of 29 C.F.R. Part 1926.1050-1060.

803 KAR 2:500. Maritime employment.

803 KAR 2:505. Cranes and derricks in construction.

803 KAR 2:551. Repeal of 803 KAR 2:550.

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

**Advertising Distilled Spirits and Wine.**

804 KAR 1:100. General advertising practices.

**Malt Beverage Equipment, Supplies and Service**

804 KAR 11:040. Growlers.

**Department of Insurance  
Financial Standards and Examination Division**

**Health Maintenance Organizations**

806 KAR 38:100. Risk-based capital for health organizations. (Deferred from June)

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

**Certificate of Need**

900 KAR 6:055. Certificate of Need forms.

900 KAR 6:070. Certificate of Need considerations for formal review.

900 KAR 6:075. Certificate of Need nonsubstantive review.

**Data Reporting and Public Use Data Sets**

900 KAR 7:030. Data reporting by health care providers.

**Department for Public Health  
Division of Maternal and Child Health**

**Kentucky Early Intervention System**

902 KAR 30:001. Definitions for 902 KAR Chapter 30.

902 KAR 30:110. Point of Entry and service coordination.

902 KAR 30:120. Evaluation and eligibility.

902 KAR 30:130. Assessment, service planning, and assistive technology.

902 KAR 30:150. Personnel qualifications.

902 KAR 30:160. Covered services.

902 KAR 30:180. Procedural safeguards.

902 KAR 30:200. Coverage and payment for services.

**Controlled Substances**

902 KAR 55:045. Exempt prescription products. (Comments Received, SOC ext.)

902 KAR 55:090. Exempt anabolic steroid products. (Deferred from June)

**Department for Medicaid Services  
Division of Community Alternatives**

**Medicaid Services**

907 KAR 1:835. Michelle P. waiver services and reimbursement.

**Hospital Service Coverage and Reimbursement**

907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement. (Amended After Comments) (Deferred from April)

**Department for Community Based Services  
Division of Family Support**

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

921 KAR 2:055. Hearings and appeals. (Amended After Comments)

921 KAR 2:060. Delegation of power for oaths and affirmations.

**Supplemental Nutrition Assistance Program**

921 KAR 3:030. Application process.

921 KAR 3:042. Supplemental Nutrition Assistance Program Employment and Training Program.

921 KAR 3:050. Claims and additional administrative provisions.

921 KAR 3:060. Administrative disqualification hearings and penalties.

921 KAR 3:070. Fair hearings. (Amended After Comments.)

**Commissioner's Office**

**Child Welfare**

922 KAR 1:320. Service appeals. (Amended After Comments)

**Division of Protection and Permanency**

**Child Welfare**

922 KAR 1:480. Appeal of child abuse and neglect investigative findings. (Amended After Comments)

**REMOVED FROM JULY 2014 AGENDA**

**TRANSPORTATION CABINET**

**Department of Highways  
Division of Maintenance**

**Billboards**

603 KAR 10:001. Definitions. (Amended After Comments) (Deferred from May)

603 KAR 10:010. Static advertising devices. (Amended After Comments) (Deferred from May)

603 KAR 10:020. Electronic advertising devices. (Amended After Comments) (Deferred from May)

603 KAR 10:030. Removal of vegetation related to advertising devices. (Amended After Comments) (Deferred from May)

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Public Health**

**Controlled Substances**

902 KAR 55:045. Exempt prescription products. (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  
103 KAR 15:180E

This emergency administrative regulation is being promulgated in order to provide qualified community development entities the forms and procedures necessary when applying for and administering the New Markets Development Program tax credits. KRS 141.432 to KRS 141.434 were amended by HB 445 of the 2014 Regular Session, effective for taxable years beginning on or after January 1, 2014, and the tax credit that may be awarded each year was increased from \$5 million to \$10 million, effective July 15, 2014. An ordinary administrative regulation is not sufficient, because qualified community development entities will be applying for the \$5 million increase in New Markets Development Program tax credits on July 15, 2014. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
THOMAS B. MILLER, Commissioner

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
Office of Income Taxation  
(Emergency Amendment)

103 KAR 15:180E. Kentucky new markets development program tax credit.

RELATES TO: KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

STATUTORY AUTHORITY: KRS 141.433(7)

EFFECTIVE: June 5, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7) requires the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity investments. This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity (CDE) in order for the department to certify qualified equity investments and to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the department to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit authorized by KRS 141.434.

(2) "Application" means Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue Form 41A720-S80), that is filed by a CDE with the department for certification as a qualified equity investment.

(3) "Applications fee" means a \$1,000[dollars] nonrefundable cashier's check that shall be attached to the application at the time of filing with the department.

(4) "CDE" means a qualified community development entity as defined by KRS 141.432(6).

(5) "CDFI Fund" means the U.S. Department of Treasury, Community Development Financial Institutions Fund.

(6) "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved by the department.

(7) "Department" means the Kentucky Department of Revenue.

(8) "Department's approval" means certified by the department as provided by KRS 141.433(3).

(9) "Identification number" means the:

(a) Social Security Number for an individual;

(b) Federal Employer Identification Number for a general partnership, estate, or trust; or

(c) Kentucky Corporation/LLET Account Number for a corporation or limited liability pass-through entity.

(10) "Long-term debt security" is defined by KRS 141.432(3).

(11) "Performance fee" is defined by KRS 141.433(8).

(12) "Qualified active low-income community business" is defined by KRS 141.432(5).

(13)[(42)] "Qualified community development entity" is defined by KRS 141.432(6).

(14)[(43)] "Qualified equity investment" is defined by KRS 141.432(7).

(15)[(44)] "Qualified low-income community investment" is defined by KRS 141.432(8).

(16)[(45)] "Tax credit" is defined by KRS 141.432(9).

(17)[(46)] "Taxpayer" is defined by KRS 141.432(10).

Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that seeks to have an equity investment or long-term debt security certified by the department as a qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an application with the department.

(2) The department shall notify the CDE within thirty (30) days after receipt of the application whether the application is approved or denied.

(a) If the department intends to deny the application, the CDE shall be notified in writing by the department of the reason for the denial, and the CDE may correct the application as provided by KRS 141.433(2).

(b) If the department determines that the application is in compliance with KRS 141.432 to 141.434, a copy of the application shall be returned to the CDE with written notice of the department's approval.

(c) 1. The department shall:

a. Accept an application on or after July 15, 2014[~~March 4, 2014~~], if the application is received via hand-delivery, mail, express mail, or courier; and

b.[(b)] Not accept an application received via facsimile, CD-Rom, CD, or electronic means.

2. The date that the application is stamped received by the Office of Income Taxation, Division of Corporate Tax, Tax Credits Section, shall be the date that the application is recorded as received pursuant to the provisions of KRS 141.133.

3. An application received prior to July 15, 2014[~~March 4, 2014~~], shall be recorded as received on July 15, 2014[~~March 4, 2014~~].

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

(1) The CDE's name, mailing address, identification number, telephone number, and fax number;

(2) The name and identification number of the parent company, if the CDE is included in a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

(3) The type of entity of the CDE for Kentucky income tax purposes included in the application;

(4) The signature of the person completing the application and the date signed;

(5) The total number of taxpayers making qualified equity investments;

(6) The total amount of qualified equity investments for all taxpayers;

(7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C. 45D(c);

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund which includes the

Commonwealth of Kentucky within the service area as set forth in the allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

(9) Proof of current certification with the CDFI Fund that includes the original application to CDFI and all subsequent updates;

(10) A statement of whether the entity's service area is a county, state, multi-state, or national. A map of the service area, articles of organization that describe the service area, bylaws that describe the service area, or other documentation that describes the service area shall be attached to the application;

(11) Information regarding the proposed use of the proceeds from the qualified equity investments, including a description of the qualified active low-income community business as provided by KRS 141.432(5);

(12) The name, identification number, type of investment (whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment;

(13) A signed certification indicating that the application has been executed by the executive officer of the CDE, declaring under the penalty of perjury:

(a) That the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and

(b) That the application, including all accompanying documents and statements, is true, correct and complete;[and]

(14) The application fee; and

(15) The refundable performance fee.

Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the approved application is received by the CDE, the CDE shall issue qualified equity investments in exchange for cash in the amount of the certified purchase prices contained in the application.

(2) The CDE shall provide the department with evidence of the receipt of the cash for each qualified equity investment by filing with the department Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification (Revenue Form 41A720-S81).

(3) If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of Form 8874(K)-A shall be returned to the CDE and taxpayer with the department's written approval, including a statement of the tax credits available to the taxpayer for each of the next seven (7) years.

(4) If the department is not satisfied that the cash amount of the qualified equity investment was received by the CDE, the department shall notify the CDE in writing of the reason. If the CDE does not agree with the department's written determination, the CDE may file a protest as provided by KRS 131.110.

Section 5. Information Required on or Attached to the Form 8874(K)-A. The following information shall be required on or attached to the Form 8874(K)-A:

(1) The CDE's name and identification number;

(2) For the taxpayer making the qualified equity investment:

(a) The taxpayer's name and address; and

(b) The identification number of the taxpayer;

(3) The certified purchase price of the qualified equity investment;

(4) The date the CDE received cash for the qualified equity investment;

(5) The type of taxpayer making the qualified equity investment; and

(6) Certification by the executive director of the CDE, declaring under the penalty of perjury that the form, including all accompanying documents and statements, is true, correct and complete.

Section 6. New Markets Development Program Tax Credit Recapture. (1) If there is an event as provided by KRS 141.433(6) which would result in the recapture of any portion of the tax credit previously approved:

(a) The CDE shall notify the department upon discovery of the event; or

(b) The department, upon discovery of the event or after receiving notice from the CDE of the event, shall provide written notice of the proposed recapture to the CDE as provided by KRS 141.433(6)(b).

(2) If the entity fails or is unable to cure the deficiency within ninety (90) days after receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the department shall notify the CDE and each taxpayer of the amount of recapture or the balance of the tax credit on Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture (Revenue Form 41A720-S82).

(3) If the taxpayer is a pass-through entity, a Form 8874(K)-B shall also be sent to each partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

Section 7. Information Required on the Form 8874(K)-B. The following information shall be required on the Form 8874(K)-B:

(1) The CDE's name and identification number;

(2) For the taxpayer making the qualified equity investment:

(a) The taxpayer's name and address; and

(b) The identification number of the taxpayer;

(3) The certified purchase price of the qualified equity investment;

(4) The date the CDE received cash for the qualified equity investment;

(5) The type of taxpayer making the qualified equity investment;

(6) The date the tax credit with respect to a qualified equity investment was subject to recapture;

(7) An explanation of the recapture;

(8) The recapture amount of tax credit or balance of tax credit; and

(9) The signature of the authorized department employee and the date.

Section 8. Filing Requirements. (1) Form 8874(K)-A.

(a) A taxpayer claiming the tax credit shall attach each taxable[tax] year a copy of Form 8874(K)-A to the tax return on which the credit is claimed.

(b) A partner, member, or shareholder of a taxpayer claiming the tax credit shall attach each taxable[tax] year a copy of the appropriate form listed in this paragraph and incorporated by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the credit is claimed:

1. Schedule K-1, Form 720S[7205] (Revenue Form 41A720S(K-1));

2. Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or

3. Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1)[41A765-GP(K-4)]).

(2) Form 8874(K)-B.

(a) A taxpayer or a partner, member, or shareholder of a taxpayer having a tax credit recapture shall:

1. Attach a copy of Form 8874(K)-B to the tax return for the taxable[tax] year that includes the tax credit recapture date; and

2. Enter the recapture on the applicable line of the tax return.

(b) A taxpayer or a partner, member, or shareholder of a taxpayer claiming a tax credit shall attach each taxable[tax] year a copy of Form 8874(K)-B to the tax return on which the credit is claimed.

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

(a) Revenue Form 41A720-S80, Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit, May 2014[June, 2010];

(b) Revenue Form 41A720-S81, Notice of Kentucky New Markets Development Program Tax Credit and Certification, May 2014[June 2010]; and

(c) Revenue Form 41A720-S82, Notice of Kentucky New Markets Development Program Tax Credit Recapture, May 2014:[June 2010-]

## VOLUME 41, NUMBER 1 – JULY 1, 2014

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 3, 2014

FILED WITH LRC: June 5, 2014 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 24th, 2014 from 10:00 a.m. to 12:00 p.m., in Room 381, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31st, 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:** Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes guidelines and the filing requirements of a qualified community development entity for taxable years beginning on or after January 1, 2014, when the qualified community development entity is applying for and administering Kentucky New Markets Development Program tax credits.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary in order to incorporate the amended provisions of KRS 141.432 to KRS 141.434 as provided by HB 445 of the 2014 Regular Session which are effective for tax years beginning on or after January 1, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.433(7) provides that the department shall promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation prescribes for taxable years beginning on or after January 1, 2014, forms to be used and procedures to be followed by a qualified community development entity in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(2) If 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 contains updated forms and procedures effective January 1, 2014, to conform with KRS 141.432 to KRS 141.434 that were amended by HB 445 of the 2014 Regular Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation to conform to KRS 141.432 to KRS 141.434 that were amended by HB 445 of the 2014 Regular Session.

(c) How the amendment conforms to the content of the

authorizing statutes: KRS 141.433(7) authorizes the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434.

(d) How the amendment will assist in the effective administration of the statutes: For taxable years beginning on or after January 1, 2014, this amendment will provide qualified community development entities forms and procedures to be used in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All qualified community development entities applying for New Markets Development Program tax credits will 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: For taxable years beginning on or after January 1, 2014, qualified community development entities will use the forms and procedures contained in this administrative regulation when applying for and administering the New Markets Development Program tax credits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not increase the cost of qualified community development entities to administer the New Markets Development Program as provided by KRS 141.432 to KRS 141.434.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The guidance and clarification contained in this amended administrative regulation should reduce the cost of qualified community development entities to administer the New Markets Development Program as provided by KRS 141.432 to KRS 141.434.

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

(a) Initially: A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

(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: Funds will be provided by the department.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies to all qualified community development entities applying for New Markets Development Program tax credits as provided by KRS 141.432 to KRS 141.434.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.433(7).

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



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the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be collected as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD  
(As Amended at ARRS, June 10, 2014)

16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 160.380, 161.020, 161.028(1), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5:010 for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments, and experience as outlined in Section 5 of this administrative regulation.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) "Kentucky teacher standards" means the standards established in 16 KAR 1:010 that identify what a Kentucky teacher shall know and be able to do.

(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework.

(9) "Professional teaching certificate" means the document issued to:

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

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.

(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1)(a) Until December 31, 2014, a statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed TC-1 application form and has successfully completed:

1.a.(a)-] At least a bachelor's degree with:

(i)[a-] A cumulative grade point average of 2.50 on a 4.0 scale; or

(ii)[b-] A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

b.[2-] As required by Section 4(2)(g)6 of this administrative regulation, a master's degree with:

(i)[a-] A cumulative grade point average of 2.50 on a 4.0 scale; or

(ii)[b-] A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

2.[(b)-] An approved program of preparation; and

3.[(e)-] The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(b) Beginning January 1, 2015, a statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed CA-1 application form and has successfully completed:

1.a. At least a bachelor's degree with:

(i) A cumulative grade point average of 2.50 on a 4.0 scale; or

(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

b. As required by Section 4(2)(g)6 of this administrative regulation, a master's degree with:

(i) A cumulative grade point average of 2.50 on a 4.0 scale; or

(ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

2. An approved program of preparation;

3. The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made; and

4. A national and state criminal background check performed in accordance with KRS 160.380(5)(e)] within twelve (12) months prior to the date of application.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year approved program of preparation which is consistent with:

(a) The Kentucky teacher standards established in 16 KAR 1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation in KAR Title 16.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the

year of expiration of the certificate; or

(b) Successful completion of the continuing education option as established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The Kentucky teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2:040;

(b) Elementary school: primary through grade 5 to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade 6 if grade 6 is taught in a self-contained classroom or in a school organization in which grade 6 is housed with grade 5 in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c)1. Middle school option 1: grades 5 through 9 with the equivalent of one (1) major to be selected from:

- a. English and communications;
- b. Mathematics;
- c. Science; or
- d. Social studies; **or**

2. Middle school option 2: grades 5 through 9 with two (2) middle school teaching fields to be selected from:

- a. English and communications;
- b. Mathematics;
- c. Science; or
- d. Social studies;

~~[3. The grades 5 through 9 mathematics certificate shall be valid for teaching Algebra I grades 10 and 11;~~

~~4. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;]~~

(d) Secondary school: grades 8 through 12 with one (1) or more of the following majors:

1. English;
2. Mathematics;
3. Social studies;
4. Biology;
5. Chemistry;
6. Physics; or
7. Earth science;

(e) Grades 5 through 12 with one (1) or more of the following majors:

1. Agriculture;
2. Business and marketing education;
3. Family and consumer science;
4. Industrial education; or
5. Engineering and technology;

(f) All grade levels with one (1) or more of the following specialties:

1. Art;
2. A foreign language;
3. Health;
4. Physical education;

5. Integrated music;

6. Vocal music;

7. Instrumental music; or

8. School media librarian; or

(g) Grades primary through 12 for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;

6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or

7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

**(3)(a) The grades 5 through 9 mathematics certificate issued under subsection (2)(c)1.b. or 2.b. of this section shall be valid for teaching Algebra I grades 10 and 11.**

**(b) A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under subsection (2) or (4) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field established in subsection (2)(c) of this section.**

(4) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Psychology, grades 8-12;
- (b) Sociology, grades 8 through 12;
- (c) Journalism, grades 8 through 12;
- (d) Speech/media communications, grades 8-12;
- (e) Theater, primary through grade 12;
- (f) Dance, primary through grade 12;
- (g) Computer information systems, primary through grade 12;

or

(h) English as a second language, primary through grade 12.

**5)(4)]** An endorsement to **a certificate[certificates]** identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Computer science, grades 8-12;
- (b) English as **a** second language, primary through grade 12;
- (c) Gifted education, primary through grade 12;
- (d) Driver education, grades 8-12;
- (e) Literacy specialist, primary through grade 12;
- (f) Reading, primary through grade 12;
- (g) Instructional computer technology, primary through grade

12;

(h) Teacher Leader, all grades;

(i) Other instructional services - school safety, primary through grade 12;

(j) Other instructional services - environmental education, primary through grade 12;

(k) Other instructional services - elementary mathematics specialist, primary through grade 5;

(l) Learning and behavior disorders, grades 8 through 12. This endorsement shall be issued:

1. Following completion of the requirements of Section 5(2) of this administrative regulation; and

2. Only to candidates with preparation and certification for a base or restricted base certificate for the secondary grades 8-12; or

(m) American Sign Language, primary through grade 12.

Section 5. Additional Certification. (1) A certificate extension

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may be issued for any base or restricted base certificate area offered in Section 4(2) or ~~(4)(3)~~ of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section ~~4(5)~~~~(4)(4)~~ of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(3)(a) A professionally-certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (c)(b) of this subsection.

(b)1. Until December 31, 2014, an application for a certificate endorsement or extension shall be made on a Form TC-HQ.

2. Beginning January 1, 2015, an application for a certificate endorsement or extension shall be made on a Form CA-HQ.

(c) A certificate extension or certificate endorsement shall be issued if an educator~~[submits a completed TC-HQ application and]~~:

1. Holds a valid Kentucky professional teaching certificate;

2. Submits proof that the educator has:

a. Current employment in a certified position;

b. A bona fide offer of employment in a certified position in a Kentucky public school; or

c. Approval of the local district superintendent;

3. Successfully completed the applicable content assessments; and

4. Has either:

a. A declared major in the area of certification being sought; or

b. A combination of education, experience, professional development, awards, and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the index contained within the application forms TC-HQ or CA-HQ~~[form, TC-HQ]~~.

(i)~~[-]~~ Points shall be granted only for experience, professional development, awards, or achievements earned relative to the specific content area, student population taught, and grade range served.

(ii)~~[-]~~ Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

(iii)~~[-]~~ Successful completion of the appropriate content assessment or assessments for the certificate area being added shall count for forty-five (45) points.

(4) If a teacher currently holds a professional certificate in the secondary grades 8-12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5-9, the teacher shall not be required to complete the content assessment.

(5) A certificate extension or endorsement issued under the requirements established in subsection ~~(3)(c)~~~~(3)(b)~~ of this section shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education areas shall be added only if the teacher holds the correlative certificate.

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. (1) Until December 31, 2014, application for

certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.

(2) Beginning January 1, 2015, application for certification or additional certification shall be made on Form CA-1 and shall be accompanied by the fees required by 16 KAR 4:040.

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

(a) "Form CA-1", 03-14;

(b) "Form CA-HQ", 03-14;

(c) "Form TC-1", 10/05; and

~~(d)(b)~~ "Form TC-HQ", 10/2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: March 17, 2014

FILED WITH LRC: April 8, 2014 at 4 p.m.

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.

### OFFICE OF KENTUCKY SECRETARY OF STATE (As Amended at ARRS, June 10, 2014)

#### 30 KAR 6:010. Kentucky address confidentiality program.

RELATES TO: KRS 14.300, 14.302, 14.304, 14.306, 14.310

STATUTORY AUTHORITY: KRS 14.304(2), (4), 14.306(3), (5), 14.318(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318(2) authorizes the Secretary of State to promulgate administrative regulations implementing KRS 14.300 to 14.310, 14.314, and 14.316. This administrative regulation implements KRS 14.300, 14.302, 14.304, 14.306, and 14.310.

Section 1. Definitions. (1) "Address" is defined by KRS 14.300(1).

(2) "Applicant" is defined by KRS 14.300(2).

(3) "Filer" means a person who is:

(a) A:

1. Parent or guardian acting on behalf of a minor;

2. Guardian acting on behalf of a person who is declared incompetent; or

3. Designee of an applicant or a parent or guardian of a minor or a guardian of a person declared incompetent who cannot apply independently; and

(b) Applying to the Secretary of State to have an address designated by the Secretary of State serve for voting purposes as the address of the minor, incompetent person, or applicant.

(4) "Program Participant" is defined by KRS 14.300(5).

Section 2. Requirements for Application for Certification to Participate in the Address Confidentiality Program. (1) Application for certification to participate in the address confidentiality program shall be made to the Secretary of State by submitting a completed Application for Certification to Participate in Address Confidentiality Program.

(2) The Application for Certification to Participate in Address Confidentiality shall be:

(a) Notarized; and

(b) In English.

Section 3. Certification in the Address Confidentiality Program.

(1) The Secretary of State shall approve an Application for Certification to Participate in Address Confidentiality Program and certify the applicant as a program participant if the applicant and the Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS

14.302 and 14.304 and this administrative regulation.

(2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in Address Confidentiality Program was denied or the applicant was certified as a program participant.

(a) If an Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.

(b) If an applicant is certified as a program participant, the Secretary of State shall:

1. Assign to the program participant a participant number and designated address to be used for voting purposes; and

2. Issue to the program participant an Address Confidentiality Program Participant Card reflecting the participant number, designated address to be used for voting purposes, and date on which certification expires.

(3) If an applicant is certified as a program participant, participation in the address confidentiality program shall be effective as of the date of the notification of certification.

#### Section 4. Change of Program Participant's Name or Address.

(1) A program participant or a filer shall notify the Secretary of State of a change in the program participant's name or address by submitting to the Office of the Secretary of State a completed Address Confidentiality Program Participant Name or Address Change form.

(2) The Address Confidentiality Program Participant Name or Address Change form shall:

(a) Be in writing;

(b) Be in English;

(c) Be signed by the program participant or a filer;

(d) Include both the program participant's new information and information as certified; and

(e) Be considered filed on the day the Address Confidentiality Program Name or Address Change form is date-stamped received by the Office of the Secretary of State.

Section 5. Withdrawal from Participation in the Address Confidentiality Program. (1) A program participant or filer wishing to withdraw from participation in the address confidentiality program shall submit to the Secretary of State a Withdrawal from Participation in Address Confidentiality Program form.

(2) The Withdrawal from Participation in Address Confidentiality Program form shall be:

(a) In writing;

(b) In English;

(c) Signed by the program participant or a filer;

(d) Notarized or signed by a representative of any office designated pursuant to KRS 14.310 as a referring agency who assisted in the completion of the Withdrawal from Participation in Address Confidentiality Program form; and

(e) Submitted to the Secretary of State by mail or in person.

Section 6. Confirmation by the Secretary of State of a Withdrawal from Participation in the Address Confidentiality Program. (1) Upon receiving a Withdrawal from Participation in Address Confidentiality Program form, the Secretary of State shall mail to the program participant or filer a written confirmation of withdrawal.

(2) The written confirmation shall notify the program participant or filer:

(a) Of the date on which a Withdrawal from Participation in Address Confidentiality Program form was date stamped received by the Office of the Secretary of State; and

(b) That program participation shall be terminated ten (10) days following the date of the written confirmation of withdrawal, unless the program participant or a filer notifies the Secretary of State on or before that date that the withdrawal request was not legitimate because it was not voluntarily submitted by the program participant or a filer.

Section 7. Application for Renewal of Certification in the Address Confidentiality Program. (1) A program participant or filer

wishing to renew certification in the address confidentiality program shall submit to the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires an Application for Certification to Participate in Address Confidentiality Program pursuant to Section 2 of this administrative regulation.

(2) The Application for Certification to Participate in Address Confidentiality Program shall be considered timely submitted for purposes of renewal if it is date-stamped received by the Office of the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires.

Section 8. Review by the Secretary of State of a Renewal Application for Certification to Participate in Address Confidentiality Program. (1) The Secretary of State shall approve a renewal Application for Certification to Participate in Address Confidentiality Program if the applicant and Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.

(2) The Secretary of State shall notify the program participant or filer whether the renewal Application for Certification to Participate in Address Confidentiality Program was denied or the program participant's certification was renewed within five (5) business days after it is date-stamped received by the Secretary of State.

(a) If a renewal Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the program participant or filer of the reason for denial.

(b) If a program participant's certification is renewed, the Secretary of State shall issue to the program participant a new Address Confidentiality Program Participant Card pursuant to Section 3(2)(b)2 of this administrative regulation, and the renewal shall be effective as of the date of the notification of renewal.

Section 9. Appeal from Cancellation of Certification in Address Confidentiality Program. (1) A program participant or filer wishing to appeal from a cancellation of certification in the address confidentiality program shall submit to the State Board of Elections an Appeal from Cancellation of Certification in Address Confidentiality Program form.

(2) The Appeal from Cancellation of Certification in Address Confidentiality Program shall be considered timely submitted if it is date-stamped received by the State Board of Elections within thirty (30) days of the date of the notice of certification cancellation.

(3) The Appeal from Cancellation of Certification in Address Confidentiality Program shall:

(a) Be in writing;

(b) Be in English;

(c) Be signed by the program participant or filer; and

(d) Include information as to why certification in the address confidentiality program should not be cancelled.

(4) If an Appeal from Cancellation of Certification in Address Confidentiality Program is not timely submitted, cancellation of certification in the address confidentiality program shall be effective upon the expiration of thirty (30) days after the date of the notice of certification cancellation.

Section 10. Review by the Executive Director of the State Board of Elections of an Appeal from Cancellation of Certification in Address Confidentiality Program. (1) The executive director of the State Board of Elections shall approve or deny an Appeal from Cancellation of Certification in Address Confidentiality Program within five (5) business days after it is date-stamped received by the State Board of Elections.

(a) The executive director of the State Board of Elections shall approve an Appeal from Cancellation of Certification in Address Confidentiality Program if the executive director determines that grounds for cancellation pursuant to KRS 14.306 do not exist.

(b) The executive director of the State Board of Elections shall deny an Appeal from Cancellation of Certification in Address Confidentiality Program if the executive director determines that grounds for cancellation pursuant to KRS 14.306 exist.

(2) The executive director of the State Board of Elections shall provide to the program participant or filer written notice of the decision regarding an Appeal from Cancellation of Certification in Address Confidentiality Program.

(3) If an Appeal from Cancellation of Certification in Address Confidentiality Program is timely submitted and denied pursuant to this section, cancellation of certification in the address confidentiality program shall be effective on the date on which the notice of denial is mailed.

(4) The decision of the executive director of the State Board of Elections shall conclude the appeal procedures pursuant to KRS Chapter 14 and this administrative regulation.

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

(a) "Application for Certification to Participate in Address Confidentiality Program", June/March 2014;

(b) "Address Confidentiality Program Participant Card", March 2014;

(c) "Address Confidentiality Program Participant Name or Address Change", June/March 2014;

(d) "Withdrawal from Participation in Address Confidentiality Program", June/March 2014; and

(e) "Appeal from Cancellation of Certification in Address Confidentiality Program", March 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at <http://www.sos.ky.gov>.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: March 24, 2014

FILED WITH LRC: March 24, 2014 at 2 p.m.

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

## FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Office of Sales and Excise Taxes

(As Amended at ARRS, June 10, 2014)

### 103 KAR 43:330. Measurement of compressed natural gas (CNG) and liquefied natural gas (LNG) in gallons.

RELATES TO: KRS 138.210, 138.220, 138.250

STATUTORY AUTHORITY: KRS 131.130(1), 138.226(1) ~~138.220~~

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws. KRS 138.226(1) authorizes the department to promulgate administrative regulations necessary to administer gasoline and special fuel taxes. This administrative regulation prescribes the method of measurement of compressed natural gas and liquefied natural gas in gallons as a special fuel.

Section 1. Definitions. (1) "Compressed natural gas" means natural gas compressed into high pressure fuel cylinders capable of being used to operate or propel any vehicle on public roadways.

(2) "Liquefied natural gas" means natural gas that has been converted to liquid form for ease of storage or transport.

(3) "Special fuels" is defined by/in KRS 138.210(4)(b) and includes compressed natural gas and liquefied natural gas.

(3) "Liquefied natural gas" means natural gas that has been converted to liquid form for ease of storage or transport].

Section 2. "Special Fuels" shall include compressed natural gas and liquefied natural gas.

Section 3. Conversion Method. (1) For purposes of reporting the number of gallons subject to the tax imposed by KRS 138.220 as required by KRS 138.250, every special fuels dealer[who manufactures compressed natural gas] shall convert compressed natural gas or liquefied natural gas into[the quantity produced from pounds to] gallons.

(2) The conversion rate for compressed natural gas[used] shall be 5.66 pounds or 126.67 cubic feet of compressed natural gas to one (1) gallon of special fuels.

(3) The conversion rate for liquefied natural gas[used] shall be 6.06 pounds or 1.52 gallons of liquefied natural gas to one (1) gallon of special fuels.

[Section 3. (1) This administrative regulation shall replace Revenue Policy 72P105.

(2) Revenue Policy 72P105 is hereby rescinded and shall be null, void, and unenforceable.]

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: April 8, 2014

FILED WITH LRC: April 14, 2014 at 10 a.m.

CONTACT PERSON: Lisa Swiger, Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

## GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (As Amended at ARRS, June 10, 2014)

### 201 KAR 9:305. Continued licensure[certification] of athletic trainers.

RELATES TO: KRS 214.610~~214.610(1), 311.901(1), 311.905(2), 311.909(1)(o)[311.900-311.928]~~

STATUTORY AUTHORITY: KRS 214.610(1), 311.901(1)[311.908(1), (4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.901(1) requires the Kentucky Board of Medical Licensure to promulgate administrative regulations relating to the licensure and regulation of athletic trainers and requires continuing education courses on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome.~~[311.908(1) empowers the State Board of Medical Licensure to adopt rules and administrative regulations as necessary to fulfill their statutory duty and obligation to certify qualified athletic trainers to practice within the Commonwealth of Kentucky. The purpose of] This administrative regulation establishes[is to establish] the criteria for the continued licensure[certification] of athletic trainers.~~

Section 1. Definition. "CEU"[Definitions: "Continuing education unit (CEU)"] means the completion of ten (10) hours of educational courses approved by the:

(1) Kentucky Board of Medical Licensure; or

(2) Board of Certification, Inc~~[National Athletic Trainer Association (NATA)]~~.

Section 2. (1) An athletic trainer licensed~~[certified]~~ to practice in the Commonwealth of Kentucky shall complete six (6) CEUs during each three (3) year renewal cycle beginning with the renewal cycle that ends on June 30, 2015];

(a) For the three (3) year period, July 1, 1991 – June 30, 1994; and

(b) For each three (3) year period thereafter].

(2) (a) During each ten (10) year period of practice, each licensee shall complete a minimum of two (2) hours of continuing education in HIV/AIDS courses approved pursuant to KRS 214.610~~214.610, 214.615 and 214.620~~.

(b) The hours required by paragraph (a) of this subsection shall be counted as part of the six (6) CEUs required by subsection (1) of this section for the three (3) year renewal cycle during which the HIV/AIDS course was completed].

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each three (3) year period, the required CEUs shall include the human immunodeficiency virus and acquired immune deficiency syndrome educational course approved by the Cabinet for Human Resources in 902 KAR 2:150].

PRESTON P. NUNNELLEY, M.D., President  
APPROVED BY AGENCY: March 31, 2014  
FILED WITH LRC: April 9, 2014 at 11 a.m.

CONTACT PERSON: Leanne K. Diakov, General Counsel,  
Kentucky Board of Medical Licensure, 310 Whittington Parkway,  
Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax  
(502) 429-7118.

### GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (As Amended at ARRS, June 10, 2014)

#### 201 KAR 9:307. Fee schedule regarding athletic trainers.

RELATES TO: KRS 311.901(1), 311.905(1)(a), (3)  
STATUTORY AUTHORITY: KRS 311.901(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.901(1) requires the Kentucky Board of Medical Licensure[authorizes the board] to promulgate administrative regulations necessary to establish fees relating to the licensure[certification] and regulation of athletic trainers. This administrative regulation establishes a schedule of fees for services rendered by the board.

Section 1. Fee Schedule for Athletic Trainers. (1) The fee for initial issuance of a regular license[certificate] shall be-] \$100.

(2) The fee for renewal of a license[certificate], valid for a three (3) year period, shall be-] fifty (50) dollars.

(3) The fee for activation of an inactive license[certificate] shall be-] fifty (50) dollars.

(4) The fee for issuance of a duplicate wallet card shall be-] five (5) dollars[one (1) dollar].

(5) The fee for issuance of a duplicate wall license[certificate] shall be-] ten (10) dollars.

(6) The fee for verification of a state license[certificate] to another licensing agency shall be-] ten (10) dollars.

PRESTON P. NUNNELLEY, M.D., President  
APPROVED BY AGENCY: March 31, 2014  
FILED WITH LRC: April 9, 2014 at 11 a.m.

CONTACT PERSON: Leanne K. Diakov, General Counsel,  
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Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax  
(502) 429-7118.

### GENERAL GOVERNMENT CABINET Kentucky Board of Barbering (As Amended at ARRS, June 10, 2014)

#### 201 KAR 14:085. Sanitation requirements.

RELATES TO: KRS 317.410, 317.440  
STATUTORY AUTHORITY: KRS 317.410, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(b) requires the Board of Barbering to promulgate administrative regulations governing the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools[requires the board to establish requirements to protect the health and safety of the public]. This administrative regulation establishes the sanitation requirements.

Section 1. Any barber, probationary licensee[apprentice barber], student barber, manicurist, or instructor of barbering suffering from any contagious diseases or conditions shall not be allowed to practice in this state, in accordance with KRS 317.580.

A[No] person suffering from a contagious disease or condition shall not be rendered service by any barber, probationary licensee[apprentice barber], student barber, manicurist, or instructor of barbering in the state.

Section 2. General Sanitation. The entire licensed facility, barber shops, and barber schools, including all equipment, employees, and implements, [contained therein] shall be continually maintained in a sanitary manner, in accordance with KRS 317.580 and this administrative regulation[satisfactory to the board].

Section 3. Methods of Sanitizing. [(1) Any implements to be used on the public shall be properly sanitized and all methods of sanitation shall be bacteriological effective. (2)] All commercially prepared sanitizing agents shall be used in accordance with the manufacturer's instructions.

Section 4. Disinfection of Implements and Spills; Blood and Body Fluids. (1) Implements and surfaces shall be thoroughly cleaned prior to disinfection because disinfectants are inactivated and ineffective if/when visibly contaminated with debris, hair, dirt, or particulates or if heavily soiled/when heavily soiled; thus, implements and surfaces shall first be thoroughly cleaned prior to disinfection].

(a) Disinfectants shall be prepared fresh daily or more often if solution becomes diluted or soiled.

(b) Contact Time: A surface shall be left[Leave surface] wet or completely immersed for ten (10) minutes or longer, as required by the manufacturer, for disinfecting against HIV, HBV, and all other viruses, bacteria, and fungi.

(2) All used implements shall first be cleaned of visible dirt, debris, or bodily fluids with warm soapy, detergent water and then disinfected by completely immersing in a disinfectant authorized by this subsection[an appropriate disinfectant].

(a) All nonporous implements that come into contact with intact skin shall be thoroughly cleaned before immersion in a disinfectant authorized by this paragraph[an appropriate disinfectant]. An appropriate disinfectant for objects that come into contact with intact skin shall include[is]:

1. An Environmental Protection Agency registered, hospital-grade bactericidal (especially pseudomonacidal), virucidal, and fungicidal that is mixed and used according to the manufacturer's directions; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) All nonporous implements which have come in contact with blood or body fluids shall be thoroughly cleaned before immersion in a disinfectant authorized by this paragraph[an appropriate disinfectant]. An appropriate disinfectant shall include[includes]:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(c) For personal protection against blood-borne pathogens, cleanup shall[should] always be done wearing protective gloves, [and also] gowns, and eye protection for large spills.

(d) All implements, which have come in contact with blood or body fluids, shall be disinfected by complete immersion in a[an appropriate] disinfectant in accordance with this section.

(3) Any nonporous surface that comes in contact with blood or body fluids shall first be cleaned with warm soapy, detergent water, and then a[an appropriate] disinfectant shall be used in accordance with this subsection.

(a) An appropriate disinfectant for surfaces which have come in contact with blood or body fluids shall[is] include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) For personal protection against blood-borne pathogens, cleanup shall[should] always be done wearing protective gloves, [and also] gowns, and eye protection for large spills.

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(4) Household bleach shall be/is an effective disinfectant for all purposes in a shop or school, with the following considerations:f/

(a) Bleach solutions shall be mixed daily and used in a ten (10) to one (1) solution, nine (9) parts tap water and one (1) part bleach.

(b) Bleach shall be kept in a closed covered container and not exposed to sunlight.

(c) Each licensee shall be aware that bleach:

1. May produce eye irritation or mouth, esophageal, and gastric burns; and

2. Is corrosive to metals.

(d) Bleach shall not be placed or stored near other chemicals used in salons, such as acrylic monomers, alcohol, other disinfecting products, or near flame because bleach vapors can react with vapors from other chemicals.

(e) Bleach may produce eye irritation or mouth, esophageal, and gastric burns.

(d) Bleach is corrosive to metals.

(e) Bleach vapors might react with vapors from other chemicals, and therefore should not be placed or stored near other chemicals used in salons (i.e. acrylic monomers, alcohol, other disinfecting products, or near flame).

(f) Used or soiled bleach solution shall be discarded every day by pouring the solution down a sink basin or toilet bowl.

(5) A bottle container other than the original manufacturer's container used for application of authorized/appropriate disinfectant shall be properly labeled as to contents, percentage solution, and date mixed.

(6) Cleanup items from minor cuts shall be double bagged or placed in biohazard containers. Licensees shall/should consult with the local health department for directions about disposal.

(7) All Food and Drug Administration designated "medical devices" shall only be disinfected by appropriate Environmental Protection Agency approved disinfectants, which/

(8) Environmental Protection Agency approved disinfectants are indicated by their registration number on the product label.and/ The manufacturer's directions for use shall always be followed.

Section 5. Shampoo Bowls. All shampoo bowls, shampoo boards, cups, or similar items shall be sanitized, in accordance with this administrative regulation, after each use.

Section 6. Proper Protection of Neck. (1) A/No shampoo apron, hair cloth, or similar article shall not be placed directly against the neck of the patron, and these items/they shall be kept from direct contact with the patron by means of a paper neck band or clean towel.

(2) A/No neck band of paper or cloth shall not be used more than once.

(3) A/No towel shall not be used more than once without proper laundering, in accordance with Section 12 of this administrative regulation.

Section 7. Use of Creams. (1) All creams and other semi-solid substances shall be removed from containers with a clean, sanitized spatula.

(2) Spatulas made of a washable, nonabsorbent material shall be sanitized before being used again.

(3) Spatulas made of wood shall be discarded after one (1) use.

Section 8. Use of Styptics. Styptics to arrest bleeding shall be used only in liquid or powder form and shall be applied by clean gauze, cotton, or any other sanitary item.

Section 9. Special Solution Containers. Product containers shall be used to prevent the contamination of unused solution.

Section 10. Use of Powder. All powder shall be dispensed from a shaker or similar receptacle and shall be applied with disposable puffs or cotton pledgets, or other disposable applicators.

Section 11. Walls and Floors. Walls, floors, and fixtures shall be sanitary and kept clean at all times.

Section 12. Proper Laundering Methods. (1) All cloth towels, robes, and similar items shall be laundered in a washing machine with laundry detergent and chlorine bleach used according to the manufacturer's directions for sanitation purposes.

(2) A closed, dustproof cabinet shall/must be provided for clean towels and linen, and a closed, dustproof hamper or receptacle shall/must be provided for all soiled towels and linens.

Section 13. Personal Hygiene. (1) Any barber, probationary barber, student barber, manicurist, or instructor of barbering shall wash their hands in antibacterial soap and water before beginning work on any and each patron/Every person licensed or permitted by the board shall thoroughly cleanse his or her hands with soap and water or an alcohol-based hand rub immediately before serving each patron.

(2) All licensees shall wear a clean, washable outer garment while serving a patron in a shop.

(3) Instruments or implements shall not be carried or stored in pockets, belts, aprons, or smocks.

Section 14. Equipment Sanitation. (1) All equipment used in a shop shall be maintained in a sanitary manner, in accordance with this section.

(2) Razors, scissors, tweezers, combs, rubber disc, parts of vibrators, clippers, trimmers, neck dusters, and any appliances or implements that come in contact with the head, face, neck, and hands shall be sanitized in accordance with the manufacturer's instructions, KRS 317.580, and this administrative regulation and placed in a dry sanitizer such as a properly functioning cabinet sanitizer (light box, UV light) to maintain the sanitation between uses.

(3)(a) Electrical equipment that provides circulating, whirlpool, or vacuum effects (for example, a facial machine, pedicure station, and nail drill) shall be:

1. Cleaned and disinfected after each use; and

2. Flushed, cleaned, and disinfected on a bi-weekly schedule.

(b) A record of this/such cleaning/log shall be kept in a log and made available upon any shop inspection.

(c) A bi-weekly cleaning shall include the use of a hospital grade disinfectant or ten (10) percent bleach solution that is circulated through the machine for the minimum time recommended by the manufacturer.

(4)(3)(a) Heated electrical equipment such as thermal irons, pressing combs, and stoves shall be considered/are sanitized by the heat source.

(b) Unheated parts of heated electrical equipment shall be cleaned and disinfected according to manufacturers' recommendations.

(c) Any other electrical equipment, such as clippers and attachments, shall be cleaned and disinfected after each use using the following method:

1. Removal of/Remove hair and all foreign matter from the equipment; and

2. Complete saturation of/Completely saturate clipper blade and attachment with an EPA-registered high-level disinfectant solution, spray, or foam used according to the manufacturer's instructions.

Section 15. (1) Rooms used for multiple purposes, such as massage, shall be/are permissible as long as all instruments, implements, and supplies are properly sanitized, in accordance with this administrative regulation.

(2) Any barber, probationary barber, student barber, or instructor of barbering engaged in the practice of barbering work of any kind shall have a minimum of six (6) combs at their disposal. Each work station shall have a bottle of alcohol (ethyl alcohol ninety (90) percent) and cotton of the same sanitary condition for the purpose of sanitizing scissors, razors, clippers, and all instruments before and after each use on a patron.



**(3) At least one (1) covered waste receptacle for every two (2) work stations shall be provided in each barber shop and barber school for the deposit of soiled towels. An additional covered receptacle for every two (2) work stations shall be provided for the disposal of used paper products.**

**(4) Laundry work in a barber shop and school shall be prohibited in the same room where any barber service is rendered. Drying of towels or linens on radiators or on lines in a barber shop and barber school shall be prohibited.**

**(5) The use of the following items shall be prohibited in barber shops and barber schools:**

**(a) Non-disposable powder puffs;**

**(b) Sponges;**

**(c) Lump alum; and**

**(d) Styptic pencils.** [All barber shops or barber schools, together with all furniture, equipment, tools, utensils, floors, walls, ceilings, restrooms, supply rooms, adjoining rooms and manicuring instruments shall at all times be kept in a clean and sanitary condition.]

Section 3. Each operator engaged in scalp work of any kind must have at least six (6) combs at his or her disposal and more are recommended. Each work stand shall have a bottle of alcohol (ethyl alcohol – seventy (70) percent) and cotton on same for the purpose of cleaning scissors, razors, clippers, and all instruments before and after being used on a customer.

Section 4. Any barber, manicurist, student, or instructor shall wash his or her hands in soap and water before beginning work on any and each patron or person.

Section 5. At least one (1) covered waste receptacle for every two (2) chairs must be provided in each barber shop or barber school for the deposit of soiled towels. An additional waste receptacle for each two (2) chairs must be provided for deposit of used paper products.

Section 6. (1) Towels shall not be used for more than one (1) operation. Towels not sent to a steam laundry must be boiled in water. Laundry work in shop or school is prohibited in the room where barber service is rendered. Drying of towels or linens on lines or radiators in schools or shops is prohibited.

(2) The headrest of each chair must be provided with a clean towel or sheet of clean paper for each patron.

(3) A strip of cotton, towel or paper must be placed around the patron's neck so that the chair cloth does not come in contact with the skin of the neck. Such papers, towel or cloth must be discarded after use on a patron.

Section 7. The use of powder puffs, sponges, lump alum and styptic pencils is prohibited.

Section 8. Razors, scissors, tweezers, combs, rubber discs and parts of vibrators and all other utensils, appliances or anything that comes in contact with the head, face, neck or hands, must be washed with hot water and soap and disinfected, and then placed in a dry sterilizer until again used. Only such methods of disinfection as are bacteriologically effective and approved by the Secretary of the Human Resources Cabinet shall be permitted. The secretary has approved the following methods of disinfection:

(1) Dry disinfection.

(a) Formaldehyde gas has a place in disinfecting valuable articles, but it has no penetrating power and is limited in its action to the surface. Further it requires a temperature of sixty-five (65) degrees Fahrenheit or over and a humidity of at least sixty (60) percent to be effective. Exposure of at least six (6) to twelve (12) hours in a small type cabinet to strong concentration of the gas is necessary to achieve surface disinfection. Formaldehyde gas cannot be depended upon to accomplish more than surface disinfection under optimistic conditions.

(b) Dry heat and temperature of 338 degrees Fahrenheit continued for one (1) hour will destroy all form of bacterial life. It is easy to maintain this temperature in an appliance of special

construction known as a hot air or dry wall sterilizer. The ordinary household cooking oven is as good as any special contrived appliance for the disinfection of small articles by dry heat. In the absence of a thermometer, it is usual to heat the oven to a point necessary to brown cotton and expose the object for at least one (1) hour to this heat.

(2) Liquid disinfection.

(a) Carbolic acid and phenol are useful disinfectants in five (5) percent solutions (seven (7) ounces to one (1) gallon of water) with exposure for one-half (1/2) hour. They are effective against all ordinary harmful bacteria.

(b) Sodium Hypochlorite solutions made up from commercial preparations and containing 200 ppm of chlorine are effective for the surface disinfection of equipment that has been thoroughly cleaned. Contact with the solution should not be for less than two (2) minutes.

(c) A ten (10) percent solution for Formalin is satisfactory for disinfection of all equipment. Formalin does not attack copper, nickel, zinc, or other metal substances.

(d) A seventy (70) percent solution of alcohol is an effective disinfectant for cleaning equipment.

(e) Instruments are to be disinfected by boiling water and should be boiled at least fifteen (15) minutes. (One (1) percent alkaline substance, such as carbonate of soda, will prevent rusting or injury to the cutting edge of bright steel instruments.)

(f) Steam sterilization at fifteen (15) pounds pressure at 248 degrees Fahrenheit for thirty (30) minutes is an effective means of sterilization. Steaming steam has the same disinfecting power as boiling water and exposure for one-half (1/2) hour to steaming steam is sufficient for most purposes.]

FRANCIS L. SIMPSON, Chair

APPROVED BY AGENCY: January 13, 2014

FILED WITH LRC: January 14, 2014 at 8 a.m.

CONTACT PERSON: Francis L. Simpson, Board Chair, Kentucky Board of Barbering, 9114 Leesgate Road Suite 6, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-7149.

## GENERAL GOVERNMENT

### Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

(As Amended at ARRS, June 10, 2014)

#### 201 KAR 18:192. Continuing professional development for professional land surveyors.

RELATES TO: KRS 322.180(3), 322.190, 322.270, 322.290(15)

STATUTORY AUTHORITY: KRS 322.290(4), (15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(15) requires the board to adopt a program of continuing education for professional land surveyors. This administrative regulation implements the continuing professional development program mandated by KRS 322.290(15) for professional land surveyors.

Section 1. Definitions. (1) "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering by taking and passing a university course or attending a seminar.

(2) "Continuing professional development" or "CPD" means participation in activities, beyond the basic educational requirements, that:

(a) Provide specific content planned and evaluated to improve the land surveyor's professional competence;

(b) Encourage acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the professional land surveyor's critical inquiry and balanced judgment;

(d) Raise the ethical standards within the professional community; and

(e) Meet the requirements established by this administrative regulation.

(3) "CPDC" means the Continuing Professional Development Committee.

(4) "Professional development hour" ~~[or "PDH"]~~ means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

(5) "Provider" means a person, school, association, company, corporation, or group who has developed a CPD activity and participates directly in the presentation.

(6) "Sponsor" means a group, organization, or professional society, offering activities by providers.

## Section 2. Continuing Professional Development Committee.

(1) The chair of the State Board of Licensure for Professional Engineers and Land Surveyors shall appoint a Continuing Professional Development Committee and name its chair.

(2) The CPDC shall consist of ~~five (5)~~~~[three (3)]~~ board of licensure members of which at least ~~three (3)~~~~[two (2)]~~ are professional land surveyors.

(3) Work of the CPDC shall be considered work of the board, and compensation shall be given as provided by KRS 322.270.

(4) The CPDC shall hold regular meetings, and a record of its action shall be maintained.

(5) The CPDC may rule on all matters concerning continuing professional development for professional land surveyors.

(a) In order to be binding, a decision~~[Decisions]~~ of the CPDC shall be ratified by the board.

(b) A licensee who disagrees with a decision of the CPDC may direct his or her concerns to the board for consideration at a subsequent meeting of the board.

Section 3. Program Structure. (1) Except as provided by Section 6(1) and (2) of this administrative regulation and subsection (3) of this section~~[Sections 3(3), 6(1), and 6(2) of this administrative regulation]~~, a professional land surveyor shall complete and report to the board a minimum of eight (8) professional development hours for each calendar year, for a total of a minimum of sixteen (16) professional development hours for each reporting period.

(2) The requirement for professional development hours shall include a four (4) hour~~[board-sponsored]~~ course, pre-approved by the CPDC, in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct, taken once every four (4) years. In the year that this course is taken, it shall count as four (4) of the required eight (8) hours.

(3) A maximum of four (4) hours in excess of the sixteen (16) professional development hours required to be earned in a reporting period may be carried forward to the next reporting period.

(4) Failure to earn the sixteen (16) professional development hours per reporting period shall make the licensee ineligible for licensure renewal.

Section 4. Criteria for Professional Development. (1) Professional development hours may be earned by successful completion of [the following activities subject to approval by the CPDC and board].

- (a) College or university courses;
- (b) Seminars;
- (c) Tutorials;
- (d) In-house programs sponsored by corporations or other organizations;
- (e) Correspondence courses;
- (f) Televised or videotaped courses;
- (g) Distance learning courses;
- (h) Teaching or instructing courses, programs, or items specified in paragraphs (a) through (g) of this subsection.

1.[;] This credit may be claimed at twice the number of hours permitted participants.

2.[, except] The credit shall not be claimed more than once for teaching or instructing the same or substantially similar course,

program, or item;

(i) Making or attending approved presentations at technical or professional meetings; or

(j) Publication of papers, articles, or books related to the practice of land surveying.

(2) Activities described in subsection (1) of this section shall:

(a) Be relevant to the practice of land surveying;

(b) Contain technical, ethical, or managerial subjects;

(c) Be an organized program of learning;

(d) Be conducted by individuals with education, training, or expertise;

(e) Be offered for the number of professional development hours recommended by the program author, subject ~~[however,]~~to review~~[;]~~ and acceptance or adjustment~~[;]~~ by the CPDC; and

(f) Not include:

1. In-service training;

2.[;] Orientation to specific institutional policies and practices;

or

3.[, or] Time used to sell or advertise a product.

(3) CPD activities shall earn credit only if substantially different from a course for which credit was claimed or granted in the current calendar year or previous two (2) calendar years.

(4) Professional development hours shall be converted as established in paragraphs (a) through (c) of this subsection.~~[follows:]~~

(a) One (1) university semester hour shall equal fifteen (15) professional development hours.

(b) One (1) university quarter hour shall equal ten (10) professional development hours.

(c) One (1) continuing education unit shall equal ten (10) professional development hours.

Section 5. Approval of a Continuing Professional Development Activity. Activity approvals may be granted for sponsors, providers, or individual professional land surveyors.~~[as follows:]~~

(1) Approval of activities shall be~~[is]~~ valid for a specified approval period or until alteration of the activity is approved by the CPDC.

(2) Failure to notify the CPDC of a change in an activity, including a change in the instructor, may render approval of the activity null and void.

(3) Prior to approval, an activity shall not be advertised as approved for Kentucky professional land surveyors but may be advertised that the activity has been "submitted for consideration."

(4) If prior or post approval is desired, a written request for approval of the activity shall be submitted to and received by the CPDC on the Continuing Professional Development Course Approval Form at least forty-five (45) days prior to the meeting date of the CPDC at which the request will be considered.

(5) All requests for approval of an activity shall be accompanied by:

(a) A detailed outline and objectives;

(b) A time outline including registration, introductions, welcomes, breaks, and meals;

(c) Handouts or reference materials needed to evaluate the activity; and

(d) A resume for each instructor or speaker in the activity.

(6) The CPDC or board may~~[reserves the right to]~~ send a representative to monitor an activity.~~[;]~~

(a) The provider or sponsor shall waive all fees for the CPDC or board representative.~~[; and]~~

(b) Approval for the activity may be withdrawn for subsequent iterations of the activity, if significant variation is observed from the approved activity.

(7) An evaluation form shall be made available for participants at each presentation.

(8) An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board shall not present a CPD activity for credit without prior, written approval from the board.

(9) If a provider fails to obtain prior approval, a professional land surveyor may request credit for an activity by making a written request for post approval to the CPDC and including in that

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request, the items listed in subsection (5) of this section.

(10) Upon approval, an activity shall receive a CPD number, which shall be used to identify the activity.

(11) If an activity is not approved by the CPDC, the requestor shall be sent notice of nonapproval within two (2) weeks of its decision. This decision shall be presented to the board at its next meeting for **consideration of** ratification.

Section 6. Exemptions and Extensions. ~~A[The following]~~ professional land ~~surveyor[surveyors]~~ may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption **if a requirement established in this section is met.[:]**

(1) A professional land surveyor shall be exempted for the reporting period containing the calendar year in which he or she is initially licensed by the board.

(2) A professional land surveyor who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the calendar year in which the disability, illness, or extenuating circumstance occurs. The CPDC may grant an extension of time to fulfill the yearly CPD requirement for an extenuating circumstance.

(3) An exemption or extension request shall be made in writing for each calendar year, and the exemption or extension shall only be valid for that calendar year.

Section 7. Reinstatement. Before a license is reinstated by the board under 201 KAR 18:115, a former professional land surveyor shall earn the continuing professional development hours required for each year the license was revoked, suspended, or expired, up to a maximum of thirty-two (32) professional development hours.

Section 8. Reporting. (1) A professional land surveyor shall certify whether or not he or she has complied with the requirements of this administrative regulation on the Electronic License Renewal Application, available at [www.kyboels.ky.gov](http://www.kyboels.ky.gov).

(2) Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation.

Section 9. Audits. (1) Compliance with the annual CPD requirements shall be determined through an audit process.

(2) Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board.

(3) Individuals selected for audit shall within thirty (30) days of the board's request, provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include:

(a) Verification records in the form of transcripts, completion certificates, or other documents supporting evidence of participation; or

(b) Information regarding seminar or course content, instructors, and sponsoring organizations.

(4) Individual licensees shall maintain verification records and documentation for audit purposes for the current reporting period and **at least** the two (2) previous reporting periods.

(5) If continuing professional development credit is disallowed, a professional land surveyor shall have 180 calendar days after notification to substantiate the original claim or earn other credit to meet the requirement.

(6) Failure to comply with the CPD requirements shall be considered a violation of KRS 322.180(3) subjecting the professional land surveyor to disciplinary action.

(7) An audit resulting in a determination of noncompliance shall subject the professional land surveyor to an automatic audit the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.

(8) A professional land surveyor who is under investigation pursuant to KRS 322.190 **shall be subject[may be subjected]** to the audit requirements of this section.

Section 10. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) "Continuing Professional Development Course Approval Form", November 1999, State Board of Licensure for Professional Engineers and Land Surveyors; and

(b) "Electronic License Renewal Application", 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at 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: April 10, 2014

FILED WITH LRC: April 11, 2014 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.

### GENERAL GOVERNMENT CABINET Board of Nursing

(As Amended at ARRS, June 10, 2014)

**201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements[, program requirements, recognition of a national certifying organization].**

RELATES TO: KRS 218A.205(3)(g), (7), 314.011, 314.042, 314.091, 314.103, 314.161, 314.470

STATUTORY AUTHORITY: KRS 218A.205(3)(g), (7), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(g) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(7) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. 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. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. 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 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 (2)(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) 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.

(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, 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 find/determine if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

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 population focus as 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 Association~~Academy~~ of Nurse Practitioners; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his or her 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 Licensure Renewal Application: 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) ~~1.~~ 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;

**2. The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board;**

(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.

**(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.**

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)1. 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 prior to its expiration date after a request by the board shall have the APRN license voided. This action shall not be considered to be a disciplinary action.

2. 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, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence that the certification had not lapsed, then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation[6(3)(a)2]. A license may be issued prior to receipt of the FBI report.

(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 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 or herself 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 or her 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 or she 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 established[set] in KRS 314.091.

Section 12. Dual designations. (1) An advanced practice registered nurse who wishes to practice in more than one (1) designation shall complete an approved organized postbasic program of study and clinical experience for each[in-the] desired designation in compliance with the educational requirements established[set forth] in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for[in] each[additional] designation.

(2) To apply for licensure for more than one (1) designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(l).

(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a designation[one (1) of the designations], then that designation shall be voided. The license shall not be voided if so long as the other designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation[that section] shall apply to the voided designation.

(5) Designations shall be the[are] Nurse Anesthetist, Nurse Midwife, Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

SALLY BAXTER, President

APPROVED BY AGENCY: April 10, 2014

FILED WITH LRC: April 11, 2014 at 4 p.m.

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**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, June 10, 2014)**

**201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.**

RELATES TO: KRS 218A.205(3)(a), 314.011(7), 314.042, 314.193(2), **314.396**

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) requires the Board of Nursing to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances. KRS 314.131(1) authorizes the board~~[of Nursing]~~ to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042~~(10) [(9)]~~.

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in~~[the following]~~ scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be[are] adopted:

~~(a) [for each specialty area: (1)]~~ Scope and Standards of Psychiatric-Mental Health Nursing Practice;

~~(b) [(2)]~~ Nursing: Scope and Standards of Practice;

~~(c) Standards for Office Based Anesthesia Practice[(3) Scope and Standards for Nurse Anesthesia Practice];~~

~~(d) [(4)]~~ Standards for Nurse Anesthesia Practice;

~~(e) Scope of Nurse Anesthesia Practice[Office-based~~

Anesthesia Practice];

(f)(5) Standards for the Practice of Midwifery;

(g)(6) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(h)(7) Pediatric Nursing: Scope and Standards of Practice;

(i)(8) Standards of Practice for Nurse Practitioners;

(j)(9) Scope of Practice for Nurse Practitioners;

(k) AACN(40) Scope and Standards[of Practice] for[the] Acute Care Nurse Practitioner Practice;

(l)(41) Neonatal Nursing: Scope and Standards of Practice;

(m) AACN(42) Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice; and

(n)(43) Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice[Advanced Practice Nursing in Oncology].

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(5).

Section 6. (1) A CAPA-NS and a CAPA-CS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse. [An advanced practice registered nurse shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.]

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS).

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the Notification to Discontinue the CAPA-NS After Four Years.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(9)(a), the APRN shall file with the board the "[Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)]".

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of each[the] registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of a[the] DEA Controlled Substance Registration Certificate number shall be reported in writing to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except when a CAPA-NS has been discontinued pursuant to KRS 314.042(9).

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the

requirements established by 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances.  
(1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance other than a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus.

(2) This section shall not apply to:

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

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

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescribing pursuant to subsection (1) of this section if the prescribing:

a. Is done as a substitute for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescribing pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. Administering or prescribing controlled substances to prisoners in a state, county, or municipal correctional facility;

10. Prescribing a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That has been classified as a Schedule V controlled substance.

(3) The APRN shall, prior to initially prescribing a controlled substance for a medical complaint for a patient:

(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient;  
 (c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall/should be discontinued when the condition requiring its use has resolved; and

3. Document that the discussion occurred and that the patient consented to the treatment.

(4) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(5) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(6) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance.

(7) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(8) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen or further random drug screens if the APRN:

(a) Finds/Deems a drug screen to be clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(9) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section.

(10) If prescribing a controlled substance for a patient younger than sixteen (16) years of age, the APRN shall obtain and review an initial KASPER report. If prescribing a controlled substance for an individual sixteen (16) years of age or older, the requirements of this section shall apply.

(11) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation as specified in subsection (2) of this section, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence and document that the discussion occurred and that the patient consented to the treatment.

Section 10. Prescribing Standards for Controlled Substances from Schedule II and Schedule III Containing Hydrocodone. (1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance from Schedule II or Schedule III controlled substance containing hydrocodone.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus.

(2) This section shall not apply to:

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

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

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescribing pursuant to subsection (1) of this section if the prescribing or dispensing:

a. Is done as a substitute for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescribing pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health.

(3) Prior to the initial prescribing of a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to a human patient, an APRN shall:

(a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;

(b) Query the electronic monitoring system established in KRS 218A.202 for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;

(c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(e) Obtain written consent for the treatment.

(4)(a) An APRN prescribing an additional amount of a

Schedule II controlled substance or Schedule III controlled substance containing hydrocodone for the same medical complaint and related symptoms shall:

1. Review the plan of care at reasonable intervals based on the patient's individual circumstances and course of treatment;
2. Provide to the patient any new information about the treatment; and
3. Modify or terminate the treatment as appropriate.

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

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

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

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

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

(a) "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2007 Edition, American Nurses' Association;

(b) "Nursing: Scope and Standards of Practice", 2010 Edition, American Nurses' Association;

(c) "Standards for Office[-] Based Anesthesia Practice", 2013[2014] Edition, American Association of Nurse Anesthetists;

(d) "[Scope and]Standards for Nurse Anesthesia Practice", 2013[2014] Edition, American Association of Nurse Anesthetists;

(e) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(f) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse-midwives;

(g)[(f)] "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2008 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;

(h)[(g)] "Pediatric Nursing: Scope and Standards of Practice", 2008 Edition,

National Association of Pediatric Nurse Practitioners;

(i)[(h)] "Standards of Practice for Nurse Practitioners", 2013[2014] Edition, American Association[Academy] of Nurse Practitioners;

(j)[(i)] "Scope of Practice for Nurse Practitioners", 2013[2014] Edition, American Association[Academy] of Nurse Practitioners;

(k)[(j)] "AACN Scope and Standards[of Practice] for[the] Acute Care Nurse Practitioner Practice", 2012[2006] Edition, American Association of Critical-Care Nurses;

(l)[(k)] "Neonatal Nursing: Scope and Standards of Practice", 2013[2004] Edition, American Nurses Association/National Association of Neonatal Nurses;

(m)[(l)] "AACN Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice", 2010 Edition, American Association of Critical-Care Nurses;

(n)[(m)] "Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice[Advanced Practice Nursing in Oncology]", 2013[2003] Edition, Oncology Nursing Society;[and]

(o)[(n)] "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for

Controlled Substances (CAPA-CS)", 6/2010, Kentucky Board of Nursing;

(p) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)", 6/2014[4/2014], Kentucky Board of Nursing; and

(q) "Notification to Discontinue the CAPA-NS After Four Years", 6/2014[4/2014], Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SALLY BAXTER, President

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**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, June 10, 2014)**

**201 KAR 20:161. Investigation and disposition of complaints.**

RELATES TO: KRS Chapter 13B, 218A.205, 314.011 ~~[(13)]~~, 314.031, 314.071(4), 314.091, 314.107, 314.470, 314.991(3)

STATUTORY AUTHORITY: KRS 218A.205, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against a licensee, holder of a multistate licensure privilege pursuant to KRS 314.470, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)(a) A complaint shall be in writing and shall be dated and fully identify the individual by name.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are found[determined] to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction or a certified copy of disciplinary action in another jurisdiction shall be considered a valid complaint.

(4) A complaint shall be investigated.

(a) If the complaint establishes[sets forth] a potential violation or the conduct falls within the statutory instances which shall[must] be investigated, the board shall send a copy of the complaint to the licensee, holder of a multistate privilege, or applicant to the address of record.

(b) A written, legible, verified response shall be filed with the board within thirty (30) days of receipt by the individual against whom the complaint has been made.

(c) The staff may request an informal conference with the individual against whom the complaint has been made.

(5)(a) A complaint shall be evaluated to find[determine] if a violation of the provisions of KRS Chapter 314 has been alleged.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6)(a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to



board members or to the public, except as provided by KRS 314.470. The board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

(7)(a) When the board receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance by an advanced practice registered nurse (APRN), it shall notify, within three (3) business days:

1. The Department of Kentucky State Police;
2. The Office of the Attorney General; and
3. The Cabinet for Health and Family Services, Office of the Inspector General.

(b) An investigation concerning a complaint filed against an APRN pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be commenced within seven (7) days of the filing of the complaint.

(c) The investigation shall be completed and a determination as to the disposition of the complaint shall be made within 120 days of the receipt of the complaint, unless an extension of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 2. Disposition of Complaints. (1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b)1. The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or

2. It may be found[determined] that there is probable cause that a violation of KRS 314.091 has occurred.

(c) In cases involving practice as a nurse on the privilege pursuant to KRS 314.470, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, Chapter 13B, and 201 KAR 20:162.

(b) Notice of the hearing and charges shall be mailed by certified mail to the address of the licensee or applicant on file with the board pursuant to KRS 314.107.

(c) Notice of the hearing and charges shall be signed by the executive director or designee.

(4) Agreed order.

(a) The board may enter into an agreement with an individual for denial, revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty, if the individual agrees to waive the right to a hearing. The terms of the agreement may include other conditions or requirements to be met by the individual, including those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms that ensure[insure] protection of public health and safety or that serve to educate or rehabilitate the individual.

(c) The agreed order, if approved by the board, shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be

resolved as directed therein.

(5) Consent decree.

(a) If an individual agrees to waive the right to a hearing, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty and other terms and conditions as listed in Section 4 of this administrative regulation against an individual who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit, multistate licensure privilege pursuant to KRS 314.470, or a current license or provisional license issued by the board;

2. Practiced as an advanced practice registered nurse in the Commonwealth of Kentucky without current licensure issued by the board prior to filing an application for licensure;

3. Practiced as an advanced practice registered nurse after expiration of the current certification granted by the appropriate national organization or agency;

4. Cured noncompliance with continuing education requirements, as established[set forth] in 201 KAR 20:215, Section 3;

5. Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the six (6) months;

6. Tested positive on a drug screen for a nonprescribed drug or illicit substance and obtained a chemical dependency evaluation that does not indicate a diagnosis of chemical dependency;

7. Failed to report a criminal conviction or disciplinary action against any professional license or credential in Kentucky or in another jurisdiction on an application;~~[or]~~

8. Committed a substandard nursing act where:

a. The continuing practice by the nurse does not pose a risk of harm to the client or another;

b. The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;

c. The nurse subsequently exhibits a conscientious approach to and accountability for his or her practice; and

d. The nurse subsequently has demonstrated the knowledge and skill to practice safely; or

9. As an advanced practice registered nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS):

a. Failed to register with KASPER;

b. Failed to report a DEA registration number to the board; or

c. Failed to notify the board of the CAPA-CS.

(b) The issuance of a consent decree shall be restricted to only those individuals described in paragraph (a) of this subsection who have not previously been issued a consent decree for the same or substantially similar violation and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license may be issued by board staff after the individual meets all requirements for licensure upon ratification of the consent decree by the board.

(d) Upon ratification by the board of the consent decree, the investigation of the specific complaint shall be terminated.

(e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(f) Consent decrees that have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing, or other organizations, unless required by law.

(6) Special standards for an Advanced Practice Registered Nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS).

(a) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any felony offense after July 20, 2012 relating to controlled substances in any state shall be permanently banned from prescribing controlled substances.

(b) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have their authority to prescribe

controlled substances suspended for at least three (3) months and ~~as~~ further restricted as established~~determined~~ by the board.

(c) The board shall mirror in time and scope any disciplinary limitation placed on an APRN licensed in Kentucky by a licensing board of another state if the disciplinary action resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances.

(d) An applicant for licensure in Kentucky as an APRN who has disciplinary action by a licensing board of another state which resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall have his or her application denied.

(e) Cases that come under KRS 314.011(21)(c) shall not be considered convictions for the purpose of this subsection.

Section 3. The executive director or designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

(1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform;[-]

(2) Requiring the individual have continuous, direct, on-site supervision by a licensed nurse, physician, or dentist;[-]

(3) Specifying the individual's practice setting;[-]

(4) Specifying the types of patients to whom the individual may give nursing care;[-]

(5) Requiring the individual to notify the board in writing of a change in name, address, or employment;[-]

(6) Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements established/set by the board;[-]

(7) Requiring the individual to submit to the board evidence of physical or chemical dependency, mental health evaluations, counseling, therapy, or drug screens;[-]

(8) Meeting with representatives of the board;[-]

(9) Issuing the license or temporary work permit for a specified period of time;[-]

(10) Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions;[-]

(11) Requiring the individual to be employed as a nurse for a specified period of time; or[-]

(12) Requiring the individual to complete continuing education in a specific subject.

Section 5. Anonymous complaints. Section 1(2)(a) of this administrative regulation notwithstanding, the board shall accept an anonymous complaint if so long as the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

Section 6. In accordance with federal law, the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

SALLY BAXTER, President

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GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, June 10, 2014)

**201 KAR 20:360. Evaluation of prelicensure registered nurse and practical nurse programs.**

RELATES TO: KRS 314.111

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~~regulations~~ establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered nurses or as practical nurses.

Section 1. Approval Status and Withdrawal of Approval. Approval status shall be based upon each program of nursing's performance and demonstrated compliance with 201 KAR 20:260 through 20:360. (1) Developmental approval shall be the designation granted to a proposed program of nursing to continue development of plans for program implementation.

(2) Initial approval shall be the designation granted to a new program of nursing upon admission of the first class, if provided the date of enrollment is within eighteen (18) months of board approval of the proposal. During the period of initial approval, reports documenting implementation of the proposal shall be submitted on a quarterly basis.

(3)(a) Full approval shall be the designation granted to a program of nursing that has implemented the proposal and that continues to meet the standards of 201 KAR 20:260 through 20:360.

(b) Monitoring status shall be the designation granted to a program of nursing as established/set forth in this paragraph.

1. A program of nursing that has achieved initial approval and fails to achieve the pass rate established in/set by Section 2(4) of this administrative regulation for its first graduating class shall be placed on monitoring status.

2. A program of nursing that meets the standards of 201 KAR 20:260 through 20:360 including achieving the pass rate established in/set by Section 2(4) of this administrative regulation shall be granted full approval status.

3. A program of nursing that has achieved full approval status and fails to meet one (1) or more of the standards of 201 KAR 20:260 through 20:360 including achieving the pass rate established in/set by Section 2(4) of this administrative regulation for one (1) year shall be placed on monitoring status.

4. While on monitoring status, a program of nursing shall make significant progress to correct its deficiencies.

a. If the deficiency is not achieving the pass rate established in Section 2(4) of this administrative regulation, the program administrator shall comply with Section 2(6) of this administrative regulation. The program's pass rate for the next year shall show an upward trend.

b. If the deficiency relates to any other standard, the program administrator shall analyze data to assess the factors that contribute to the deficiency and submit a plan to correct the deficiency that includes the timeframe involved. The program of nursing shall report its progress to the board.

c. The program shall submit the required documentation no later than four (4) months from the notice of deficiency.

5. A program of nursing shall not remain on monitoring status for more than three (3) consecutive years. The board may/shall conduct a yearly site visit if the program's response warrants it. The program shall either attain full approval or be moved to conditional approval status.

(4) Conditional approval shall be the designation granted to a program of nursing if one (1) or more of the standards of 201 KAR 20:260 through 20:360 have not been met following monitoring status.

(a) Following the decision of the board to place a program of

nursing on conditional approval status, the program administrator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.

(b) The program administrator shall, within thirty (30) days of the notice of ~~the~~ deficiencies being sent, file a plan of compliance to correct each of the identified deficiencies.

(c) The program administrator 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 ~~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 evaluate if/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 conditional approval status of the program of nursing shall be adjusted to probationary status~~probational~~.

(5) Probationary status~~Probational approval~~ shall be the designation granted to a program of nursing if one (1) or more standards have continued to be unmet.

(a) Following the decision of the board to place a program of nursing on probationary~~probational~~ status, the program administrator shall be notified of the continued areas of deficiency. The probationary status shall not exceed one (1) academic year. A new student shall not be admitted to a program of nursing while it is on probationary status.~~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 program administrator 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 program administrator 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 ~~shall~~may conduct quarterly~~periodic~~ evaluations of the program of nursing during the time of correction to evaluate if/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 probationary~~probational~~ status, a hearing pursuant to KRS Chapter 13B shall be conducted to evaluate/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)(a) of this section shall be continuously monitored by the board until the program closes.

Section 2. Reports and Examination Pass Rates. (1) A program of nursing that prepares graduates for licensure shall meet all standards of 201 KAR 20:260 through 20:360 in order to retain full approval. Level of approval status shall be established/determined annually by the board on the basis of the program's annual report, NCLEX examination pass rates for first time test takers, and other pertinent data.

(2) A program of nursing shall submit an annual report regarding its compliance with administrative regulations 201 KAR 20:260 through 20:360. A secondary or distance learning site shall be treated independently for purposes of compliance with the regulatory standards.

(3) To verify continued compliance with these administrative regulations, the program administrator shall submit progress

reports or periodic supplemental reports, completed/complete~~completed~~ questionnaires, surveys, and other documents as requested by the board.

(4) A program of nursing shall maintain at least an eighty-five (85) percent annual pass rate for graduates taking the NCLEX-RN or NCLEX-PN for the first time. Pass rates shall be published on a calendar year basis for those graduates who have tested within twelve (12) months of the program completion date as reported by the program of nursing~~graduation~~.

(5) A program of nursing and a secondary~~or distance~~ learning site shall be evaluated individually concerning licensure examination results.

(6) If a program of nursing's pass rate for first time test takers is less than eighty-five (85) percent for a calendar year, the program administrator shall submit a self study report that evaluates factors that contributed to the graduates' performance on the NCLEX examination and a description of the corrective measures to be implemented.

Section 3. Factors That May Jeopardize Program Approval Status. Approval status may change for any of the following reasons:

(1) Deficiencies in compliance with 201 KAR 20:260 through 20:360;

(2) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives, ~~if~~outcomes, or policies;

(3) Continual failure to submit records or reports to the board within the designated time frame;

(4) Failure to provide sufficient clinical learning opportunities for students as described in 201 KAR 20:320, Section 2(7)(b) and (c)~~to achieve stated objectives/outcomes~~;

(5) Failure to comply with requirements of the board~~or to respond to recommendations of the board~~ within the specified time;

(6) Failure to maintain the pass rate on the licensure examination for first time test takers as established in/set by Section 2(4) of this administrative regulation; or

(7) Withdrawal of accreditation by a national nursing accrediting body recognized by the United States Department of Education.

Section 4. Program Evaluation. (1) The faculty shall engage in an evidence~~a research~~ based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation plan that is submitted to the board.

(2) The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregate~~aggregation~~ analysis, and trending of data.

(3) The evaluation plan shall provide evidence that the outcomes of the assessment process are used to improve the quality and strength of the program.

(4) The evaluation plan shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

(a) Organization and administration of the program of nursing;

(b) Curriculum;

(c) Resources, facilities, and services;

(d) Teaching and learning methods including distance education;

(e) Faculty performance;

(f) Student achievement of program outcomes;

(g) Graduation rates;

(h) Licensure examination pass rates;

(i) Employment rates of graduates; and

(j) Clinical resources.

(5) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure~~insure~~ that the distance education program is substantially comparable to a campus based program.

Section 5. Voluntary Closure of a Program. (1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards[for approval] until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following[after] the transfer of students to other approved programs.

1. The program shall continue to meet the standards[for approval] until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to the board for safekeeping.

1. The transcript of the student or graduate shall identify the date on which the program closed.

2. The board shall be consulted about the disposition of all other program records.

Section 6. Change in Ownership or Organization of the Governing institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure[insure] adherence by the program of nursing to 201 KAR 20:260 through 20:360.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

SALLY BAXTER, President

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**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, June 10, 2014)**

**201 KAR 20:370. Applications for licensure.**

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.470

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to

carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the[appropriate] completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, ["Application for Licensure"];]

(b) For RN or LPN Renewal, ["Annual Licensure Renewal Application: RN or LPN"];]

(c) For licensure or reinstatement as an advanced practice registered nurse, ["Application for Licensure as an Advanced Practice Registered Nurse"];]

(d) For renewal as an RN and an APRN, ["Annual Licensure Renewal Application: RN and APRN"];]

(e) For licensure as an RN and as an APRN, ["Application for RN and APRN Licensure"];]

(f) For retired licensure status, ["Application for Retired Status"];]

(g) For APRN renewal with an RN Compact license, ["Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)"]; or

(h) In addition to any other renewal form, for APRN renewal, ["APRN Practice Data"];]

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of license.

Section 3. 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 the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 6/2014/2/2014/6/2014, Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 6/2014/2/2014/6/2014, Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 6/2014/2/2014/6/2014, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 6/2014/2/2014/6/2014, Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 6/2014/2/2014/6/2014, Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 6/2014/2/2014/6/2014, Kentucky Board of Nursing; and

(h) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: February 21, 2014

FILED WITH LRC: April 11, 2014 at 4 p.m.

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**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, June 10, 2014)**

**201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.**

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.470, 403.707, 421.500-421.575/421.550]

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application. (1) On the form ["Application for Initial or Continued SANE Course Approval"], the applicant for approval of a SANE course shall submit evidence to the board of completion of the requirements for course approval

that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;

(d) Course completion requirements;

(e) Tentative course presentation dates;

(f) Records maintenance policy; and

(g) Copy of certificate of course completion form.

(2) [(4)] Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.470, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(3) [(2)] Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) [(3)] Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees; [f.]

(b) Course outcomes, which [The outcomes] shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner; [f.]

(c) Unit objectives for an individual, which [Individual unit objectives] shall be stated in operational or behavioral terms with supportive content identified; [f.]

(d) Content, which [The content] shall be described in detailed outline format with corresponding lesson plans and time frame, and which [The content] shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes; [f.]

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3 of this paragraph; and

b. The clinical practice experience required by subparagraph 2 of this paragraph.

2. Clinical practice. The clinical portion of the course shall be a minimum of sixty (60) hours and shall include:

a. [Supervised] Detailed genital and anal inspection, a minimum of sixteen (16) speculum examinations [examination], visualization techniques, and use of equipment supervised by a physician, a physician's assistant, an advanced practice registered nurse, or a sexual assault nurse examiner [SANE] – twenty-six (26) hours; [f.]

b. [Supervised] Mock sexual assault history taking and examination techniques with evaluation supervised by a physician, a physician's assistant, an advanced practice registered nurse, or a sexual assault nurse examiner [SANE] – ten (10) hours; [f.]

c. Observing relevant civil or criminal trials, meeting with the Commonwealth Attorney, or similar legal experience - sixteen (16) hours; [f.]

d. Meeting with a rape crisis victim advocate or mental health professional with expertise in the treatment of a sexually assaulted individual [sexual assault individuals] – four (4) hours; and [f.]

e. Meeting with members of law enforcement - four (4) hours.

3. The didactic portion of the course shall include instruction in the following topics related to forensic evaluation of an individual [individuals] reporting sexual assault:

a. The role and responsibilities of a sexual assault nurse examiner, health care professional, rape crisis, law enforcement, and judicial system personnel;

b. Application of the statewide medical protocol relating to the forensic and medical examination of an individual [individuals] reporting sexual assault pursuant to KRS 216B.400(2);

c. Principles and techniques of evidence identification, collection, evaluation, preservation, and chain of custody;

d. Assessment of injuries, including injuries of forensic significance;

e. Physician consultation and referral;

- f. Medicolegal documentation;
  - g. Victim's bill of rights, KRS 421.500 through ~~421.575~~~~421.550~~;
  - h. Crisis intervention;
  - i. Dynamics of sexual assault;
  - j. Testifying in court;
  - k. Overview of the criminal justice system and related legal issues;
  - l. Available community resources including rape crisis centers;
  - m. Historical development of the forensic nursing conceptual model;
  - n. Cultural diversity and special populations;
  - o. Ethics;
  - p. Genital anatomy, normal variances, and development stages;
  - q. Health care implications and interventions; and
  - r. Developing policies and procedures.
- (e) Teaching methods with the activities of both instructor and learner ~~[shall be]~~ specified in relation to the content outline, and which ~~These activities~~ shall be congruent with stated course objectives and content, and reflect the application of adult learning principles; ~~[-]~~
- (f) Evaluation methods which ~~There~~ shall be clearly defined ~~[methods]~~ for evaluating the learner's achievement of course outcomes, and which ~~There~~ shall include ~~also~~ ~~[be]~~ a process for annual course evaluation by students, providers, faculty, and administration; and ~~[-]~~
- (g) Instructional or reference materials ~~[- All]~~ required which ~~[instructional materials and reference materials]~~ shall be identified.
- (5) ~~(4)~~ Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

- (a) Provider name, date, and site of the course; and
- (b) Participant roster, containing at ~~with~~ a minimum the name, Social Security number, and license number for each participant ~~[of names, Social Security numbers, and license numbers]~~.

(4) A participant shall receive a certificate of completion that documents the following:

- (a) Name of participant;
- (b) Title of course, date, and location;
- (c) Provider's name; and
- (d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the ~~[Application for Initial or Continued SANE Course Approval]~~.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed ~~[following procedure shall be followed:]~~ (1) A

written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.470;

(b) Have completed a board approved SANE educational course or a comparable course;

1. The board or its designee shall evaluate the applicant's course to determine its course comparability; and

2. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c) If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(4) ~~(3)~~ (d) 3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course completed by the applicant.

1. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours.

2. The course shall ~~te~~ include those topics specified in this paragraph;

(d) Complete the ~~[~~Sexual Assault Nurse Examiner Application for Credential~~]~~;

(e) Pay the fee established in 201 KAR 20:240;

(f) Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and pay the fee required by the FBI that is within six (6) months of the date of the application;

(g) Provide a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(h) Provide a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(i) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(f) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the ~~[~~SANE Renewal Application~~]~~ or ~~[~~Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)~~]~~, as applicable, and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to ~~[may]~~ reinstate the credential

by:

- (a) Submitting the Sexual Assault Nurse Examiner Application for Credential["Application for SANE Credential"];
  - (b) Paying the fee established in 201 KAR 20:240;
  - (c) Submitting evidence of earning the continuing education requirement for the number of registered nurse licensure periods since the SANE credential lapsed;
  - (d) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and paying the fee required by the FBI that is within six (6) months of the date of the application;
  - (e) Providing a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
  - (f) Providing a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
  - (g) Providing a letter of explanation that addresses each conviction, if applicable.
- (2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.
- (3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

- (1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to adoption by the board;
- (2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and
- (3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

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

- (a) "Application for Initial or Continued SANE Course Approval", 6/2014/2/2014[6/97], Kentucky Board of Nursing;
  - (b) "Sexual Assault Nurse Examiner Application for Credential", 6/2014/2/2014[6/2010], Kentucky Board of Nursing;
  - (c) "SANE Renewal Application", 6/2012, Kentucky Board of Nursing; and
  - (d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 6/2014/2/2014[6/2012], Kentucky Board of Nursing.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: February 21, 2014

FILE WITH LRC: April 11, 2014 at 4 p.m.

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**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, June 10, 2014)**

**201 KAR 20:450. Alternative program.**

RELATES TO: KRS 314.085, 314.091, 314.171, 314.470,  
STATUTORY AUTHORITY: KRS 314.131(1), (2), 314.171(3)  
NECESSITY, FUNCTION AND CONFORMITY: KRS

314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.171 authorizes the board to establish an alternative to discipline program~~[impaired nurses committee]~~ to promote early identification, intervention, treatment, and rehabilitation of nurses who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any physical or mental condition. This administrative regulation provides procedures for the implementation of an alternative program.

Section 1. Definitions. (1) "Approved treatment provider" means an alcohol or drug treatment provider that meets the standards as established~~[set-out]~~ in Section 7 of this administrative regulation.

(2) "Board" means the Board of Nursing.

(3)~~["Chemically-dependent individual" means a person whose ability to practice nursing according to acceptable and prevailing standards of care is or may be impaired by reason of alcohol or drug abuse. (4)]~~ "Program" means the Kentucky Alternative Recovery Effort for Nurses which is the alternative program operated by the board for nurses.

(4) "Substance use disorder" means the combined DSM-IV categories of substance abuse and substance dependence.

Section 2. Admission and Denial to the Program. (1) In order to gain admission to the program, an individual shall:

- (a) Be an advanced practice registered nurse, a registered nurse, or a licensed practical nurse licensed in the Commonwealth of Kentucky, a holder of a multistate licensure privilege pursuant to KRS 314.470, or an applicant for a credential issued by the board;
- (b) Request in writing participation in the program;
- (c) Admit in writing to having~~[being]~~ a substance use disorder~~[chemically-dependent individual]~~;
- (d) Agree in writing to the terms established~~[set forth]~~ in the program agreement;
- (e) Obtain a current substance use disorder~~[chemical dependency]~~ assessment, which may include a complete physical and psychosocial evaluation performed by a licensed or certified medical, mental health or psychological specialist in the field of drug, alcohol, or other substance use disorder~~[chemical dependency]~~;
- (f) Provide any evaluation and treatment information, disclosure authorizations, and releases of liability as may be requested by the program staff;
- (g) Agree to abide by the program~~[programs]~~ staff's finding~~[determination]~~ regarding employment as a nurse pending admission; and
- (h) Have attended or be enrolled in an approved treatment provider program.

(2) Admission to the program shall be denied if the applicant:

- (a) Does not meet the eligibility requirements for admission as established in~~[set by]~~ subsection (1) of this section; or
  - (b) Is not eligible for licensure in Kentucky or if the board does not grant authorization to practice under KRS 314.470 Article V(f) or 201 KAR 20:500, Section 3(2).
- (3) Admission to the program may be denied if the applicant:
- (a) Diverted scheduled substances for other than self-administration;
  - (b) Will not substantially benefit from participation in the program;
  - (c) Has a criminal conviction related to the sale or distribution of scheduled substances or legend prescription drugs; or
  - (d) Has been terminated from alternative program participation in Kentucky or any other state.
- (4) In the case of an applicant for a credential issued by the board, admission to the program shall be conditioned upon obtaining licensure in Kentucky. Failure to obtain licensure shall result in denial of admission to the program.

Section 3. Requirements for Participation in the Program. (1) A participant shall:

- (a) Enter into a program agreement; and

(b) Comply with all of the terms and conditions of the program agreement for the time period specified in the agreement.

(2) The program agreement~~[shall be updated and modified as needed to address the participant's progress in recovery and]~~ may include any of the following:

(a) A requirement that the participant undergo and successfully complete substance use disorder~~[chemical dependency]~~ treatment by an approved treatment provider;

(b) A requirement that the participant agree not to practice in any capacity in a patient care setting or area~~[one]~~ which requires licensure until approved to do so by the program;

(c) A requirement that the participant undergo and successfully complete the continuing care program recommended by the approved treatment provider and designated in the program agreement. The continuing care program may include individual or group counseling or psychotherapy;

(d) A requirement that the participant remain free of alcohol, mood-altering substances including herbal preparations, over-the-counter medications containing alcohol or mood-altering substances, and any other medication except for substances prescribed by a practitioner authorized by law to prescribe for a specific medical condition;

(e) A requirement that the participant inform all treating health care practitioners of the participant's substance use disorder~~[chemical dependency]~~ and recovery status prior to receiving a prescription for any medication, mood-altering substance, or herbal preparation;

(f) A requirement, if a participant shall~~[must]~~ take any substance prescribed or recommended by a practitioner, that the participant provide the program written documentation from the practitioner that the use of the substance does not impair the participant's ability to practice nursing in a safe and effective manner and will not interfere with the participant's recovery program provided the substance is used in accordance with the prescription or recommendation;

(g) A requirement that if the participant is prescribed, recommended, or dispensed any medication by a practitioner, the participant shall cause the practitioner to report the medication to the program. The report shall include the diagnosis, the name of the medication, the quantity prescribed, any refills or any other information about the medication requested by the program staff, and shall be submitted to the program within the time specified in the program agreement. Consultation with a physician addictionologist may be required by the program and the participant shall agree to abide by any finding~~[determination]~~ made by the physician addictionologist;

(h) A requirement that the participant cause all treatment providers and counselors to provide any reports as may be required by the program at the intervals specified in the program agreement;

(i) A requirement that the participant submit to random alcohol and drug testing when requested by the program, and that the participant comply with all requirements of the program concerning random alcohol and drug testing;

(j) A requirement that the participant attend~~[health professionals support group,]~~ twelve (12) step group meetings, or other group meetings as specified by the program agreement, and that the participant verify attendance at these meetings by signature of a group or meeting representative and submit the signatures to the program;

(k) A requirement that the participant comply with the employment and nursing practice restrictions specified by the program agreement;

(l) A requirement that the participant sign a waiver which may~~[would]~~ allow the program to communicate with the participant's treatment providers, counselors, employers, work site monitors, law enforcement officials, and~~[health professionals]~~ support group facilitators, if applicable;

(m) A requirement that the participant be responsible for paying the costs of the physical and psychosocial assessment, substance use disorder~~[chemical dependency]~~ treatment, and random alcohol and drug testing, or any other costs incurred in complying with the program agreement;

(n) A requirement that the participant submit a written personal report to the program at the intervals specified by the program agreement;

(o) A requirement that the participant meet in person with a program representative at the intervals specified by the program agreement;

(p) A requirement that the participant shall not work as a nurse in another Nurse Licensure Compact state without the permission of this state and the other state; and

(q) A requirement that the participant comply with all other terms and conditions specified in the program agreement which the program staff finds~~[determines]~~ are necessary to ensure that the participant is able to practice nursing in accordance with acceptable and prevailing standards of safe nursing care.~~[(3)(a) By participating in the alternative program, the participant waives all rights to a hearing on any underlying complaint or any decision to terminate the participant from the alternative program pursuant to Section 5 of this administrative regulation, as well as any right to appeal that decision.]~~

~~(b) The participant shall acknowledge in writing his or her understanding and consent to paragraph (a) of this subsection.]~~

Section 4. Successful Completion of the Program. (1) A participant successfully completes the program when the participant fully complies with all of the terms of the program agreement for the period as specified in the agreement.

(2) When a participant successfully completes the program, the program shall notify the participant of the successful completion in writing. Once the participant receives this written notification of successful completion of the program, the participant shall no longer be required to comply with the program agreement.

(3) A participant who successfully completes the program shall not be reported to the National Council of State Boards of Nursing's disciplinary data bank.

Section 5. Causes for Termination from the Program. A participant may be terminated from the program for the following causes:

(1) Noncompliance with any aspect of the program agreement; or

~~(2)[Receipt of information by the board which, after investigation, results in disciplinary action by the board other than a reprimand; or (3)]~~ Being unable to practice according to acceptable and prevailing standards of safe nursing care.

Section 6. Resignation From the Program. (1) A participant may resign from the program.

(2) Upon resignation, the participant shall sign an agreed order in conformity to 201 KAR 20:161, Section 2(4) voluntarily surrendering the nursing license.

Section 7. Standards for Approved Treatment Providers. In order to be an approved treatment provider, the treatment provider shall:

(1) Be:

(a) Accredited by the Joint Commission for the Accreditation of Healthcare Organizations or be state-certified and shall have operated as a substance use disorder~~[chemical dependency]~~ treatment program for a minimum of one (1) year; or

(b) A licensed or certified specialist in the field of substance use disorder~~[chemical dependency]~~ treatment as outlined in 201 KAR 20:163, Section 2(2);

(2) Provide inpatient or outpatient care;

(3) Be based on a twelve (12) step program of Alcoholics Anonymous,~~1/~~Narcotics Anonymous,~~2~~ or an equivalent support group;

(4) Provide development of an individualized treatment and aftercare program to meet the specific needs of the participant and make recommendations regarding an ongoing rehabilitation plan;

(5) Be based on an evaluation that meets the standards of 201 KAR 20:163, Section 3;

(6) Provide clearly-stated costs and fees for services, and offer fee schedules and flexibility in payment plans to accommodate



participants who are underinsured or experiencing financial difficulties;

(7) Demonstrate willingness to provide information to the alternative program regarding the status of the participant after applicable/appropriate consents to release information are obtained;

(8) Work closely with the alternative program staff to assure proper implementation and administration of policies and procedures related to the program;

(9) Maintain timely and accurate communication with program staff, including assessments, diagnosis, prognosis, discharge summary, and follow-up recommendations as well as reports on significant events which occur in treatment that are related to impairment and the ability to practice safely; and

(10) Provide written reports of progress at intervals as requested by program staff.

Section 8. An individual who is admitted to the program but does not hold a Kentucky nursing license shall pay a participation fee of fifty (50) dollars per year.

Section 9. (1) A participant in the alternative program who moves to another jurisdiction may transfer to the new jurisdiction's alternative program.

(2) If the participant is accepted into the new jurisdiction's alternative program, the participant may relinquish his or her Kentucky license pursuant to 201 KAR 20:510.

(3) The provisions of Section 6 of this administrative regulation shall not apply in this situation.

(4) If the participant relinquishes his or her Kentucky license, the alternative program in Kentucky shall cease monitoring the participant.

Sally Baxter, President

APPROVED BY AGENCY: April 10, 2014

FILED WITH LRC: April 11, 2014 at 4 p.m.

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**GENERAL GOVERNMENT CABINET  
Kentucky Board of Physical Therapy  
(As Amended at ARRS, June 10, 2014)**

**201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.**

RELATES TO: KRS 12.355, 164.772, 214.610(1), 327.050(8), (9), 327.070, 327.075

STATUTORY AUTHORITY: KRS 327.040(10), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate administrative regulations for the effectuation of the purposes of KRS Chapter 327, and 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each uneven numbered year. The fee shall be waived for renewal of license or certificate held by active duty member of Armed Forces as established/set forth in KRS 12.355;

(2) Submission of the completed Renewal or Reinstatement Application;

(3) Verification of continued competence as established/set forth in 201 KAR 22:045;

(4) Compliance/in accordance with the course requirement

in KRS 327.050(8), verification of completion of a Cabinet for Health and Family Services (CHFS)/(CHS) approved two (2) hour course on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS, pursuant to KRS 214.610(1), but not more than one (1) time every ten (10) years. The course shall be completed within the renewal biennial period that it is due; and

(5) Verification that, since the last renewal period, the credential holder has not:

(a) Been in violation of KRS 327.070;

(b) Had a professional license or credential disciplined or under current disciplinary review in this state or another jurisdiction;

(c) Had a civil claim made against the credential holder which related to the credential holder's practice of physical therapy; or

(d) Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) pursuant to/per KRS 164.772.

Section 2. Credentials not renewed by the board by March 31 of each uneven numbered year shall lapse.

Section 3. (1) A credential holder who has a credential that has lapsed [less than three (3) years] may, within three (3) years of the lapsed date, reinstate upon:

(a) [(1)] Meeting the requirements of Section 1(2), (4), and [through] (5) of this administrative regulation for the current renewal period;

(b) [(2)] Verification of having obtained within two (2) years prior to the date of submission of the completed Renewal or Reinstatement Application:

1. [(a)] Thirty (30) hours of continued competency as established/set forth in 201 KAR 22:045, Section 2(1)(a)1, 2, and 3 and (c) for a physical therapist; or

2. [(b)] Twenty (20) hours of continued competency as established/set forth in 201 KAR 22:045, Section 2(1)(b)1, 2, and 3 and (c) for a physical therapist assistant; and

(c) Submission of payment of the reinstatement fee established in 201 KAR 22:135.

(2) [(3)] Continued competency hours submitted under subsection (1)(b) [(2)] of this section for reinstatement shall satisfy the continued competency hours for the next renewal period as established/set forth in 201 KAR 22:045, Section 2(2) and (3).

[(4)] and (2) [Submission of payment of the reinstatement fee established in 201 KAR 22:135.]

Section 4. A credential holder who has a credential that has lapsed [greater than three (3) years] may, more than three (3) years of the lapsed date, reinstate upon:

(1) Meeting the requirements of Section 3 of this administrative regulation;

(2) Submission of all credentials from other jurisdictions since last renewal; and

(3) Completing the following requirements of the board if not holding a current credential from any other jurisdiction since last renewal; the board shall require the following:

(a) Submission of evidence of professional competency;

(b) An agreement to practice physical therapy under direct supervision not to exceed six (6) months;

(c) Successful completion of the board-approved examination; or

(d) Any combination of paragraphs (a) through (c) of this subsection.

Section 5. Incorporation by Reference. (1) "Renewal or Reinstatement Application", June 2012, is incorporated by reference.

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

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: April 14, 2014

FILED WITH LRC: April 15, 2014 at noon

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

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Physical Therapy  
(As Amended at ARRS, June 10, 2014)**

**201 KAR 22:160. Telehealth and telephysical therapy.**

RELATES TO: KRS 327.200

STATUTORY AUTHORITY: KRS 327.040(11), (12),  
327.200(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(12) requires the board to promulgate by administrative regulation standards of practice. KRS 327.200(1) requires a treating physical therapist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. KRS 327.200(2) requires the board to promulgate administrative regulations necessary to implement telehealth. This administrative regulation protects the health and safety of the citizens of Kentucky and establishes procedures necessary to prevent[for preventing] abuse and fraud through the use of telehealth, prevent[prevents] fee-splitting through the use of telehealth, and utilize[utilizes] telehealth in the provision of physical therapy services and in the provision of continuing education.

Section 1. Patient Identity, Communication, and Informed Consent Requirements. A credential holder using telehealth to deliver physical therapy services or who practices telephysical therapy shall, upon an initial contact with the patient:

- (1) ~~Make reasonable attempts to~~ Verify the identity of the patient;
- (2) Obtain alternative means of contacting the patient;
- (3) Provide to the patient alternative means of contacting the credential holder;
- (4) Provide contact methods of alternative communication the credential holder shall use for emergency purposes;
- (5) Not use personal identifying information in non-secure communications; and
- (6) Inform the patient and document acknowledgement of the risk and limitations of:
  - (a) The use of electronic communications in the provision of physical therapy;
  - (b) The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of physical therapy; and
  - (c) The potential disruption of electronic communication in the use of telephysical therapy.

Section 2. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using electronic communication to deliver physical therapy services or who practices telephysical therapy shall:

- (1) Be responsible for determining and documenting that telehealth is appropriate in the provision of physical therapy;
- (2) Limit the practice of telephysical therapy to the area of competence in which proficiency has been gained through education, training, and experience;
- (3) Document which physical therapy services were provided by telephysical therapy;
- (4) Follow the record-keeping requirements of 201 KAR 22:053, Section 5; and
- (5) Ensure that confidential communications obtained and stored electronically shall not[cannot] be recovered and accessed

by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 3. Compliance with State Law. A credential holder practicing telephysical therapy shall be:

- (1) Licensed to practice physical therapy where the patient is physically present or domiciled; or
- (2) Otherwise authorized by law to practice physical therapy in another jurisdiction where the patient is physically present or domiciled.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: January 16, 2014

FILED WITH LRC: February 11, 2014 at 1 p.m.

CONTACT PERSON: Scott D. Majors, Executive Director,  
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**GENERAL GOVERNMENT CABINET  
Kentucky Board of Social Work  
(As Amended at ARRS, June 10, 2014)**

**201 KAR 23:015. Temporary permission to practice.**

RELATES TO: KRS 335.080, 335.090, 335.100

STATUTORY AUTHORITY: KRS 335.070(1), (3), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1) requires the board to evaluate and approve the qualifications of applicants for licensure. KRS 335.070(3) authorizes the board to promulgate administrative regulations. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work. This administrative regulation establishes the requirements for the granting of temporary permission to engage in the practice of social work.

Section 1. (1) A temporary permit to engage in the practice of social work shall be granted, if requested, to an applicant who has completed all of the requirements for licensure except the examination and has applied for licensure under the provisions of KRS 335.080, 335.090, or 335.100.

(2) A person practicing under a temporary permit as a certified social worker shall not accumulate hours towards the supervision requirements of KRS 335.100(1)(b).

(3) A certified social worker or[workers and] licensed clinical social worker[workers] practicing clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070, Section 3(1)[, or equivalent].

(4) The request for a temporary permit shall be accompanied by a letter from the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

(5) A licensee shall not serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

(6) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face supervision per week.

(7) (a) Except as provided in paragraph (b) of this subsection, the temporary permit shall be valid until the applicant for licensure is issued or denied licensure under the provisions of KRS 335.080, 335.090, or 335.100.

(b) A[, but the] temporary permit shall not extend for more than 240 days after the temporary permit was approved[applicant has applied for licensure].

(8) Any changes of the terms of the temporary permit shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice[More than one (1) temporary permit shall not be granted for any applicant for licensure].

SHARON SANDERS, Chair

APPROVED BY AGENCY: March 14, 2014

FILED WITH LRC: March 14, 2014 at 4 p.m.

CONTACT PERSON: Margaret Hazlette, Executive Director,  
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**GENERAL GOVERNMENT CABINET**  
**Kentucky Board of Licensure for Professional Art Therapists**  
**(As Amended at ARRS, June 10, 2014)**

**201 KAR 34:060. Qualifying experience under supervision.**

RELATES TO: KRS 309.130(3), 309.1305(5), 309.1315,  
309.133, 309.134

STATUTORY AUTHORITY: KRS 309.1315(1), (4), (12), (16),  
309.134(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(1), (12), and (16) require the board to promulgate administrative regulations necessary to carry out the provisions of KRS 309.130 to 309.1399, to approve the level of supervision for a person seeking licensure, and to establish requirements for supervision and qualifications of supervisors. KRS 309.1315(4) requires the board to process applications. KRS 309.134(1)(b) requires an applicant to obtain a board-approved supervisor of record. This administrative regulation establishes the requirements for supervision and the qualifications necessary to be a supervisor and a supervisor of record.

Section 1. Definitions. (1) "Board-approved qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.

(2) "Direct client contact hours" means hours spent providing art therapy services to a client with[The] services[are] performed in an individual, couple, family, or group format.

(3) "Face-to-face supervision" means supervision that is either:  
(a) Interactive, simultaneous video and audio media if at least two (2) direct meetings per month are conducted[that is] in person with[where] the supervisor and supervisee [are] physically present in the same room; [exist] or

(b) All the meetings take place with the supervisor and supervisee[individuals-being] physically present in the same room.

(4) "Group supervision" means the supervision of a group off[that does not exceed] six (6) individuals or less.

(5) "Individual supervision" means case consultation between the supervisor and the supervisee that is restricted to the supervisee's cases.

(6) "Supervisee" means a licensed professional art therapy associate who works with clients under supervision.

(7) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee to meet the requirements of KRS 309.134.

(8) "Supervisor" means a board-approved licensed professional art therapist or qualified mental health professional who controls, oversees, guides, and takes responsibility for the practice of professional art therapy of a supervisee in accordance with this administrative regulation.

(9) "Supervisor of record" means an approved licensed professional art therapist in the Commonwealth of Kentucky who meets the requirements established in Section 2 of this administrative regulation.

Section 2. Requirements to be a board-approved supervisor.

(1) A licensed professional art therapist that is a supervisor shall have a minimum of four (4) years of experience in the practice of art therapy. A board-approved[An-approved] qualified mental health professional that is a supervisor shall have a minimum of four (4) years of independent experience.

(2) A supervisor shall not have:

(a) An unresolved citation filed against him or her by the board;  
(b) A disciplinary action that resulted in the suspension or probation of a license; or

(c) A previous or existing personal relationship with a supervisee.

(3) In order to obtain board-approved supervisor status, a supervisor shall complete three (3) hours of board-approved supervisor training which shall be completed within one (1)[a] year of the supervisor[supervisor's] seeking board approval.

(a) The board-approved supervisor training shall cover:

1. Kentucky law governing the practice of art therapy contained in[.] both KRS Chapter 309 and 201 KAR Chapter 34, theories of supervision, ethical issues involved in supervision, and supervisor responsibilities; and

2. Documentation in a supervision log that includes supervision times as well as the treatment and planning that is employed.

(b) Supervisor training shall be an onsite or online course which shall be conducted by an instructor who is a licensed professional art therapist or board-approved qualified mental health professional and who has demonstrated proficiency in the curriculum established in this administrative regulation.

(c) To maintain board-approved supervisor status, a supervisor shall retake the board-approved supervisor training every three (3) years.

(4) Supervisory experience obtained in Kentucky with a supervisor who has not completed the course required by subsection (3) of this section shall not be accepted by the board.

(5) A licensed professional art therapist [for a board-approved mental health professional] shall not serve as a supervisor of record for more than six (6) licensed professional art therapist associates with whom he or she has a supervisory agreement[supervision contract] at the same time.

(6)(a) An applicant receiving supervision outside of Kentucky shall demonstrate that his or her supervisor has been independently licensed in a clinical practice for four (4) years following licensure as a professional art therapist or with[a] one (1) of the groups approved by the board as of the time of the supervision.

(b) The out of state supervisor shall have the equivalent qualifications to those prescribed for a supervisor established in this administrative regulation.

(7) To be recognized as a supervisor, a licensed professional art therapist or board-approved qualified mental health professional who meets the requirements of this section shall request in writing to become a supervisor in Kentucky and provide a copy of the supervisory training certificate.

Section 3. Supervisory Agreement for Licensed Professional Art Therapist Associate Supervision. (1) Prior to beginning supervision, a supervisee shall enter into a supervisory[an] agreement [for supervision] with a supervisor of record and submit it to the board for approval.

(2) At a minimum, the supervisory agreement shall address the following [matters]:

(a) The name and license number of the supervisee;

(b) The name and license number of the supervisor of record;

(c) The name and license number of other supervisors;

(d) The agency, institution, or organization where the experience will be received;

(e) A detailed description of the nature of the practice including:

1. The type of clients who will be seen;

2. An accurate assessment of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment which meets currently recognized standards in the profession;

3. The therapies and treatment modalities that will be used including the prospective length of treatment;

4. Problems that will be treated;

5. The nature, duration, and frequency of the supervision, including the:

a. Number of hours of supervision per week;

b. Amount of group and individual supervision; [and]

c. Ethical considerations for the use of internet, social networking, and electronic media for the transmission of case information; and

**d. Number of hours of face-to-face supervision, including how that supervision shall be obtained;**

(f) The conditions or procedures for termination of the supervision;

(g) A statement that:

1. The supervisor of record understands that he or she shall be held accountable to the board for the care given to the supervisee's clients; and

2. The supervisor of record and other supervisors **shall** meet the criteria established in Section 2 of this administrative regulation;

(h) An individualized job description that:

1. Describes in detail how the requirements of this administrative regulation will be met; and

2. Is on office or agency letterhead **that[and]** is signed by the executive director, the agency director, or the individual who heads the office; and

(i) A copy of each supervisor's supervisory training certificate **that is** attached to the **supervisory agreement[contract for licensed professional art therapy supervision]**.

(3) Changes to that portion of the supervisory agreement that describes the nature of the practice and experience that the supervisee is to obtain as required by this administrative regulation shall be submitted to the board for approval.

(4) If the supervisee changes his or her supervisor of record, a new **supervisory agreement[Contract for Professional Art Therapist Associate Supervision]** shall be submitted to the board for approval.

(5) A supervisee shall notify the board by letter of changes of supervisors who are not the supervisor of record, but who are identified in the **supervisory agreement[Contract for Professional Art Therapist Associate Supervision]** and attach a copy of the supervisor's supervisory training certificate.

Section 4. Notice to Client. A licensed professional art therapy associate practicing under the supervision of a licensed professional art therapist or a **board-approved** qualified mental health professional shall notify in writing each client of the associate or by posting a notification which shall include:

(1) The name, office address, telephone number, and license number of the supervisor of record; and

(2) A statement that the supervisee is licensed by the board.

Section 5. Experience under supervision. (1) Experience under supervision shall consist of:

(a) At least sixty (60) percent of the required experience in direct client contact hours;

(b) Direct responsibility for a specific individual or group of clients; and

(c) Broad exposure and opportunity for skill development with a variety of dysfunctions, diagnoses, acuity levels, and population groups.

(2) **The board may for extenuating circumstances beyond the supervisor's or supervisee's control, such as in cases of disability, illness, or undue hardship, grant a limited waiver from the requirement of two (2) monthly direct in person meetings to satisfy the face-to-face supervision requirements upon written request by the supervisor and supervisee[A minimum of nine (9) hours per year of continuing education shall be accrued by each person holding an associate license].**

Section 6. Supervision Requirements. (1) A minimum of seventy-five (75) percent of **the** supervision hours shall be provided by a licensed professional art therapist who has been recognized as a board-approved supervisor under Section 2 of this administrative regulation.

(2) A board-approved **qualified** mental health professional who has been recognized as a board-approved supervisor under Section 2 of this administrative regulation may provide up to a

maximum of twenty-five (25) percent of supervision hours.

(3) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The accurate assessment of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of art therapy; and

(e) The development and use of the professional self in the therapeutic process.

(4)(a) Supervision shall total a minimum of 100 hours and 1,000 client contact hours which shall include individual supervision of no less than one (1) hour for every ten (10) hours of client contact.

(b) A supervisee shall not obtain more than twenty-five (25) hours of the required supervision by group supervision.

(c) Group supervision shall not be permitted in groups of more than six (6) supervisees.

Section 7. Documentation Requirements. (1) The board-approved supervisor and licensed professional art therapy associate shall maintain copies of the completed supervision log, which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) Documentation shall identify modality of supervision.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional art therapist associate is without supervision, the associate may continue working **for** up to ninety (90) calendar days under the supervision of another clinical supervisor while **a[an appropriate]** board-approved supervisor is sought and a new **supervisory agreement[supervision contract]** is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2) The supervisee shall notify the board of these **extenuating** circumstances **within ten (10) days of the occurrence** and shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision. The written plan shall include:

(a) The name of the temporary supervisor;

(b) Verification of the credential held by the temporary supervisor;

(c) An **email** address **and a postal address** for the temporary supervisor **and the supervisee**; and

(d) A telephone number for the temporary supervisor.

Section 9. Evaluation by the Board. The period of supervised experience required by KRS 309.133(1) and 309.134 shall be evaluated by the board according to one (1) of the following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervisory agreement required by Section 3 of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) Documentation for an applicant for licensure as a licensed professional art therapist that establishes that an individual has been licensed in another jurisdiction at the clinical level and has been engaged in the active practice of professional art therapy work in that jurisdiction for at least five (5) years immediately preceding the filing of an application for licensure **as a professional art therapist** with the board **pursuant to 201 KAR 34:025** shall **be deemed to** meet the requirement for supervision **established[set forth]** in this administrative regulation.

MARYBETH ORTON, Chair

APPROVED BY AGENCY: March 14, 2014

FILED WITH LRC: March 14, 2014 at noon

CONTACT PERSON: Lucie Duvall, Board Administrator,  
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**GENERAL GOVERNMENT CABINET**  
**Kentucky Applied Behavior Analysis Licensing Board**  
**(As Amended at ARRS, June 10, 2014)**

**201 KAR 43:100. Telehealth and telepractice.**

RELATES TO: KRS 319C.140(2)

STATUTORY AUTHORITY: KRS 319C.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.140(2) requires the board to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. **This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.**

Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth. (1) A licensee who provides applied behavior analytic services via telehealth shall:

(a) Maintain competence with the technologies utilized, including ~~[but not limited to]~~ understanding and adequately addressing the actual and potential impact of those technologies on clients, supervisees, or other professionals;

(b) Maintain compliance with KRS Chapter 319C, 201 KAR Chapter 43, and all other applicable federal, state, and local laws;

(c) At the onset of the delivery of care via telehealth, identify appropriate emergency response contacts local to the client ~~so[such]~~ that those contacts **shall be[are]** readily accessible in the event of an emergency;

(d) Protect and maintain the confidentiality of data and information in accordance with all applicable federal, state, and local laws ~~[including but not limited to HIPAA]~~; and

(e) Dispose of data and information only in accordance with federal, state, and local law and in a manner that protects the data and information from unauthorized access.

(2) Applied behavior analysis with a client shall not commence via telehealth.

**(a)** An initial, in-person meeting for the licensee and client who prospectively utilize telehealth shall occur.

**(b)** The licensee shall, at the initial, in-person meeting with the client:

**1.[(a)]** Make reasonable attempts to verify the identity of the client;

**2.[(b)]** Obtain alternative means of contacting the client other than electronically;

**3.[(c)]** Provide to the client alternative means of contacting the licensee other than electronically;

**4.[(d)]** Document if the client has the necessary knowledge and skills to benefit from the type of telehealth to be provided by the licensee; and

**5.[(e)]** Inform the client in writing about and obtain the client's informed written consent regarding:

**a.[4.]** The limitations of using technology in the provision of applied behavior analytic services;

**b.[2.]** Potential risks to confidentiality of information due to technology in the provision of applied behavior analytic services;

**c.[3.]** Potential risks of disruption in the use of telehealth technology;

**d.[4.]** When and how the licensee will respond to routine electronic messages;

**e.[5.]** In what circumstances the licensee will use alternative communications for emergency purposes;

**f.[6.]** Who else may have access to client communications with the licensee;

**g.[7.]** How communications can be directed to a specific

licensee;

**h.[8.]** How the licensee stores electronic communications from the client; and

**i.[9.]** That the licensee **or client** may elect to discontinue the provision of services through telehealth at any time.

Section 2. Jurisdictional Considerations. (1) A person providing applied behavior analytic services via telehealth to a person physically located in Kentucky ~~while[at the time the]~~ services are provided shall be licensed by the board.

(2) A person providing applied behavior analytic services via telehealth from a physical location in Kentucky shall be licensed by the board ~~and[. This person]~~ may be subject to licensure requirements in other states where the services are received by the client.

Section 3. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services **shall not**:

(1) ~~[Shall not]~~ Engage in false, misleading, or deceptive advertising; and

(2) ~~[Shall not]~~ Split fees.

SHELLI DESKINS, Chair

APPROVED BY AGENCY: March 28, 2014

FILED WITH LRC: April 1, 2014 at 2 p.m.

CONTACT PERSON: Lindsey Lane, Board Administrator,  
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**TOURISM, ARTS AND HERITAGE CABINET**  
**Kentucky Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, June 10, 2014)**

**301 KAR 2:300. Black bear seasons and requirements.**

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations. This administrative regulation establishes bear hunting and chasing seasons; bear hunting areas; legal methods of take; and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Bear" means the species *Ursus americanus*.

(7) "Bear chase area" means a designated area within the Bear Zone where hunters may use dogs to chase bears.

(8) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(9) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) black bear of either sex.

(10) "Bear zone" means the following Kentucky counties: Bell, Clay, Floyd, Harlan, Knott, Knox, Laurel, Leslie, Letcher, Martin,

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McCreary, Perry, Pike, Pulaski, Wayne, and Whitley.

(11) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(12) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

~~(14) "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull from the trigger. (15) "Junior bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.~~

~~(15) [(46)] "License year" means the period from March 1 through the following last day of February.~~

~~(16) [(47)] "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.~~

~~(17) [(48)] "Muzzle-loading firearm" means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.~~

~~(18) [(49)] "Shotshell" means ammunition discharged from a shotgun. (20) "Youth" means a person under the age of sixteen (16) by the day of the hunt.~~

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) A person shall first obtain the appropriate bear chase permit from the department before chasing bears.

(2) A bear chase permit or junior bear chase permit shall only be purchased by a resident of Kentucky.

(3) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid bear chase permit while using dogs to chase bears.

(4) A bear chase permit shall [permits may] be purchased on the department's Web site at fw.ky.gov from July 1 through December [August] 31.

(5) A person shall not:

(a) Kill or intentionally injure a bear during a chase-only season;

(b) Chase a bear except during daylight hours while a chase season is open;

(c) Chase a bear from a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

(6) Individual hunt groups shall include no more than five (5) people and eight (8) dogs, except:

(a) A hunt party may total seven (7) people if two (2) additional youths accompany the party;

(b) The two (2) additional youths do not have to be drawn as part of a quota hunt party; and

(c) The two (2) additional youths shall not be allowed to harvest a bear.

(7) Any dog transported in a motorized vehicle by members of a hunt group shall be considered a member of that hunt group.

(8) The department shall supply a Bear Chase Survey to each person purchasing a bear chase permit.

(9) A person who purchases a bear chase permit shall submit to the department a completed Bear Chase Survey by the last day of January following each bear season.

(10) A person who fails to submit a Bear Chase Survey shall be ineligible to purchase a bear chase permit for the following year's chase seasons.

(11) A person shall only use a dog to chase a bear in the following designated areas:

(a) Eastern bear chase area;

(b) Central bear chase area; and

(c) Western bear chase area.

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the following seasons:

(1) The chase-only season, which shall be from August 1 through August 31; and

(2) The bear quota hunt with dogs season pursuant to Section 8 of this administrative regulation.

Section 5. Bear Permit Requirements. (1) Only a resident of Kentucky shall be allowed to purchase a bear permit.

(2) Unless exempted by KRS 150.170, a person hunting a bear shall possess proof of purchase of a valid Kentucky hunting license and valid bear permit while hunting.

Section 6. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use dogs during the modern gun ~~regular bear hunting~~ season for bears, except leashed tracking dogs may be used to recover a wounded or dead bear ~~bears~~;

(c) Hunt bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming;

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den; or

(h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Weapon Restrictions. (1) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

(a) A crossbow or archery equipment loaded with a non-barbed broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm;

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading firearm of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(2) A crossbow shall contain a working safety device.

(3) A bear hunter shall not use a magazine capable of holding more than ten (10) rounds [A person shall not use the following to take a bear:

(a) A device capable of taking a bear other than a firearm, crossbow, or archery equipment;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty (20) gauge;

(e) Rimfire ammunition;

(f) A fully-automatic firearm;

(g) A firearm with a magazine capacity greater than ten (10) rounds;

(h) Steel-jacketed ammunition;

(i) Tracer bullet ammunition;

(j) A shotshell containing more than one (1) projectile;

(k) A broadhead smaller than seven-eighths (7/8) inch wide;

(l) A barbed broadhead;

(m) A crossbow without a working safety device;

(n) A chemically treated arrow; or

(o) An arrow with a chemical attachment.

(2) A bear shall not be taken with a handgun that does not:  
 (a) Have a barrel length of at least six (6) inches;  
 (b) Have a bore diameter of at least 0.270 inches; or  
 (c) Fire a bullet that produces at least 550 ft/lbs of energy at 100 yards].

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the bear zone during the following seasons established in paragraphs (a) through (c) of this subsection:

(a) The archery – crossbow season for bears, which shall be for nine (9) consecutive days beginning on the Saturday before Thanksgiving;

(b) The modern gun[regular bear] season for bears, which shall be for three (3) consecutive days beginning on the second Saturday in December; and

(c) The bear quota hunt with dogs season, which shall be for five (5) consecutive days beginning on the Monday following the modern gun[regular bear] season for bears.

(2) A person shall not take more than one (1) bear in a license year.

(3) A hunt party drawn for the bear quota hunt with dogs season shall not take more than one (1) bear in a license year.

Section 9. Bear Season Closure. (1) The archery - crossbow season for bears shall close after daylight hours on the day the following quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(2) The modern gun[regular bear] season for bears shall close after daylight hours on the day the following quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(3) The bear quota hunt with dogs season shall close after daylight hours on the day the quota of five (5) bears has been reached.

(4) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the annual quota has been reached.

Section 10. Bear Quota Hunt with Dogs Requirements. (1) A person shall complete the Bear Quota Hunt with Dogs Application[apply for the quota hunt] on the department's Web site at fw.ky.gov from September 1 through September 30.

(2) An applicant shall possess a bear chase permit before applying.

(3) A person shall not:

(a) Apply more than one (1) time per year;

(b) Apply as a party of more than five (5) people; or

(c) Be eligible to take a bear unless drawn by the department in the bear quota hunt lottery.

(4) A person shall only harvest a bear with the use of unleashed dogs.

(5) A person or each member of a hunt party selected for the quota hunt shall possess a bear permit in order to kill a bear.

(6) The bear quota hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit.

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

(a) Waterfowl; or

(b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12. Bear Reserves. (1) The following areas within the Bear Zone established in paragraphs (a) through (d) of this subsection shall be closed to bear hunting:

(a) Cumberland Gap National Historical Park;

(b) Hensley-Pine Mountain Wildlife Management Area;

(c) Big South Fork National River and Recreation Area; and

(d) The area surrounding Hensley-Pine Mountain Wildlife Management Area: starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds northeast along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds west along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 463 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.

(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area established[referenced] in subsection (1)(d) of this section.

Section 13. Harvest Recording and Check-in Requirements.

(1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

(a) Species taken;

(b) Date taken;

(c) County where taken; and

(d) Sex of the bear.

(2) A person who has harvested a bear during the modern gun[regular bear] season for bears shall:

(a) Retain a completed hunter's log;

(b) Check a harvested bear at a department-operated check station immediately after leaving the field;

(c) Telecheck the bear before leaving the check station by:

1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and

2. Recording the confirmation number on the hunter's log; and

(d) Attach to the carcass a department issued tag prior to leaving the check station.

(3) A person who has harvested a bear during the archery – crossbow season or the bear quota hunt with dogs season shall:

(a) Retain a completed hunter's log;

(b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:

1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and

2. Recording the confirmation number on the hunter's log;

(c) Arrange for department personnel to inspect the bear by:

1. Calling the department at 800-858-1549[or 800-252-5378] within twenty-four (24) hours of harvest; and

2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex; and

(d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

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

(a) "Eastern Bear Chase Area" map, 2013 edition;

(b) "Central Bear Chase Area" map, 2013 edition;[and]

(c) "Western Bear Chase Area" map, 2013 edition;

(d) "20 Bear Chase Survey", 2014 edition; and

(e) "Bear Quota Hunt With Dogs Application", 2014 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

MATT SAWYERS, Acting Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: April 9, 2014

FILED WITH LRC: April 14, 2014 at 11 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) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(As Amended at ARRS, June 10, 2014)**

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

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," June 10~~[May 13]~~~~[March 14]~~, 2014~~[December 10, 2013]~~, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14~~[5/13/14]~~~~[3/14/14]~~ [12/08/09])
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 10/12/12)
- 2.12 Abandoned Inmate Funds (Amended 3/14/14~~[6/12/12]~~)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
- 3.9 Student Intern Placement Program (Added 9/13/2010)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 3/14/14~~[Added 9/13/2010]~~)
- 3.17 Uniformed Employee Dress Code (Amended 8/20/13)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 5.1 Research and Survey Projects (Amended 12/10/13)
- 5.3 Program Evaluation and Measurement (Amended 6/12/12)
- 6.1 Open Records Law (Amended 5/14/07)
- 8.2 Fire Safety (Amended 3/14/14~~[2/15/06]~~)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14~~[12/13/05]~~)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 12/17/12)
- 9.6 Contraband (Amended 3/14/14~~[6/12/12]~~)
- 9.8 Search Policy (Amended 5/13/14~~[12/40/13]~~)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 9.22 Control and Use of Caustic/Toxic Materials (Added 3/14/14)~~[9.20 Electronic Detection Equipment (Amended 10/14/05)]~~
- 10.2 Special Management Inmates (Amended 8/20/13)
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Dietary Procedures and Compliance~~[Nutritional Adequacy of Inmate Diet]~~ (Amended 3/14/14~~[5/15/08]~~)

- 11.4 Alternative Dietary Patterns (Amended 3/14/14~~[5/15/08]~~)
- 13.1 Pharmacy Policy and Formulary (Amended 3/14/14~~[8/25/09]~~)
- 13.2 Health Maintenance Services (Amended 3/14/14~~[11/9/10]~~)
- 13.3 Medical Alert System (Amended 3/14/14~~[10/14/05]~~)
- 13.5 Advance Healthcare Directives (Added 4/12/05)
- 13.6 Sex Offender Treatment Program (Amended 5/15/08)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14~~[12/13/05]~~)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 Mental Health Services (Added 8/20/13)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 10/14/05)
- 14.4 Legal Services Program (Amended 3/14/14~~[07/09/07]~~)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 3/14/14~~[8/20/13]~~)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 12/10/13)
- 15.1 Hair, Grooming and ID Card Standards (Amended 10/12/12)
- 15.2 Rule Violations and Penalties (Amended 3/14/14~~[9/13/10]~~)
- 15.3 Meritorious Good Time (Amended 12/13/05)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
- 15.6 Adjustment Procedures and Programs (Amended 3/14/14~~[10/14/05]~~)
- 15.7 Inmate Accounts~~[Account—Restriction]~~ (Amended 3/14/14~~[11/9/10]~~)
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 10/12/12)
- 16.2 Inmate Correspondence (Amended 8/20/13)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 07/09/07)
- 16.1 Inmate Personal Property (Amended 8/20/13)
- 17.2 Assessment Center Operations (Amended 11/15/06)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14~~[5/15/08]~~)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
- 18.1 Classification of the Inmate (Amended 07/09/07)
- 18.2 Central Office Classification Committee (Amended 8/20/13)
- 18.5 Custody and Security Guidelines (Amended 3/14/14~~[6/12/12]~~)
- 18.7 Transfers (Amended 07/09/07)
- 18.9 Out-of-state Transfers (Amended 2/15/06)
- 18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 07/09/07)
- 18.15 Protective Custody (Amended 11/15/06)
- 18.16 Information to the Parole Board (Effective 3/14/14~~[11/15/06]~~)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Added 2/13/04)
- 19.3 Inmate Wage/Time Credit Program (Amended 8/20/13)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)



22.2 Recreation and Inmate Activities (Added 3/14/14)

23.1 Religious Programs (Amended 8/20/13)

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

25.3 Prerelease Program (Effective 11/15/06)

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

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

~~25.8 Extended Furlough (Amended 4/12/05)]~~

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

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

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

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LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: March 6, 2014

FILED WITH LRC: March 14, 2014 at 10 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Corrections, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, June 19, 2014)**

**702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.**

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools, including a private school desiring to associate with KHSAA or to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of level of play) to be enrolled in at least grade seven (7) unless the student has participated at the high school level prior to the 2014 - 2015 school year;

(6) Require its governing body to annually establish goals and

objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership which provides that each high school is audited ~~over a five (5) year period~~ regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public; and

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, beginning with the 2014-2015 school year, the KHSAA shall implement the following requirements for all participants in middle school athletics and distribute these requirements to all middle schools and publish via the KHSAA Web site:

(1) Require that any coach (head or assistant, paid or unpaid) desiring to coach interscholastic athletics at the middle school level meet the requirements of KRS 156.070(2)(f)2. and KRS 160.380(4) and (6);

(2) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(d), and shall use [performed and signed by a physician, physician assistant, advanced practice registered nurse, or chiropractor (if performed within the professional's scope of practice), for each student seeking eligibility to participate in any school athletic activity or sport using] the form approved for use at the middle[high] school level;

(b) All participants at the middle school level shall adhere to all sports medicine policies in use at the middle school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs; and

3. Concussion and other head injury policies;

(3) Create a permanent Middle School Athletics Advisory

Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies; make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics; and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the Kentucky Board of Education with recommendations for changes in statute, administrative regulation, or policy;

(4) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(5) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(6) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445, and other requirements for coaches at the middle school level;

(7) Beginning with the 2015-2016 school year, require any student enrolled initially in grade five (5) through eight (8) during the 2015-2016 school year or thereafter who is repeating a grade for any reason, to be ineligible to compete in interscholastic competition involving students enrolled in grades six (6) through eight (8) while repeating a grade;

(8) Beginning with the 2015-2016 school year, require any student who turns:

(a) Fifteen (15) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age prior to August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(9) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time prior to the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(10)(8) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(11)(9) Require that the common schools at the middle school level may only compete in contests against schools, including combined elementary or middle school teams, that adhere to these provisions;~~and~~

(12)(40) Issue an annual report to the Kentucky Board of Education on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy; and

(13)(44) ~~Allow~~Nothing in this administrative regulation shall prohibit a school or school district~~from choosing~~ to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation.

Section 4. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

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

(a) "KHSAA Constitution", 6/2013;

(b) "KHSAA Bylaws", 6/2014/4/2014[9/2013];

(c) "KHSAA Due Process Procedure", 6/2014/6/2013;

(d) "KHSAA Board of Control and Officials Division Policies", 6/2014/4/2014[9/2013];

(e) "KHSAA Form BA101- Baseball Pitching Limitation", 4/2009;

(f) "KHSAA Form FB102- Football Financial Report", 9/7/2009;

(g) KHSAA Form GE01, "Application for Renewal of Membership",~~["KHSAA Form GE1- Membership Renewal"]~~, 4/2014[6/2013];

(h) KHSAA Form GE02, "Application for New Membership", 4/2014~~["KHSAA Form GE2- New Membership Application"]~~, 4/2014[6/2013];

(i) KHSAA Form GE04, "Athletic Participation/Physical Examination Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation",~~["KHSAA Form GE3- Participation List"]~~, 4/2009;

(j)~~["KHSAA Form GE4- Physician & Parental Permission~~

~~Form"; 4/2014[6/2013];~~

~~(i) KHSAA Form GE06, "Transfer Form – Citizens of the U.S. or U.S. Territories";[(k)]["KHSAA Form GE6– Domestic Transfer";] 4/2014[9/2013];~~

~~(k) KHSAA Form GE07, "Application for Foreign Exchange Student (Non Domestic)";[(l)]["KHSAA Form GE7– Non Domestic Exchange] Eligibility";, 4/2014[9/2013];~~

~~(l) KHSAA Form GE08, "Application for Foreign Student, Non-Exchange (Non Domestic)";[(m)]["KHSAA Form GE8 – Non Domestic Non-Exchange] Eligibility";, 4/2014[9/2013];~~

~~(m)[(n)] "KHSAA Form GE14- Contract for Athletic Contests", 4/2014[4/2009];~~

~~(n) KHSAA Form GE16, "Request for Statutory Waiver of Bylaw 2";[(o)]["KHSAA Form GE16– Statutory-Waiver-of-Bylaw 3";] 4/2014[3/2012];~~

~~(o)[(p)] "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;~~

~~(p) KHSAA Form GE20, "Heat Index Measurement and[(q)]["KHSAA Form GE20– Heat Index] Record";, 4/2014[4/2009];~~

~~(q)[(r)] "KHSAA Form GE26- Financial Aid Report", 5/2011;~~

~~(r) KHSAA Form GE35, "Request for Waiver of[(s)]["KHSAA Form GE35– Waiver–] 20 Day Notice";, 4/2014[5/2011];~~

~~(s)[(t)] "KHSAA Form GE36- Add. Info for Appeal", 5/2011;~~

~~(t)[(u)] "KHSAA Form GE40- Request for a Statutory Waiver of Bylaw 27";, 2/2012;~~

~~(v) "KHSAA Form GE52- District Tournament Financial Report";, 4/2014[5/2011];~~

~~(u) KHSAA Form GE53, "KHSAA Regional[(w)]["KHSAA Form GE53– Region] Tournament Financial Report";, 4/2014[3/2012];~~

~~(v)[(x)] "KHSAA Form GE69- Waiver – 15 Day Exceptions", 5/2011;~~

~~(w) KHSAA Form SO112, "Semi-State Tournament";["KHSAA Form SO112– Soccer Semi-State] Financial Report";, 4/2014[(y)] "KHSAA Form SO103– Soccer Section/SubSection Financial Report";, 5/2011;~~

~~(z) "KHSAA Form WR101– Wrestling Permission Form";, 12/2009;~~

~~(x) KHSAA Form WR111, "Wrestling Skin Condition";[(aa)]["KHSAA Form WR111– Wrestling Skin Condition & Unconscious";] 4/2014[5/2011];~~

~~(y) KHSAA Form WR126, "Minimum Weight Certification Program Assessor Designation";[(bb)]["KHSAA Form WR126– Wrestling Weight Certif. Program Assessor";] 4/2014[3/2012]; and~~

~~(z)[(cc)] "KHSAA Form MS1 - Physician & Parental Permission";, 9/2013.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

TERRY HOLLIDAY, Ph.D., Commissioner of Education

ROGER MARCUM, Chairperson

APPROVED BY AGENCY: April 15, 2014

FILED WITH LRC: April 15, 2014 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.

## KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Fire Commission  
(As Amended at ARRS, June 10, 2014)

### 739 KAR 2:090. Candidate Physical Ability Test.

RELATES TO: KRS Chapter 67, 75.010, 95A.040

STATUTORY AUTHORITY: KRS 95A.040(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040(2) requires the commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions. This administrative regulation establishes the candidate physical ability test to be used for candidates seeking professional firefighter positions.

Section 1. Definitions. (1) "Candidate means any individual, including a volunteer firefighter, who shows interest in, or has applied for, a career position within a fire department."

(2) Definitions. (1) "CPAT" means the most current version of the Candidate Physical Ability Test Program copyrighted by the IAFF.

(3) (2) "CPAT Administration" means the IAFF's secure web-based tool for all IAFF licensees to collect and provide aggregate and redacted data in support of all aspects of administering the CPAT program.

(4) (3) "IAFC" means the International Association of Fire Chiefs.

(5) (4) "IAFF" means the International Association of Fire Fighters.

(6) (5) "Professional firefighter":

(a) Means a full-time employee of a fire department or fire protection district, as established in KRS 95A.040(2)(a), whose job involves the active suppression of fires as part of the regular course of the employee's duty; and

(b) Does not mean a part-time employee or an employee whose job:

1. Is administrative or supervisory; and

2. Does not involve the active suppression of fires as part of the regular course of the employee's duty.

(7) "SFRT area offices" means State Fire Rescue Training area offices.

Section 2. Licensure Requirements. (1) Each candidate[All candidates] applying for full-time employment as a firefighter with a Kentucky fire department on or after January 1, 2013 shall have successfully completed the CPAT [, with the exception of:

(a) Fire department chiefs and their executive staffs, with the executive staff designation to be determined by the fire chief or other executive authority as provided in the job descriptions of the local government presiding over the fire department, provided that no more than twenty-five (25) percent of a single department's paid personnel be classified as executive staff;

(b) Any part-time firefighter employed and paid by a fire department prior to January 1, 2013, who is promoted to a full-time position within the same fire department; or

(c) Any full-time firefighter who is currently employed or who has previously been employed by a Kentucky fire department in accordance with KRS Chapters 67, 75, and 95 prior to January 1, 2013, who is hired by another fire department and has not been out of fire service for more than 365 days].

(2) [Any Kentucky fire department may, in addition to the requirement of subsection (1) of this section, require all new candidates hired for full-time firefighter positions to successfully complete the CPAT, including the categories of candidates listed in subsections (1)(a)-(c) of this section.] A fire department may accept a CPAT certification obtained in a state other than the Commonwealth of Kentucky to fulfill the requirements of this administrative regulation.

(3) A fire department[All fire departments] established pursuant to KRS 75.010 shall be fully licensed with the IAFF to

implement the CPAT and may administer the CPAT independently of the Kentucky Fire Commission with thirty (30) days prior notification to the Kentucky Fire Commission. The Kentucky Fire Commission shall assist each fire department in obtaining ~~the~~**[such]** licensure upon written request and shall be responsible for all costs associated with IAFF licensure. The Kentucky Fire Commission shall assume all liability for compliance with the CPAT program.

(a) The Kentucky Fire Commission shall agree, on behalf of all licensees, to collect and provide to the IAFF and the IAFC data regarding number of male, female, and minority applicants that have taken the CPAT and the pass and fail rates of each. The CPAT Administration shall be used by the Kentucky Fire Commission as the sole means for collecting and providing data as well as for the administration of the CPAT.

(b) All licensees shall use the CPAT in whole and only for the purpose of candidate testing in accordance with the most current copyrighted version of the **["CPAT Manual, 2nd Edition"]**. This includes, but is not necessarily limited to, recruiting, mentoring, preparatory programs, orientation programs, and proper program administration including using specified equipment, test parameters, qualified proctors, and test personnel.

1. The Kentucky Fire Commission shall provide the staff necessary for all CPAT mentoring, orientation, and practice testing, unless a fire department administers the CPAT independently of the Kentucky Fire Commission.

2. The Kentucky Fire Commission shall complete the transportability studies and licensure requirements **established[provided]** in Chapter 3 of the CPAT Manual.

3. The Kentucky Fire Commission shall provide all candidates with the pre-test materials and preparation guides required in Chapter 4 of the CPAT Manual.

4. Consistent with Chapter 4 of the CPAT Manual, a candidate may opt to take the CPAT examination during either of the mandatory practice sessions.

**a.** If a candidate opts to take the CPAT examination during a practice session, the candidate shall not ~~be permitted to~~ re-take the examination during the same administration period.

**b.** Any candidate applying for re-certification within one (1) year of initial certification may opt out of the orientation session.

(c) The CPAT shall be administered by the Kentucky Fire Commission continually in two (2) separate permanent locations. One (1) ~~[such]~~ permanent location shall be located in Louisville, Kentucky, and the other shall be located in Winchester, Kentucky. ~~[Future permanent locations may be established by the Kentucky Fire Commission with prior board approval.]~~

(d) The Kentucky Fire Commission shall administer the CPAT and the required orientation and practice sessions throughout the Commonwealth of Kentucky in the manner **established[prescribed]** in subparagraphs 1. through 9. of this paragraph, ~~provided that these regional training requirements may be satisfied if a permanent location providing continuous training is established in the specific region pursuant to paragraph (c) of this subsection~~. In conducting the CPAT exam and required orientation and practice sessions, the Kentucky Fire Commission shall attempt to locate the facilities in closest proximity to the fire department with the majority of potential candidates.

1. The CPAT shall be administered at least once per year in the region comprised of Areas 1 and 2, combined.

2. The CPAT shall be administered at least once per year in Area 4.

3. The CPAT shall be administered at least once per year in the region comprised of Areas 9, 10, 11, and 12, combined.

4. The CPAT shall be administered at least once per year in the region comprised of Areas 13 and 14, combined.

5. The CPAT shall be administered at least two (2) times per year in Area 3.

6. The CPAT shall be administered at least two (2) times per year in Areas 5 and 6, combined.

7. The CPAT shall be administered at least two (2) times per year in Area 7.

8. The CPAT shall be administered at least two (2) times per year in Area 15.

9. Any of the trainings required ~~pursuant to~~**[under]** subparagraphs 1 through 8 of this paragraph may be cancelled if no more than fifteen (15) candidates have registered within ninety (90) days prior to the scheduled examination.

(e) The Kentucky Fire Commission shall administer the CPAT using mobile equipment within an SFRT area office area upon written request from a fire department located within that SFRT area office area, on the conditions that:

**1.** The CPAT has not been administered within that SFRT area office area during the four (4) months prior to the request; **and**

**2.** ~~and that~~ There are a minimum of fifteen (15) candidates registered for the examination. The CPAT shall be administered within ninety (90) days of receipt of the request if all of the resources required to administer the CPAT are anticipated to be available on the date requested.

(f) The Kentucky Fire Commission, with the assistance of local fire departments, shall be responsible for securing the location of the regional examinations **established[provided]** in paragraph (d)2 and 3 of this subsection. In the event that the Kentucky Fire Commission and local fire departments are unable to secure an appropriate location within thirty (30) days of the scheduled examination, the examination shall be cancelled.

(g) The responsibility for securing a CPAT examination site upon fire department request shall be shared jointly between the Kentucky Fire Commission and the requesting local fire department.

**1.** The requesting fire department shall suggest a location ~~that~~**[which]** meets the requirements detailed in the CPAT Manual for a testing site.

**2.** If the property is owned by a city, county, or state government, the Kentucky Fire Commission shall secure the property.

**3.** In the event that the Kentucky Fire Commission and the requesting fire department are unable to secure an appropriate location within thirty (30) days of the scheduled examination, the examination shall be cancelled.

**4.** The Kentucky Fire Commission may inspect the site up to thirty (30) days prior to the scheduled examination.

(h) The Kentucky Fire Commission shall establish a schedule for the administration of the CPAT on an annual basis. This schedule shall be published on the Kentucky Fire Commission Web site at least thirty (30) days prior to January 1 of each year. Any additional administrations of the CPAT shall also be publicized and communicated to all fire departments located within the SFRT area office area in which the CPAT is being administered.

(i) A CPAT certification obtained in the Commonwealth of Kentucky shall remain valid for one (1) year if the candidate is not hired by the fire department on whose behalf the CPAT is administered. ~~The~~**[Such a]** CPAT certification shall be considered to have fulfilled the requirements of this administrative regulation by another fire department with whom the candidate applies for full-time employment for the year following the date of initial certification.

(4) A third party testing organization may obtain a limited CPAT license for the purpose of testing the physical capability of firefighter candidates. The limited license shall be granted only upon the express condition that the licensee ~~shall~~**[may]** only administer the CPAT for a fire department ~~that~~**[which]** already possesses a valid full license from the IAFF. As a condition of receiving a limited license, an applicant shall agree that it shall only administer the CPAT in accordance with the IAFF's licensing requirements, which include full compliance with the EEOC conciliation agreement and utilization of the CPAT Administration.

(a) **A limited licensee**~~[Limited licensees]~~ shall not administer the CPAT to any person without first obtaining a written **Fire Department** Agreement with the fire department to which the person is applying. ~~[A standard agreement is incorporated by reference.]~~The agreement shall **comply with**~~[contain]~~ the following~~[provisions]~~:

1. The fire department shall certify that it has a valid CPAT license and that it agrees to recognize and accept proof of completion of the CPAT from the limited licensee;

2. The fire department shall certify that it shall utilize the CPAT

only in the context of an overall implementation of the CPAT program that complies with its CPAT license;

3. The limited licensee shall have the capability and agree to assist the fire department in meeting the terms of compliance, including the pre-test orientation and mentoring requirements;

4. The limited licensee shall have the capability and staff to validate the CPAT for jurisdictions through a transportability study, assist the fire department in obtaining CPAT licensure, provide consistent CPAT testing administration, and legally defend their validation and CPAT administration;

5. The limited licensee shall have the capability and agree to provide candidates continuously available practice tests and orientations. It shall ~~[further]~~ assist the CPAT licensed fire department in establishing candidate mentoring programs. The limited licensee shall have purchased all CPAT equipment and verify that the equipment and props conform to all ~~requirements~~specifications outlined in the CPAT Manual and that it has the ability to administer the CPAT in conformity with the specifications of the CPAT Manual;

6. ~~[No]~~Cost shall ~~not~~ be imposed upon a Kentucky resident for the administration of the CPAT by a limited licensee located in the Commonwealth of Kentucky. ~~The~~Any such fee shall be paid by the Kentucky Fire Commission; and

7. If the limited licensee provides CPAT certifications for a candidate's use in applying for employment in multiple fire departments, it shall notify the IAFF of the CPAT licensed fire departments for which the certification is provided. The Kentucky Fire Commission shall provide an electronic system ~~[by which]~~ to transmit this information. CPAT licensed fire departments ~~that~~which accept the certifications can verify an applicant's results and the date upon which the results are no longer valid.

(b) Limited licensees shall agree to fully cooperate with the IAFF in its conduct of on-site reviews and audits of any facility holding a limited license. The on-site review and audit shall include ~~but is not necessarily limited to, the following~~:

1. Verification of written agreements with fire departments;
2. Verification of test administration procedures;
3. Verification of proctors;
4. Facility inspection in accordance with the CPAT requirements on size, environmental conditions, floor composition, ~~etc.~~;

5. Equipment inspection to ensure that all equipment and props meet the CPAT specifications;

6. Verification that course layout is in accordance with the CPAT specifications; and

7. Verification that the CPAT Administration is being properly used and data reported.

(c) Limited license holders shall be charged an annual licensing fee of \$5,000 to be paid to the IAFF. Limited licenses shall be non-transferable, nonexclusive, and revocable at will for any reason.

(d) Limited license holders shall confirm their license with the Kentucky Fire Commission prior to administering the CPAT.

(5) From August 1, 2014~~[the effective date of this administrative regulation]~~ through July 1, 2015, the Kentucky Fire Commission shall issue a notice of violation via United States Postal Service to any individual, organization, or governmental entity in violation of any provision of this administrative regulation. Prior to July 1, 2015, the Kentucky Fire Commission may impose all penalties authorized by law on any individual, organization, or governmental entity found to be committing fraud or providing false information to the Kentucky Fire Commission. After July 1, 2015, the Kentucky Fire Commission may impose any penalty authorized by law on any individual, organization, or governmental entity in violation of any provision of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CPAT Manual, 2nd Edition", 2007; and

(b) "Fire Department Agreement", 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

Fire Commission, 118 James Ct., Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE-TYLER MORGAN, Legal Counsel

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 14, 2014 at noon

CONTACT PERSON: Anne-Tyler Morgan; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480.

**PUBLIC PROTECTION CABINET  
Kentucky Department of Insurance  
Financial Standards and Examination Division  
(As Amended at ARRS, June 10, 2014)**

**806 KAR 30:020. Abuse of minimum service charge.**

RELATES TO: KRS 304.30-050, 304.30-090(3)

STATUTORY AUTHORITY: KRS 304.30-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.30-070 ~~authorizes~~[authorized] the ~~commissioner~~[executive director] to ~~promulgate~~[make reasonable] administrative regulations to effectuate the provisions of ~~[Subtitle 30 of]~~ the Kentucky Insurance Code, as defined in KRS 304.1-010, and to regulate the manner in which licensed insurance premium finance companies conduct their business. This administrative regulation establishes a prohibition on abuse of the finance agreement service charge~~[sets forth an untrustworthy act to be considered as sufficient to revoke or to suspend a license]~~.

Section 1. Abuse of Finance Agreement~~[Minimum]~~ Service Charge Prohibited. ~~An~~No insurance agent, ~~or~~ broker, or premium finance agency shall ~~not~~ induce an insured to become obligated under more than one (1) premium finance agreement for the purpose of obtaining more than one (1) ~~[minimum]~~ service charge, as specified in KRS 304.30-090(3)~~[change]~~[of fifteen (15)]~~[ten (10)]~~[dollars].

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 10, 2014

FILED WITH LRC: April 15, 2014 at 10 a.m.

CONTACT PERSON: DJ Wasson, Administrative Coordinator, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 4060, phone (502) 564-0888, fax (502) 564-1453.

**PUBLIC PROTECTION CABINET  
Kentucky Department of Insurance  
Division of Insurance Fraud Investigation  
(As Amended at ARRS, June 10, 2014)**

**806 KAR 47:010. Designation of a contact person.**

RELATES TO: KRS 304.47-020, 304.47-040, 304.47-050, 304.47-080

STATUTORY AUTHORITY: KRS 304.2-110~~[- 304.47-040, 304.47-080]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 ~~authorizes~~[provides that] the ~~Commissioner~~[Executive Director] of Insurance to promulgate~~[may make reasonable]~~ administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. This administrative regulation establishes requirements for the designation of primary contact persons to communicate with the Division of Insurance Fraud Investigation~~[This administrative regulation requires insurers to designate a contact person to communicate with the Division of Insurance Fraud Investigation]~~[Insurance Fraud Unit]. ~~This administrative regulation will assist insurers with their reporting requirement~~

~~of KRS 304.47-050].~~

Section 1. Every insurer shall designate at least two (2)~~one (1)~~ primary contact persons~~person~~ but not more than four (4) primary contact persons who shall communicate with the Division of Insurance Fraud Investigation~~Insurance Fraud Unit~~ on matters relating to the reporting, investigation, and prosecution of suspected fraudulent insurance acts, as defined in KRS 304.47-020.

Section 2. Every insurer shall notify the Division of Insurance Fraud Investigation~~Insurance Fraud Unit~~ in writing of the names, addresses, and telephone numbers of:

- (1) The insurer's primary contact~~person or~~ persons; and
- (2) The primary person responsible for the insurer's investigative unit.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 10, 2014

FILED WITH LRC: April 15, 2014 at 10 a.m.

CONTACT PERSON: DJ Wasson, Administrative Coordinator, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, June 10, 2014)**

**907 KAR 18:001. Definitions for 907 KAR Chapter 18.**

RELATES TO: 42 U.S.C. 1396a(a)(13)(A), 42 U.S.C. 1396a(a)(30)(A), 42 C.F.R. Part 413, 42 C.F.R. 447.204

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 18.

Section 1. Definitions. (1) "Allowable cost" means that portion of a facility's cost which may be allowed by the department for reimbursement purposes.

(2) "Ancillary service" means an ancillary service as established in 907 KAR 1:023.

(3) "Capital costs" means capital costs as established in 42 C.F.R. 413.130 through 157.

(4) "Cost report" means a copy of the cost report that a VA NF submits to the Medicare program.

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

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

(7) "Global Insight Index" means an indication of changes in health care costs from year to year developed by Global Insights Index.

(8) "Pro forma cost data" means estimated cost data for a specific future period of time.

(9) "Prospective payment rate" means a payment rate for services based on allowable costs and other factors.

(10) "Recipient" is defined by KRS 205.8451(9).

(11) "Regular part-time employee" means an employee who works part-time:

(a) On a continual basis; and

(b) Not on a short-term or temporary basis.

(12) "State fiscal year" means the twelve (12) month period

beginning on July 1 of one year and ending on June 30 of the following year.

~~(13)(12)~~ "Upper payment limit" means an amount of reimbursement that:

(a) Equates to a Veterans Affairs nursing facility's Medicaid-allowable cost; and

(b) Does not exceed the limit established in 42 C.F.R. 447.272.

~~(14)(13)~~ "VA NF" means a nursing facility that meets the requirements of 907 KAR 18:005, Section 1~~is currently:~~

~~(a) Licensed by the Cabinet for Health and Family Services, Office of Inspector General as a nursing facility;~~

~~(b) Approved by the department for Medicaid program participation; and~~

~~(c) Certified by the United States Department of Veterans Affairs as a state veterans home].~~

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 7, 2014

FILED WITH LRC: March 24, 2014 at 4 p.m.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, June 10, 2014)**

**907 KAR 18:005. Reimbursement provisions and requirements regarding Veterans Affairs nursing facility services.**

RELATES TO: 42 U.S.C. 1396a(a)(13)(A), 42 U.S.C. 1396a(a)(30)(A), 42 C.F.R. Part 413, 42 C.F.R. 447.204

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding Veterans Affairs nursing facility services in Kentucky.

Section 1. Provider Participation. To be eligible to be reimbursed for services and drugs under this administrative regulation, a VA NF shall be currently:

(1) Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(2) Participating in the Kentucky Medicaid Program in accordance with 907 1:671;

(3) Licensed by the Cabinet for Health and Family Services, Office of Inspector General as a nursing facility; and

(4) Certified as a state veterans home by the United States Department of Veterans Affairs.

Section 2. General Requirements. To be reimbursable by the department, a service shall be:

(1) Medically necessary;

(2) Provided to a recipient who is eligible for nursing facility services in accordance with 907 KAR 1:022;

(3) Provided in accordance with 907 KAR 1:022; and

(4) Provided by a VA NF~~[that meets the requirements established in Section 1 of this administrative regulation].~~

Section 3. Covered Services and Drugs. The following~~[services]~~, if provided by a VA NF in accordance with this administrative regulation, shall be covered under this administrative regulation:

- (1) Nursing facility services;
- (2) Ancillary services;
- (3) Laboratory procedures or radiological services if ordered by

[a]:

(a) A[1.] physician;

(b)[2.] An advanced practice registered nurse if the laboratory test or radiological service is within the scope of the advance practice registered nurse's practice; or

(c) A[3.] physician assistant if the laboratory test or radiological service is:

1.[a.] Authorized by the supervising physician; and

2.[b. The laboratory test or radiological service is] Within the scope of the physician assistant's practice; or]

(4) Psychological or psychiatric therapy; or

(5) Drugs.

Section 4. Reimbursement. (1) The department shall reimburse a VA NF for services and drugs under this administrative regulation on a cost basis.

(2)(a) The cost basis shall include reimbursing:

1. A VA NF for services and drugs on an interim basis during a state fiscal year using a prospective payment rate; and

2. A final reimbursement to a VA NF for services and drugs for a state fiscal year:

a. Equal to the VA NF's Medicaid allowable cost for the state fiscal year; and

b. That results from a reconciliation of the:

(i) Interim prospective reimbursement paid by the department to the VA NF for the state fiscal year; and

(ii) Actual Medicaid allowable costs experienced by the VA NF for the state fiscal year as reflected on the cost report that has been desk reviewed and approved by the department for the state fiscal year.

(b)1. Except as provided by subsection (3)(b) of this section, the prospective payment rate referenced in paragraph (a)1 of this subsection shall be:

a. Established using the most recently submitted cost report available to [and reviewed by] the department as of May 16 prior to the beginning of the state fiscal year; and

b. Trended and indexed to the midpoint of the state fiscal year.

2. For example, to set a prospective payment for a VA NF effective July 1, 2014, for the state fiscal year beginning July 1, 2014, the department shall:

a. Use the most recently submitted cost report available to the department as of May 16, 2014[2013]; and

b. Trend and index the prospective payment rate to December 31, 2014[2013].

(3)(a) A prospective payment rate for services and drugs shall:

1. Be specific to the VA NF;

2. Not be subject to retroactive adjustment except as specified in this section;

3. Be determined by the department on a cost basis annually; and

4. Except as established in paragraph (b) of this subsection, be based on a VA NF's Medicaid allowable costs.

(b)1. If no cost report containing a full state fiscal year of cost data for a VA NF is available as of May 16, to set a prospective payment rate for the VA NF, the department shall:

a. If at least six (6) months of cost data is available, use pro forma cost data:

(i) Submitted to the department by the VA NF; and

(ii) Approved by the department; or

b. If less than six (6) months of cost data is available, establish a prospective payment rate equal to the statewide average prospective payment rate of existing VA NFs until the department receives [a] pro forma cost data including at least six (6) months of cost data.

2. Pro forma cost data shall be trended and indexed in the same way as established in subsection (2)(b) of this section.

(c) The department shall[may] adjust a prospective payment rate during the state fiscal year if the prospective payment rate that was established appears likely to result in a substantial cost

settlement that could be avoided by adjusting the prospective payment rate.

(d)1. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, a prospective rate based on a cost report which has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

2. An unaudited cost report shall be subject to an adjustment to the audited amount after auditing has occurred.

(e)1. If the department has made a separate rate adjustment as compensation to a VA NF for a minimum wage update, the department shall:

a. Not pay the VA NF twice for the same costs; and

b. Adjust downward the trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment.

2. If the trending and indexing factors include costs related to a minimum wage increase:

a. The department shall not make a separate rate adjustment; and

b. The minimum wage costs shall not be deleted from the trending and indexing factors.

(4) The department shall consider an adjustment to a VA NF's prospective rate (subject to the upper payment limit) if:

(a) The VA NF's increased costs are attributable to:

1. A governmentally imposed minimum wage increase, staffing ratio increase, or a level of service increase; and

2. The increase was not included in the Global Insight Index;

(b) A new licensure requirement or new interpretation of an existing requirement by the appropriate governmental agency as issued in an administrative regulation results in changes that affect all VA NFs; or

(c) The VA NF experiences a governmentally-imposed displacement of residents.

(5)[(a)] The amount of any prospective payment rate adjustment resulting from a governmentally-imposed minimum wage increase or licensure requirement change or interpretation as cited in subsection (4) of this section shall not exceed the amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs.

(a)[1.] For purposes of this determination, costs shall be classified as either:

1.[a.] Salaries; or

2.[b.] Other.

(b)[2.] The effective date of an interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(6) A year-end adjustment of a prospective rate and a retroactive cost settlement adjustment shall be made if:

(a) An incorrect payment has been made due to a computational error (other than an omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has been made due to a misrepresentation on the part of a facility (whether intentional or unintentional);

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser; or

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(7)(a) The department shall retroactively cost settle reimbursement for services and drugs.

(b) Retroactive settlement shall entail:

1. Comparing interim prospective payments with the properly apportioned cost of Medicaid services and drugs rendered;

2. A tentative cost report settlement based upon:

a. Eighty (80) percent of any amount due the facility after a

preliminary review is performed; or

b. 100 percent settlement of any liability due the department; and

3. A final cost report settlement after the allowed billing period has elapsed for the dates of service and drugs identified within the cost report.

(c) To be considered final, a cost report shall have been reviewed and approved by the department.

Section 5. Allowable and Non-allowable Costs. (1) Nursing facility services' and drugs[services] costs shall be the direct costs associated with nursing facility services and drugs.

(2)(a) Except as provided in paragraph (d) of this subsection, interest expense used in setting a prospective rate shall be an allowable cost if:

1. Permitted pursuant to 42 C.F.R. 413.153; and

2. The interest expense:

a. Represents interest on:

(i) Long term debt existing at the time the provider enters the program; or

(ii) New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care; or

b. Is for working capital and operating needs that directly relate to providing patient care.

(b) The forms of indebtedness may include:

1. Notes, advances, and various types of receivable financing; or

2. Mortgages, bonds, and debentures if the principal is to be repaid over a period in excess of one (1) year.

(c) If a debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable.

(d) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(3)(a) The allowable cost for a service or good purchased by a VA NF from a related organization shall be the cost to the related organization unless it can be demonstrated that the related organization is equivalent to a second party supplier.

(b) Except as provided in paragraph (c) of this subsection, an organization shall be considered a related organization if an individual possesses five (5) percent or more of ownership or equity in the facility and the supplying business.

(c) An organization shall not be considered a related organization if fifty-one (51) percent or more of the supplier's business activity of the type carried on with the VA NF is transacted with persons and organizations other than the VA NF and its related organizations.

(4) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs.

(5) A cost shall be allowable and eligible for reimbursement if the cost is:

(a) Reflective of the provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

(6) The following costs shall be allowable:

(a) Costs to related organizations pursuant to 42 C.F.R. 413.17;

(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

(c) Research costs pursuant to 42 C.F.R. 413.90;

(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

(e) Purchase discounts and allowances pursuant to 42 C.F.R. 413.98;

(f) Refunds of expenses pursuant to 42 C.F.R. 413.98;

(g) Depreciation on buildings and equipment if a cost is:

1. Identifiable and recorded in the provider's accounting records;

2. Based on historical cost of the asset or, if donated, the fair market value; or

3. Prorated over the estimated useful life of the asset using the straight-line method, which is a method that depreciates the value of an asset evenly over the life of the asset;

(h) Interest on current and capital indebtedness;

(i) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services; or

(j) A provider tax on a VA NF.

(7) The following costs shall not be allowable:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health and Family Services;

(d) Travel and associated costs outside of the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences, or any related activities that are not related to NF training or educational purposes; or

(e) Costs related to lobbying.

~~(8) [To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:~~

~~(a) 1. Determine the actual gain on the sale of the facility; and~~

~~2. Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis;~~

~~(b) Gain shall be the amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price;~~

~~(c) 1. A sale shall be any bona fide transfer of legal ownership from an owner to a new owner for reasonable compensation, which shall usually be fair market value; and~~

~~2. A lease purchase agreement or other similar arrangement which does not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale until legal ownership of the property is transferred; and~~

~~(d) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs (a) through (c) of this subsection.~~

~~(9)(a) An increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984, and before October 1, 1985.~~

~~(b) [For a bona fide change[changes] of ownership entered into on or after October 1, 1985], the depreciation and interest costs shall be increased in valuation in accordance with 42 U.S.C. 1395x(v)(1)(O)(i).~~

~~(9) [(10)](a) Maximum allowable costs shall be the maximum amount which may be allowed to a VA NF as reasonable cost for the provision of a supply, drug, or service while complying with limitations expressed in related federal or state regulations.~~

~~(b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.106.~~

Section 6. Cost Report Requirements. (1)(a) A VA NF shall, no later than five (5) months following the end of a state fiscal year, submit to the department a cost report stating the VA NF's costs for the state fiscal year.

(b) The time limit stated in paragraph (a) of this subsection shall[may] be extended at the specific request of the facility with the department's concurrence.

(2) If the VA NF experienced a new item or expansion representing a departure from current service levels and for which the VA NF requested prior approval by the department, the VA NF shall submit a supplement to the cost report to the department



which:

- (a) Describes the new item or expansion; and
- (b) States the rationale for the new item or expansion.
- (3)(a) Department approval or rejection of a projection of the cost of a new item or expansion shall be made on a prospective basis in the context that if a new item or an expansion and related costs are approved they shall be considered when actually incurred as an allowable cost.
- (b) Rejection of an item or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement.
- (c) Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection.
- (d) If a request for prior approval of a projection or expansion is made, absence of a response by the department shall not be construed as approval of the item or expansion.
- (4)(a) The department shall perform a desk review of each cost report to determine whether an audit is necessary and, if so, the scope of the audit.
- (b) If the department determines that an audit is not necessary, the cost report shall be settled without an audit.
- (c) A desk review or audit shall be used for purposes of verifying costs[cost] to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data.
- (d) An audit shall[Audits may] be conducted annually or at less frequent intervals.
- (5)(a) A VA NF shall maintain and make available any records and data necessary to justify and document:
  1. Costs to the VA NF; and
  2. Services performed and drugs provided by the VA NF.
- (b) The department shall have unlimited on-site access to all of a VA NF's fiscal and service records for the purpose of:
  1. Accounting;
  2. Auditing;
  3. Medical review;
  4. Utilization control; or
  5. Program planning.

Section 7. Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual to a VA NF, a VA NF shall conduct a level I PASRR in accordance with 907 KAR 1:755.

(2)(a) The department shall not reimburse a VA NF for a service delivered to an individual if the VA NF did not comply with the requirements of 907 KAR 1:755.

(b) Failure to comply with 907 KAR 1:755 may be grounds for termination of a VA NF's participation in the Medicaid Program.

Section 8. No Duplication of Service. The department shall not reimburse for a service provided by a VA NF to a recipient if the same service is provided at the same time to the recipient by another Medicaid program provider.

Section 9. Records Maintenance, Protection, and Security. (1)(a) A VA NF shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(2)(a) A VA NF shall maintain a health record regarding a recipient for at least five (5) years from the date of the service.

(b) If the United States Department of Health and Human Services secretary requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3) A VA NF shall comply with 45 C.F.R. Part 164.

Section 10. Medicaid Program Participation Compliance. (1) A

VA NF shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.
- (2)(a) If a VA NF receives any duplicate payment or overpayment from the department, regardless of reason, the VA NF 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.

Section 11. Third Party Liability. A VA NF shall comply with KRS 205.622.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

- (2) A VA NF that chooses to use electronic signatures shall:
  - (a) Develop and implement a written security policy that shall:
    1. Be adhered to by each of the VA NF's employees, officers, agents, or contractors;
    2. Identify each electronic signature for which an individual has access; and
    3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
  - (b) Develop a consent form that shall:
    1. Be completed and executed by each individual using an electronic signature;
    2. Attest to the signature's authenticity; and
    3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
  - (c) Provide the department, immediately upon request, with:
    1. A copy of the VA NF's electronic signature policy;
    2. The signed consent form; and
    3. The original filed signature [immediately upon request].

Section 13. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 14. Federal Approval and Federal Financial Participation. The department's reimbursement and coverage of services and drugs pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement and coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement and coverage.

Section 15. ~~[Drug Reimbursement. Drugs to a recipient in a VA NF shall:~~

- ~~(1) Be reimbursed via the department's outpatient pharmacy program in accordance with 907 KAR 1:018;~~
- ~~(2) Not be included in VA NF Medicaid allowable costs; and~~
- ~~(3) Not be reimbursed pursuant to this administrative regulation.~~

**Section 16.]** Appeal Rights. A participating VA NF may appeal a department decision as to the application of this administrative regulation as it impacts the VA NF's reimbursement in accordance with 907 KAR 1:671.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 7, 2014

FILED WITH LRC: March 24, 2014 at 4 p.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Guardianship**  
**(As Amended at ARRS, June 10, 2014)**

**910 KAR 2:040. Service provisions for adult guardianship.**

RELATES TO: KRS 17.500 - 17.540, 202A, 202B, 209.990, 210.290(3), (4), 367.97501, 367.97524, 367.97527, 387.500-387.990, 389A.010, 389.015, 20 C.F.R. 416.212, 42 U.S.C. 1382(e)(1)(G)

STATUTORY AUTHORITY: KRS ~~387.600(1)~~, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program.]~~ KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes service provisions for adult guardianship.

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

(2) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(3) ~~["BHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.~~

~~(4)] "Conservator" is defined by KRS 387.510(1).~~

~~(4)(5)] (4)] "Court" means a court of competent jurisdiction.~~

~~(5) ["DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.~~

~~(6) "Department" or "DAIL" means the Department for Aging and Independent Living[(DAIL)].~~

~~(7)] (5)] "Division" means the Division of Guardianship.~~

~~(8)] (6) "DMHDDAS" means the Department for Mental Health, Developmental Disabilities and Addiction Services.~~

~~(7)] "Fiduciary Services Branch" means a central office branch under the Division of Operations and Support[Guardianship].~~

~~(9)] (8)] "Field Services Branch" means a central office branch under the Division of Guardianship.~~

~~(10)] (9)] "Guardian" is defined by KRS 387.510(3).~~

~~(11)] (10)] "Guardian ad Litem" means a guardian appointed to represent the interests of a person with respect to a single action in litigation.~~

~~(12) "Guardianship advisory committee" means a review panel of at least two (2) cabinet medical directors to review records to assist in decision making regarding end of life decisions.~~

~~(13)] (11)] "Informed consent" means a person's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.~~

~~(14)] (12)] "Interested party" is defined by KRS 387.860(5)[means an individual or agency interested in assuming duties and responsibilities on behalf of a ward].~~

~~(15)] (13)] "Least restrictive alternatives" means the guardianship options that have been exhausted such as:~~

- (a) Power of attorney;
- (b) Living wills;
- (c) Advanced directives;
- (d) Case management;
- (e) Representative payee;
- (f) Curator;
- (g) Trustee;
- (h) Health care surrogate;
- (i) Ex-parte order;
- (j) Emergency protective services;
- (k) Adult protective ongoing services; or

(l) Informal network of support.

~~(16)] (14)] "Limited conservator" is defined by KRS 387.510(2).~~

~~(17)] (15)] "Limited guardian" is defined by KRS 387.510(4).~~

~~(18) "Nurse consultant" means a nurse consultant, inspector employed by the Cabinet for Health and Family Services.~~

~~(19)] (16)] "Provider" means a facility or entity providing services for a ward such as:~~

- (a) Self;
- (b) Caretaker;
- (c) Relative;
- (d) Group home placement;
- (e) Hospital;
- (f) Psychiatric hospital;
- ~~(g)] (17)]~~ Personal care home; or
- (h) Supports for Community Living facility.

~~(20) "Quit claim deed" means a document by which an individual disclaims an interest in a piece of real property and passes that claim to another person.~~

~~(21)] (17)] "Substituted judgment" means principle of decision-making made by the Field Services Branch which comports with the individual ward or beneficiary's known wishes expressed prior to the appointment of a guardian, if the individual was once capable of developing views relevant to the matter at issue and reliable evidence of these views remains.~~

~~(22)] (18)] "Successor guardian" means an individual, agency, or corporation who is appointed to succeed a current guardian removed by the court.~~

~~(23)] (19)] "Quit claim deed" means a document by which an individual disclaims an interest in a piece of real property and passes that claim to another person.~~

~~(20)] "Ward" is defined by KRS 387.510(15).~~

Section 2. Annual Court Report. (1) Within thirty (30) calendar days of the anniversary date of the guardianship appointment, the Field Services Branch shall submit to the court an annual report on the ward's personal status.

(2) In order to complete the annual report the Field Services Branch shall:

- (a) Visit the ward and use an Initial Field Visit Report to assess current physical condition and needs;
- (b) Review the ward's records at the ward's place of residence;
- (c) Consult with the provider concerning the ward's care;
- (d) Verify the names, addresses, and telephone numbers of the ward's relatives; and
- (e) Verify with Fiduciary Services Branch the ward's burial arrangements in accordance with 910 KAR 2:030, Section 12.

(3) The Field Services Branch shall:

- (a) Review, sign, and notarize an annual report; and
- (b) Maintain a scheduling system that ensures the timely filing of annual reports in court for each guardianship ward.

Section 3. Renewal of Limited Appointments. (1) A limited guardian or limited conservator shall not be appointed for more than five (5) years pursuant to KRS 387.590(7).

(2) The Field Services Branch shall be responsible for initiating procedures for continued guardianship or conservatorship, if appropriate.

(3) To make this determination, the Field Services Branch shall review the last annual court report to determine if continued guardianship was recommended.

(4) The Field Services Branch shall secure a verified affidavit from a physician, psychiatrist, or social worker, not serving in the division, verifying the ward's petition to continue guardianship.

(5) At least sixty (60) calendar [(60)] days prior to the date of the expiration of the limited guardianship, the Field Services Branch shall file with the court the following:

- (a) Petition for Relief Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov);
- (b) Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and
- (c) A verified affidavit as specified in subsection (4) of this

section.

(6) If the request for modification involves the removal of additional rights, the Field Services Branch shall request a jury trial.

(7) If required by the court, the Field Services Branch shall attend the renewal hearing and testify.

(8) Once a court order is issued, the Field Services Branch shall obtain a copy of the court documents.

Section 4. Restoration or Modification of Rights. (1) The Field Services Branch shall inform the ward of the restoration or modification of rights process.

(2) If a ward requests the restoration of his or her rights, the Field Services Branch shall assess and assist the ward's request.

(3) The Field Services Branch shall complete an assessment of the ward using the Initial Field Visit Report that includes:

(a) Community supports available to assist the ward;

(b) Less restrictive interventions that are available to the ward;

(c) Improvements in the ward's ability to manage personal or financial affairs;

(d) Risks and benefits of restoration or modification of rights; and

(e) A recommendation of what rights could be appropriately restored, including voting rights.

(4) If the assessment supports restoration or modification, the Field Services Branch shall assist the ward in preparation of the Petition for Relief Modification or Termination (AOC-795), issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), for submittal to the court.

(5) If the assessment does not support restoration or modification, the Field Services Branch shall advise the ward or other interested party after the assessment is complete that he or she may call or write the court to request restoration.

(6) If it is in the ward's best interest, the Field Services Branch shall work with the ward towards the goal of restoration or modification by developing a plan and setting attainable and measurable goals.

(7) The Field Services Branch shall involve community partners in formulating the plan to ensure focus on comprehensive services.

(8) The Field Services Branch shall agree on a time frame for evaluating the ward's progress.

(9) If the ward has some rights restored and the cabinet's appointment is modified, the Field Services Branch shall:

(a) Obtain a copy of the cabinet's new appointment; and

(b) Email notification of the change to the Fiduciary Services Branch.

(10) If the ward's rights are restored and the cabinet no longer serves in any capacity, the Field Services Branch shall:

(a) Obtain a copy of the court order indicating restoration;

(b) Notify Fiduciary Services Branch by email of the resignation and the mailing address of the ward;

(c) Review the ward's records and hard copy file to determine if any original information or documentation should be sent to the Fiduciary Services Branch and, if so, forward the same to the Fiduciary Services Branch within ten (10) working days of the review;

(d) Inform the restored ward about procedures to apply for benefits; and

(e) Direct the restored ward to the Fiduciary Services Branch regarding additional financial questions.

Section 5. Securing Successor Guardian or Conservator. (1) The Field Services Branch shall advise or assist an interested party, if appropriate.

(2) The Field Services Branch shall discuss with the interested party:

(a) The possibility of he or she becoming guardian; and

(b) The following information:

1. Prior history and involvement of the interested party;

2. Willingness of the interested party to assist the ward; and

3. A criminal background check on the interested party with the county attorney.

(3) If the Field Services Branch determines the appointment of the interested party as successor guardian or conservator is in the best interest of the ward, the Field Services Branch shall assist the interested party with the completion and filing of:

(a) The Petition for Relief, Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and

(b) An Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), with the court.

(4) The Field Services Branch shall submit to the court a letter supporting appointment of the applicant for successor guardian or conservator.

(5) If the Field Services Branch does not agree that successor guardian or conservator appointment is in the best interest of the ward, the Field Services Branch shall:

(a) Advise the interested party that he or she may contact the court and make appropriate application; and

(b) Submit a letter to the court specifying the concerns regarding the application of appointment for successor guardian or conservator.

(6) The Field Services Branch shall be available to testify at the hearing to determine if a successor guardian or conservator is appointed by the court.

(7) If a successor guardian or conservator is appointed and the cabinet retains no responsibility, the Field Services Branch shall:

(a) Obtain a copy of the court order showing change in guardianship and verification that bond has been posted if surety has been ordered by the court;

(b) Notify Fiduciary Services Branch by email of the resignation;

(c) 1. Review the ward's records and hard copy file to determine if any original information or documentation should be sent to Fiduciary Services Branch for submission to the successor guardian or conservator; and

2. If so, forward the information or documentation to the Fiduciary Services Branch within ten (10) working days of the review;

(d) Inform the successor guardian or conservator about procedures to apply for benefits; and

(e) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding additional financial questions.

(8) If the successor guardian or conservator is appointed in some capacity and the cabinet retains some level of responsibility, the Field Services Branch shall:

(a) Obtain a copy of the court order showing the change in guardianship and verification that bond has been posted if surety was required by the court;

(b) Notify the Fiduciary Services Branch by email of the change in the cabinet's responsibility;

(c) Inform the successor guardian or conservator about procedures to apply for relevant benefits; and

(d) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding financial questions.

Section 6. Sale of Real of Estate. (1) If a ward of the cabinet has real property, the Field Services Branch and the Fiduciary Services Branch staff shall explore options for management of property and determine what is in the best interest of the ward.

(2) Information concerning the property valuation for tax purposes, the real estate or personal property, or offers to purchase the ward's property shall only be disclosed to the following authorized persons:

(a) Other staff employed by the cabinet's division such as:

1. Office of the Inspector General (OIG);

2. Office of Legal Services (OLS);

3. Ombudsman;

4. Adult Protective Services (APS); or

5. Child Protective Services (CPS);

(b) The insurance agent or claims representative of the insurance company that wrote the insurance policy on the property;

(c) The real estate agent and attorney with a provider agreement to manage property and legal matters for the service

region; or

(d) The Guardian ad Litem appointed for the sale of the ward's property.

(3) If disposing of the ward's assets, the Field Services Branch shall make a reasonable effort to preserve the estate as designated in a ward's will or other estate planning devices executed by a ward prior to the finding of disability in accordance with KRS 387.700(1).

(4) The Field Services Branch shall review court appointment papers to ensure that the cabinet has the authority to handle real estate and personal property matters.

(5) ~~If necessary, or if mandated~~~~As deemed necessary or mandatory~~ by the court, the Field Services Branch shall secure an independent appraisal of real and personal property.

(6) The Field Services Branch shall secure an attorney to handle the sale of property pursuant to KRS 389A.010 and 389A.015.

(7)(a) The Field Services Branch shall ensure the cabinet only passes title by means of a Quit Claim Deed on behalf of the ward.

(b) A Quit Claim Deed passes only the interest held by the ward.

(c) Warranties shall not be expressed in a Quit Claim Deed.

(8) The Field Services Branch shall determine if a relative or other interested party is interested in purchasing real property and, if so, offer the property appraised by a realtor to the relative or other interested party.

(9) If the division determines it is in the ward's best interest to sell real and personal property, a public forum for sale shall include a:

- (a) Public auction;
- (b) Dealer consignment;
- (c) Yard sale; or
- (d) Realtor.

(10) The Field Services Branch shall dispose of remaining items that did not sell, if applicable, [items] through donation.

(11) The Field Services Branch shall seek eviction through the court if a person residing in the ward's property:

- (a) Refuses to vacate the property;
- (b) Is not paying rent; or
- (c) Is causing damage to the property; ~~or (d) Refuses to vacate due to sale of the property.~~

(12) The Field Services Branch shall attend a closing on the ward's real property and shall sign documents such as a:

- (a) Quit Claim Deed;
- (b) Settlement Statement; or
- (c) Tax form.

Section 7. Guardianship Ongoing Service Provision. (1) The Field Services Branch:

(a) Shall have someone on call twenty-four (24) hours a day; and

(b) May have duties such as:

- 1. Managing assets, that may include managing or liquidating real and personal property;
- 2. Securing and giving consent for social services, medical services, and living arrangements; or
- 3. Securing and granting permission for other needed support services necessary for the well-being of the ward.

(2) Pursuant to KRS 387.640(1), the cabinet as guardian shall have the general duty to assure that the personal, civil, and human rights of the ward are preserved and protected.

Section 8. Decision Making on Behalf of a Ward. (1) A decision made on behalf of a ward by the Field Services Branch shall be based on the principles of:

- (a) Informed consent;
- (b) Substituted judgment;
- (c) Best interest; or
- (d) Least restrictive alternative.

(2) The Field Services Branch shall use the following guidelines if making a decision on behalf of a ward:

- (a) The exact request of the ward;
- (b) Conditions identified necessitating action;

(c) Identify and determine alternatives that best meets the individual needs of the ward while placing the least restrictions on the ward's:

- 1. Freedom;
- 2. Rights; and
- 3. Ability to control the ward's own environment;

(d) Based on available information, determine whether the ward has previously stated preferences prior to the cabinet being made the ward's guardian;

(e) Communication of decisions with the ward;

(f) A determination of risks and benefits:

1. While balancing the ward's maximum self-determination; and

2. Maintaining the safety of the ward; and

(g) Directions from the court.

(3) The Field Services Branch shall make each decision by an informed decision based on the principle of informed consent.

(4) The Field Services Branch shall not use substituted judgment if:

(a) Following the ward's wishes causes substantial harm to the ward; or

(b) The Field Services Branch is unable to establish the ward's prior wishes.

(5) The Field Services Branch shall consider the least intrusive, best interest, and least restrictive alternative course of action possible to provide for the needs of the ward.

Section 9. Visiting the Ward at the Current Residence. (1) The Field Services Branch shall visit the ward~~[and current residence]~~ at least every ninety (90) days with a minimum of two (2) visits being in the home environment annually~~[quarterly]~~ to:

(a) Assess the suitability of the placement and ascertain a ward's needs;

(b) Consult with facility personnel regarding the cabinet's expectations; and

(c) Participate in the ward's care plan.

(2) If the Field Services Branch visits a facility and concerns are identified, and if the issue does not require intervention by regulatory or certifying agencies, the Field Services Branch shall:

(a) Bring it to the attention of the facility's administrator or designee; and

(b) Develop an agreement for corrective action with the facility administrator.

(3) If the issue is a regulatory issue related to health or safety, the Field Services Branch shall report immediately to the appropriate regulatory or certifying agency such as:

- (a) OIG;
- (b) ~~DBHDD~~~~[Department for Mental Health, Developmental Disabilities and Addiction Services (DMHDDAS)]~~; or
- (c) The department.

(4) The Field Services Branch shall report known or suspected incidents of abuse, neglect, or exploitation to:

(a) The Department for Community Based Services (DCBS) office;

(b) The Division of Protection and Advocacy (P&A)~~[(DPA)]~~ if the Field Services Branch is aware the ward is a client of the P&A~~[(DPA)]~~; or

(c) Other appropriate state agency.

(5) The designated Field Services Branch shall complete the following duties:

(a) Explain reporting requirements to the ward;

(b) Explain the investigative process of abuse, neglect, or exploitation that will ensue; and

(c) Offer the alleged victim appropriate assistance or referral as specified in subsection (4) of this section.

Section 10. Out of State Travel. (1) If a request is made for a ward to travel out of the state of Kentucky, the Field Services Branch shall consider the following:

(a) Risk of or prior Absence Without Leave (AWOL);

(b) Medical issues of the ward that may require attention while out of state; and

(c) The ward's physical ability to handle the trip.

(2) The Field Services Branch shall inform the provider of the provider's financial responsibility for any emergency medical treatment not covered by the ward's medical insurance or Kentucky Medicaid from the time the ward leaves the state of Kentucky until the ward is once again within the legal boundaries of the Commonwealth of Kentucky.

(3) The Field Services Branch shall request a signed memorandum or letter from the provider detailing the following information:

(a) The potential for AWOL risk and if measures will be taken to lessen the risk;

(b) Acceptance of the involved responsibilities of the ward; and

(c) Proposed dates of travel.

(4) If the Field Services Branch determines that the provider has been responsible and agrees travel is in the best interest of the ward, the Field Services Branch shall share all necessary emergency contact numbers with the provider and request the provider to:

(a) Make contact upon return to the state of Kentucky; and

(b) Carry a copy of the current court order appointing the cabinet as guardian in case of an emergency.

Section 11. Signing Documents on Behalf of a Ward or Reports to Courts. (1) The Field Services Branch shall review facility contracts to ensure a ward's rights are preserved.

(2) The division shall not sign a contract for arbitration on behalf of a ward.

(3) A division employee shall use proper signature designation as follows:

(a) If signing on behalf of a ward, the wording shall be name of ward by name of cabinet guardianship employee on behalf of the cabinet as court appointed (type of appointment) for name of ward; or

(b) If signing a court document on behalf of the cabinet, the wording shall be name of guardianship employee on behalf of the Cabinet for Health and Family Services as court appointed (type of appointment) for name of ward.

(4) A division employee shall use the term:

(a) Conservator or limited conservator if the cabinet has been appointed for the sole purpose of performing the duties of a full or limited conservatorship; or

(b) Guardian or limited guardian in all other designations or combinations thereof.

Section 12. Client Placement and Movement. (1) To ensure a ward is receiving the least restrictive and highest quality services from the most appropriate provider, the Field Services Branch shall develop and maintain a working knowledge of:

(a) Services;

(b) Providers; and

(c) Facilities in the community.

(2) The Field Services Branch shall consider various ancillary and support services and select a provider that best meets the needs of the individual ward.

(3) If the cabinet has responsibility for living arrangements of the ward, the Field Services Branch shall ensure that the ward is living in the most appropriate, least restrictive environment taking into consideration the ward's wishes and needs.

(4) A move to a new environment, including an intensive care facility for intellectual disabilities~~[mental retardation]~~, nursing facility, or psychiatric hospital, may only be made after the Field Services Branch:

(a) Evaluates physical and mental health needs by reviewing recommendations of treating professionals; and

(b) Determines care options.

(5) The Field Services Branch shall, upon the move to a new environment:

(a) Attend an initial care plan meeting; and

(b) Visit the ward:

1. Within thirty (30) days of the move; and

2. Within ninety (90) days of the move for a follow-up visit.

(6) The Field Services Branch shall consider:

(a) Any involuntary or long-term institutional placement of a

ward to:

1. Minimize the risk of substantial harm to the ward; and

2. Obtain the most appropriate care; and

(b) The ward benefits and entitlements driven by level of care in the placement.

(7) The Field Services Branch shall notify the facility where the ward resides if the ward is listed on the Sex Offender Registry, has committed a sex crime or a crime against a minor, or is otherwise required to be on the registry pursuant to KRS 17.500 through 17.540.

Section 13. Supports for Community Living (SCL). (1) Unless a ward has been previously referred, the Field Services Branch shall refer a ward with an intellectual disability~~[a mental retardation]~~ or developmental disability to DBHDD~~[DMHDDAS]~~ for determination of Supports for Community Living (SCL) services in accordance with 907 KAR 1:145.

(2) The division shall monitor and access care in which a ward receives through SCL services.

Section 14. Bed Holds. (1) If the Field Services Branch receives notification that a ward is leaving a Medicaid nursing level of care or Medicaid Waiver program or has left a facility or placement, the Field Services Branch may:

(a) Give verbal authorization for the bed to be reserved; and

(b) Authorize bed hold days in excess of the period covered by Medicaid, or other funding source, only if the availability of the ward's funds has been verified with the Fiduciary Services Branch.

(2) If authorizing a bed hold, the Field Services Branch shall:

(a) Verify the verbal authorization of a bed hold with:

1. The facility holding the bed; and

2. Written verification including the:

a. Client's name;

b. Date phone call was placed;

c. Date reservation begins;

d. Date reservation ends; and

e. Rate per day; and

(b) Email the Fiduciary Services Branch that a bed hold has been completed.

(3) If a ward is in a public assistance eligible facility such as a licensed personal care home or family care home, and moves to a temporary stay at a hospital, psychiatric hospital-state and private, or nursing facility, the ward may be entitled to retain the public assistance for three (3) months in accordance with 42 U.S.C. 1382(e)(1)(G) and 20 C.F.R. 416.212.

(4) In order to continue public assistance the following requirements shall be met:

(a) A bed hold has been approved;

(b) A physician certifies in writing within ten (10) calendar days of admission that the non Supplemental Security Income (SSI) recipient is unlikely to be confined for longer than ninety (90) full, consecutive days; and

(c) Fiduciary Services Branch provides the DCBS with the following:

1. Notification of the temporary admission; and

2. The physician statement as specified in paragraph (b) of this subsection.

(5) If the bed hold is not verified or a physician statement is not received within ten (10) calendar days, the ward shall lose eligibility for public assistance and all public assistance shall be returned by the Fiduciary Services Branch to the Kentucky State Treasury from the date of admission.

(6)(a) The Field Services Branch may only authorize a bed hold for a ward residing in other levels of care by verifying and documenting the availability of the ward's funds with the Fiduciary Services Branch.

(b) If funds are verified by the Fiduciary Services Branch, the Field Services Branch shall verify the verbal authorization of a bed hold as specified in subsection (2) of this section.

Section 15. Moving to a New Region. (1) If a ward is being considered for placement from one (1) service region to another, the sending region's Field Services Branch shall consult with the

receiving service region's Field Services Branch to determine if the proposed placement meets the needs of the ward.

(2) If placement is appropriate, the Field Services Branch shall request that the receiving region's Field Services Branch visit and assess the ward within forty-five (45) calendar days of placement to ensure the ward is adjusting to the placement.

(3) Within seven (7) working days of the visit, the receiving region's Field Services Branch shall make a recommendation for case file transfer to the sending region as to the ward's adjustment to the placement.

(4) If the ward is not adjusting to placement in the receiving service region:

(a) The sending service region shall consult with the receiving service region for direction and possible resolution; and

(b) The receiving service region may revisit the ward to monitor the placement.

(5) If the ward is adjusting and placement is appropriate, the Field Services Branch shall request a transfer of the ward's case to the receiving region with the receiving region's approval.

(6) If the transfer of the case is considered appropriate, the Field Services Branch in the sending region shall:

(a) Review the ward's file;

(b) Ensure the annual report is current; and

(c) Forward the ward's records and notification of transfer date to the Field Services Branch of the receiving region.

(7) The Field Services Branch in the receiving region shall:

(a) Notify the court of new place of residence and transfer;

(b) Assign a Field Services Worker in the new region; and

(c) Ensure health insurance and Medicare Part D are in place and available.

(8) If any of the following apply, the ward shall not be transferred:

(a) Limited appointment that expires within the next sixty (60) days of transfer;

(b) ~~If there are~~ Legal actions pending in the current service region including the sale of real or personal property;

(c) A relative or other interested party is petitioning to be appointed successor guardian or conservator;

(d) The ward is in a psychiatric hospital voluntarily or by commitment for a period of less than 360 days; or

(e) The ward has been approved for SCL funding and is awaiting a permanent placement.

(9) If the ward is still in an emergency appointment, the case shall not be transferred without the sending region's Field Services Branch reviewing the facts and making a determination if the transfer will be accepted by the court in the receiving service region.

Section 16. Personal Belongings. (1) If a ward is moved from one (1) facility to another, the Field Services Branch shall ensure that all personal belongings are safely moved with the ward within thirty (30) calendar days of the move.

(2) If a ward is moved from a facility to a psychiatric hospital and the ward's personal belongings cannot be moved with the ward, the Field Services Branch shall:

(a) Determine:

1. ~~Determine~~ If the prior facility charges a fee for storage; and

2. Through completion of a budget with the Fiduciary Services Branch, the availability of the ward's funds to cover the expense; and

(b) 1. Store the belongings; or

2. Dispose of the belongings as specified in Section 6(10) of this administrative regulation.

Section 17. Physical Health Care Needs of a Ward. (1) The Field Services Branch may approve health care, treatment, or services of a ward as authorized by a court.

(2) The Field Services Branch may approve birth control measures for the ward and authorize intrusive measures such as insertion of intrauterine devices or birth control implants if:

(a) A medical opinion indicates that there is minimal risk for the ward; and

(b) The procedure is considered to be the least invasive and

most appropriate method available.

(3)(a) The Field Services Branch may discuss with the ward or the ward's relative or other interested party the need for surgery or treatment if:

1. It is in the best interest of the ward; and

2. The ward's relative or other interested party has been involved with the ward's case.

(b) Discussion may include the possibility of the ward's relative or other interested party petitioning the court to be appointed as full guardian, guardian for personal affairs, or as limited guardian for medical affairs only.

(4) Unless emergency surgery or treatment is necessary to preserve the ward's life or to prevent serious impairment of the ward's physical health, the Field Services Branch shall seek, pursuant to KRS 387.660(3), the approval of a court for the:

(a) Removal of a bodily organ;

(b) Amputation of a limb; or

(c) Abortion or sterilization.

(5) The Field Services Branch shall document the health care services provided in the ward's case record including:

(a) Procedure to be performed;

(b) Name of the physician performing the procedure;

(c) Location where the procedure will be performed;

(d) Reason the procedure is needed;

(e) Less intrusive measures that have been tried, if applicable; and

(f) Date the procedure is to be performed.

Section 18. Mental Health Care Needs of the Ward. (1) The Field Services Branch shall seek court approval for the following procedures:

(a) Electro-Convulsive Therapy (ECT); or

(b) Psychosurgery pursuant to KRS 387.660(3).

(2) The Field Services Branch may co-sign a provider's voluntary admission form if a ward is admitted to a mental health or intellectual disability~~mental-retardation~~ facility and if the:

(a) Ward voluntarily signs the provider's voluntary admission form;

(b) Admitting physician deems the ward to be capable of voluntarily consenting to the treatment; and

(c) ~~The~~ Cabinet is authorized by the court to make medical decisions for the ward.

(3) If there is no other person willing to petition the court for the ward to be involuntarily admitted, and the ward meets criteria for involuntary admission to a mental health facility or intellectual disability~~mental-retardation~~ facility, the Field Services Branch shall follow the procedures and may initiate the Administrative Office of the Court's Petition for Involuntary Hospitalization:

(a) In accordance with KRS Chapters 202A and 202B; and

(b) If the Field Service Branch determines it is in the best interest of the ward.

Section 19. Nonemergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization or Abortion. (1)(a) Unless emergency surgery or treatment is necessary to preserve the ward's life or prevent serious impairment of the ward's physical health, the Field Services Branch shall seek the approval of the court for the nonemergency removal of a bodily organ and the nonemergency amputation of a limb, sterilization, or abortion pursuant to KRS 387.660(3).

(b) The nonemergency removal of a bodily organ may include an organ such as the:

1. Eye;

2. Kidney;

3. Liver;

4. Lung; or

5. Reproductive organs.

(c) The nonemergency amputation of a limb may include:

1. Arm;

2. Foot;

3. Hand; or

4. Leg.

(2) The Field Services Branch may discuss with the ward,

ward's relative or other interested party:

- (a) The disposition of an amputated limb; or
- (b) Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).

(3) In order to obtain approval of the court, the Field Services Branch shall obtain written statements from two (2) physicians, who have evaluated the ward and who are not in practice together to include the following:

- (a) Ward's name;
- (b) Date when the statement was written;
- (c) Physician's name, area of practice, address, telephone number, and signature;
- (d) Date the physician last evaluated the ward's condition;
- (e) Procedure to be performed;
- (f) Person who will perform the procedure;
- (g) Location where the procedure will be performed;
- (h) Date of the procedure;
- (i) Ward's prognosis if the procedure is performed;
- (j) Ward's prognosis if the procedure is not performed;
- (k) Risks of performing the procedure;
- (l) Physician's professional opinion as to why the benefits of having the procedure outweighs the risks involved; and
- (m) Alternative and less intrusive procedures that have been performed.

(4) The Field Services Branch shall prepare a written request for legal assistance with the OLS in anticipation of a motion and order that includes the:

- (a) Ward's name;
- (b) Date of adjudication;
- (c) Date the cabinet was appointed;
- (d) Type of appointment and any limitations;
- (e) County having current jurisdiction over the case;
- (f) Court's case number;
- (g) Procedure to be performed;
- (h) Reason the procedure needs to be performed;
- (i) Person who will perform the procedure;
- (j) Location where the procedure will be performed;
- (k) Date of the procedure;
- (l) Reference to the two (2) physicians who support the need for the procedure, who have evaluated the ward and who are not in practice together;

(m) Names, relationships, and mailing addresses of relatives to be notified of the court hearing; and

(n) Disposition of the amputated limb, if applicable.

(5) The Field Services Branch shall forward to the OLS the following:

- (a) The request for legal assistance;
- (b) A copy of the district court's AOC-785, Disability Judgment;
- (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
- (d) The two (2) physicians' statements.

(6) If the motion and order have been received, the Field Services Branch shall file the following information with the court in the case:

- (a) The motion and order prepared by OLS;
- (b) The two (2) physicians' statements;
- (c) An AOC-775, Order of Appointment of Guardian, available at the court of a ward's disability case; and
- (d) An AOC-785, Disability Judgment, available at the court of a ward's disability case.

(7) If required by the court, the Field Services Branch shall attend the hearing on the motion and order.

(8) The Field Services Branch shall provide a certified copy of the signed order to the:

(a) Hospital where the surgery or treatment is to be performed; or

(b) Facility where the ward is residing so that the order can be sent with the ward to the hospital.

(9) The Field Services Branch shall grant permission for the procedure that has been approved by the court.

(10) The Field Services Branch shall arrange disposition of the amputated limb as specified in subsection (2)(a) of this section~~[19(2)(a) of this administrative regulation]~~.

(11) The Field Services Branch shall include an affidavit and other documentation of surgery in the next annual report to the court.

Section 20. Emergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization, or Abortion. (1) If an emergency procedure needs to be performed within twenty-four (24) hours of notification of need from a physician to preserve the life or prevent serious impairment of the physical health of a ward, the Field Services Branch shall not seek court approval.

(2) The Field Services Branch shall notify the division of the need for an emergency procedure.

(3)(a) The Field Services Branch shall document the emergency need and time table for the procedure and request an affidavit of emergency need from the physician.

(b) The Field Services Branch may request a second opinion and an affidavit from the second physician to verify the need for surgery is an emergency.

(c) The Field Services Branch shall review the affidavit if the affidavit is received and authorized as an emergency procedure as appropriate.

(d) The Field Services Branch may discuss with the ward, ward's relative, or other interested party:

- 1. The disposition of an amputated limb; or
- 2. Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).

(e) The Field Services Branch shall include the affidavit and other documentation to the event in the next annual report to the court.

Section 21. Involuntary Mental Health Treatment for Wards. (1)(a) If it is determined that a ward is in need of mental health hospitalization, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from a mental health professional or hospital.

(b) If the ward refuses to seek mental health services, and no other person is willing or able to file the petition, the Field Services Branch may:

- 1. Counsel community partners to petition; or
- 2. Initiate a petition for involuntary hospitalization if the ward meets the following criteria for involuntary admission for mental health treatment:
  - a. The ward has a mental health diagnosis;
  - b. The ward can benefit from mental health treatment;
  - c. The involuntary admission is the least restrictive form of treatment; and
  - d. The ward presents a danger or threat of danger to self or others.
- (2) If the cabinet is the petitioner, the Field Services Branch shall:
  - (a) Attend the mental inquest hearing; and
  - (b) Testify at the request of the county attorney.

Section 22. Involuntary Intellectual Disability~~[Mental Retardation]~~ Treatment for a Ward. (1) If it is determined that a ward is in need of intellectual disability~~[mental retardation]~~ treatment, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from an intellectual disabilities~~[a mental retardation]~~ professional.

(2) If the ward refuses to seek intellectual disabilities~~[mental retardation]~~ treatment, and there is no other person willing or able to file the petition, the Field Services Branch may file a petition if the ward meets the following criteria for involuntary admission for intellectual disabilities~~[mental retardation]~~ treatment:

(a) The ward has an intellectual disability~~[a mental retardation]~~ diagnosis;

(b) The involuntary admission is the least restrictive form of treatment; and

(c) The ward presents a danger or threat of danger to self or others if not admitted to an intermediate care facility for intellectual disability (ICF/IID)~~[mental retardation (ICF/MR)]~~.

(3) In the case of an involuntary admission to an intellectual disabilities~~[a mental retardation]~~ facility, the Field Services Branch

shall:

(a) Request approval from the Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities~~[Mental Health, Developmental Disabilities and Addiction Services (DMHDDAS)]~~ for the ward's admission to the facility; and

(b) Notify the Division of Protection and Advocacy.

(4) If the involuntary admission is granted, the Field Services Branch shall follow procedures as set out in KRS 387.660(1) for notification to the court.

(5) If the cabinet is the petitioner, the Field Services Branch shall:

(a) Attend the mental inquest hearing; and

(b) Testify at the request of the county attorney.

Section 23. Electro-convulsive Therapy and Psychosurgery. (1) Unless it is a necessary emergency medical procedure to preserve life or prevent serious impairment of the physical health of the ward, the Field Services Branch shall, for all forms of psychosurgery, seek approval from the court pursuant to KRS 387.660(3)~~[387.600(3)]~~.

(2) The Field Services Branch shall inform the division of the requested procedure.

(3)(a) The Field Services Branch shall obtain written statements from two (2) psychiatrists who have evaluated the ward and who are not in practice together.

(b) The written statements shall include the following:

1. Ward's name;

2. Date when the statement was written;

3. Psychiatrist's name, area of practice, address, telephone number, and signature;

4. Last date the psychiatrist evaluated the ward's condition face-to-face;

5. Procedure to be performed;

6. Person who will perform the procedure;

7. Location where the procedure will be performed;

8. Date of the procedure;

9. Ward's prognosis if the procedure is performed;

10. Ward's prognosis if the procedure is not performed;

11. Risks of performing the procedure;

12. Psychiatrist's professional opinion as to why the benefits of having the procedure outweigh the risks involved; and

13. Alternative and less intrusive measures that have been performed.

(4) The Field Services Branch shall prepare a written request for legal assistance to the OLS that includes the:

(a) Ward's name;

(b) Date of adjudication;

(c) Date the cabinet was appointed;

(d) Type of appointment and any limitations;

(e) County having current jurisdiction over the case;

(f) Court's case number;

(g) Procedure to be performed;

(h) Reason the procedure needs to be performed;

(i) Person who will perform the procedure;

(j) Location where the procedure will be performed;

(k) Date of the procedure;

(l) Reference to the two (2) psychiatrists who support the need for the procedure; and

(m) Names, relationships, and mailing addresses of relatives to be notified of the hearing.

(5) Upon the completion of the written request, the Field Services Branch shall send to OLS the following and request that OLS prepare a motion and order requesting the consent for treatment:

(a) Request for legal assistance;

(b) A copy of the district court's AOC-785, Disability Judgment;

(c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and

(d) Two (2) psychiatrists' statements.

(6) Once the motion and order requesting the consent for treatment have been received by the guardianship local office, the Field Services Branch shall file the following information with the

court in the case:

(a) Motion and order prepared by OLS;

(b) Two (2) psychiatrists' statements;

(c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and

(d) A copy of the district court's AOC-785, Disability Judgment.

(7) If required by the court, the Field Services Branch shall attend the hearing on the motion and order.

(8) The Field Services Branch shall provide a certified copy of the signed order by the court to the hospital where the procedure is to be performed or to the facility where the ward is residing so that the order can be sent with the ward to the hospital.

(9) The Field Services Branch shall include the following in the next annual report to the court:

(a) The requests for consent for treatment;

(b) Action taken by the court; and

(c) Treatment provided and resulting outcomes.

Section 24. Life Saving Measures. (1) The procedure for the Field Services Branch to request a change in code status from Full Code (FC) to Do Not Resuscitate (DNR) for a ward for whom the cabinet has the authority to make health care decisions shall include:

(a)1. Being advised by an attending physician, after clinical examination, that the ward~~has a~~:

a. ~~Has a~~ terminal condition;

b. Is permanently unconscious; or

c. Has a comorbid condition, in which two (2) or more coexisting medical conditions compromise the ward's chance of recovery or of benefiting from active treatment; and

2. The physician's request~~[physician requests]~~ that the ward's code status be changed to DNR;

~~(b)[Ensuring that the ward's code status remains FC until consultation has been sought with one (1) of the DCBS Adult Medical Support Section (AMSS) nurse consultants or the Health Care Advisory Committee to change the ward's code status to DNR; (c)]~~ Sending the DNR Request Form to be completed and signed by two (2) physicians, one (1) of whom shall be the attending physician; and

~~(c)[(d)]~~ Notifying and sending the signed DNR Request Form and diagnostic documentation or testing that documents the ward's condition is terminal or permanently unconscious to one (1) of the~~[AMSS]~~ nurse consultants.

(2) The~~[DCBS-AMSS]~~ nurse consultant shall determine if the ward meets criteria according to the cabinet's protocol or defer the request to change the ward's code status to DNR to the Guardianship~~[Health Care]~~ Advisory Committee.

(3) The nurse consultant~~[AMSS]~~ shall notify the Field Services Branch of the determination that was made on the ward's code status.

(4) Upon receiving the determination for DNR, in support of changing the ward's code status to DNR, the Field Services Branch shall complete a hospital's or Emergency Medical Services' (EMS) Kentucky Emergency Medical Services Do Not Resuscitate Order.

(5) The Field Services Branch shall forward a copy of the approval and the DNR Order to all involved facilities.

(6) The Field Services Branch shall notify all involved facilities verbally of the DNR Order.

(7) If the ward's medical condition improves significantly, any party involved, including the Field Services Branch, may review and make a request to change the code status.

Section 25. Death of a Ward. (1) If a ward dies, the Field Services Branch shall contact the Fiduciary Services Branch within one (1) working day upon notification of the death and provide the:

(a) Name of the ward;

(b) Date of death;

(c) Place of death;

(d) Last residence;

(e) Name, address, and telephone number of the funeral home; and

(f) Assets held by the field office or current placement.

(2) The Field Services Branch may contact the preferred



funeral home and inform them of:

- (a) The ward's death and location of the body;
- (b) Any known relative or other interested party;
- (c) Any known prepaid burial assets; and
- (d) The fact that the cabinet shall not be held responsible for any burial arrangements or funeral expenses.

(3) The Field Services Branch shall ensure that a relative or other interested party is notified of the ward's death and funeral home.

(4) If there are no funds available for burial, the Field Services Branch shall attempt to contact a known relative or other interested party to determine their interest and ability to assist with burial expenses.

(5) The Field Services Branch may also seek assistance from the county Fiscal Court or local funeral homes.

(6) As the cabinet's decision-making authority ceases when the ward dies, the Field Services Branch shall not grant permission for:

- (a) Autopsies; or
- (b) Organ or tissue donations.

(7) If a ward dies in unusual or unknown circumstances, the Field Services Branch shall:

- (a) Make a referral to:

1. APS; and

2. County coroner, relative, or other interested party who may order an autopsy; and

(b) Complete and submit to the department a Notice of Adult Fatality.

(8) If the Field Services Branch determines the ward's hard copy file is complete or no later than six (6) months from date of death, the file shall be forwarded by person or mail to the Fiduciary Services Branch.

Section 26. Cremations. (1) Pursuant to KRS 367.97524 and 40 KAR 2:150, a cremation authorization form shall be signed by an authorizing agent clearly stating the disposition of the cremated remains.

(2) Pursuant to KRS 367.97527, a ward may have established a prepaid cremation account prior to being determined to be disabled in order to specify how personal remains shall be handled.

(3) Other persons legally entitled to order the cremation and disposition of the adult's human remains shall be as listed in KRS 367.97501(1).

(4)(a) The Field Services Branch shall not sign a cremation authorization, or be allowed to establish a prepaid cremation account for a ward.

(b) If the ward funded a pre-paid cremation account prior to being adjudicated disabled, the ward's desire to be cremated shall be honored.

(c) If the ward has not signed a preneed authorization and there are no adult relatives who are willing to serve as the authorizing agent, the ~~coroner~~<sup>coroner</sup> may seek an order in district court authorizing the ward's cremation.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Initial Field Visit Report", [edition] 3/09;
- (b) "DNR Request Form", [edition] 3/09; and
- (c) "Notice of Adult Fatality", [edition] 3/09.

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

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 7, 2014 at 2 p.m.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET  
Kentucky Board of Dentistry  
(Amended After Comments)

201 KAR 8:550. Anesthesia and sedation.

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to conscious anesthesia and sedation permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia.

Section 1. Definitions. (1) "Advanced Cardiac Life Support" or "ACLS" means a certification that an individual has successfully completed an advanced cardiac life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.

(2) "Anesthesia" means an artificially induced insensibility to pain usually achieved by the administration of gases or drugs.

(3) "Anesthesia and sedation" means:

- (a) Minimal sedation;
- (b) Moderate sedation;
- (c) Deep sedation; and
- (d) General anesthesia.

(4) "Board" means the Kentucky Board of Dentistry.

(5) "Certified registered nurse anesthetist" means a registered nurse who is currently certified to practice nurse anesthesia in Kentucky.

(6) "Conscious sedation permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer parenteral sedation for the practice of dentistry.

(7) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Cardiovascular function is usually maintained.

(8) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(9) "Facility" means a location in which anesthesia or sedation is administered for the practice of dentistry.

(10) "Facility inspection" means an on-site inspection by the board or its designee to determine if a facility where the applicant proposes to provide anesthesia and sedation is adequately supplied, equipped, staffed, and maintained in a condition to support the provision of anesthesia and sedation services in a manner that meets the requirements of this administrative regulation.

(11) "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation, drug-induced depression, or changes in neuromuscular function. Cardiovascular function may be impaired.

(12) "General anesthesia permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer general anesthesia for the practice of dentistry.

(13) "Incident" means dental treatment performed on a patient under minimal sedation, moderate sedation, deep sedation, or general anesthesia with unforeseen complications.

(14) "Incremental dosing" means administration of multiple doses of a drug until a desired effect is reached.

(15) "Minimal sedation" means a drug-induced state, with or without nitrous oxide to decrease anxiety, in which patients

respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are maintained and do not require assistance.

(16) "Moderate enteral sedation" means a drug-induced depression of consciousness through the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(17) "Moderate parenteral sedation" means a drug-induced depression of consciousness that bypasses the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(18) "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(19) "Nitrous oxide sedation" means a technique of inhalation sedation with nitrous oxide and oxygen.

(20) "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract, that is, through an intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraosseous technique.

(21) "Pediatric Advanced Life Support" or "PALS" means a certification that an individual has successfully completed a pediatric advanced life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.

(22) "Sedation" means the reduction of stress or excitement by the administration of a drug that has a soothing, calming, or tranquilizing effect.

Section 2. Nitrous Oxide Sedation. (1) Nitrous oxide sedation may be used by a Kentucky-licensed dentist without a specific sedation permit or by a Kentucky-licensed dental hygienist certified to administer block and infiltration anesthesia and nitrous oxide analgesia.

(2) Equipment used in the administration of nitrous oxide sedation shall have functional safeguard measures that:

(a) Limit the minimum oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Insure that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

~~(4) [(a) Under a dentist's direct supervision and direct orders, a dental assistant may administer nitrous oxide.~~

(b)] A dental assistant may only deliver nitrous oxide at a rate specified by direct orders of a dentist. [If a dental assistant administers nitrous oxide, the dental assistant shall administer the level prescribed by the dentist].

Section 3. Minimal Sedation Without a Permit. (1) A permit shall not be required for a dentist to administer minimal enteral sedation for patients age thirteen (13) and older.

(2) A dentist who intends to administer minimal sedation shall indicate the intent to administer minimal sedation in the patient's record.

(3) Medication used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Additional dosing shall be within the MRD limits.

(4) A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia.

(5) Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation.

Section 4. Permit and Location Certificate Required. (1) A dentist shall not administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry unless:

(a) The dentist holds an appropriate Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit issued by the board; or

(b) The dentist holds a conscious sedation or general anesthesia permit that shall be converted to a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit at the next license renewal.

(2) A dentist shall not administer an anesthetic technique under a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit issued by the board at a facility unless:

(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or

(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.

(3) A treating dentist who does not hold an anesthesia and sedation permit shall not allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry at a facility owned or operated by the treating dentist unless:

(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or

(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.

Section 5. Classifications of Anesthesia and Sedation Permits. The following permits shall be issued by the board to a qualified licensed dentist:

(1) Minimal Pediatric Sedation permit that authorizes a dentist to use minimal enteral sedation for patients age five (5) to twelve (12). Medication or medications used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Incremental dosing shall be prohibited. All dosing shall be administered in the dental office. A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia. Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation;

(2) Moderate Enteral Sedation permit that authorizes a dentist to use moderate enteral sedation for patients age thirteen (13) and older;

(3) Moderate Parenteral Sedation permit that authorizes a dentist to use moderate parenteral sedation for patients age thirteen (13) and older;

(4) Moderate Pediatric Sedation permit that authorizes a dentist to use moderate sedation by any route of administration for patients age twelve (12) and under; and

(5) Deep Sedation or General Anesthesia permit that authorizes a dentist to use:

(a) General anesthesia; or

(b) Deep sedation.

Section 6. Qualifications for Obtaining a Minimal Pediatric Sedation Permit. To qualify for a Minimal Pediatric Sedation permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) a Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage minimal sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction on pediatric minimal sedation by the enteral route or the combination enteral and nitrous oxide route.

Section 7. Qualifications for Obtaining a Moderate Enteral Sedation Permit. To qualify for a Moderate Enteral Sedation permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) A Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction plus management of at least ten (10) adult case experiences by the enteral route or the combination enteral and nitrous oxide route. These ten (10) cases shall include at least three (3) live (on sight) clinical dental experiences managed by participants in groups that shall not exceed five (5) individuals. These three (3) live (on-sight) experiences may be obtained by observing a permit level dentist in his or her office, and the remaining cases may include simulations and video presentations and shall include at least one (1) experience in returning a patient from deep to moderate sedation.

Section 8. Qualifications for Obtaining a Moderate Parenteral Sedation Permit. To qualify for a Moderate Parenteral Sedation permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of:

(a) A CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate parenteral sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of sixty (60) hours of didactic instruction plus management of at least twenty (20) patients per course participant in moderate parenteral sedation techniques.

Section 9. Qualifications for Obtaining a Moderate Pediatric Sedation Permit. To qualify for a Moderate Pediatric Sedation permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by administrative regulation;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway

management; and

(4) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation for patients age twelve (12) and under.

Section 10. Qualifications for Obtaining a Deep Sedation or General Anesthesia Permit. To qualify for a Deep Sedation or General Anesthesia permit, an applicant shall:

- (1) Submit an Application for Sedation or Anesthesia Permit;
- (2) Pay the fee required by administrative regulation;
- (3) Hold current certification in either ACLS or PALS; and
- (4) Provide proof of successful completion of:

(a) A board-approved Accreditation Council for Graduate Medical Education (ACGME) accredited post doctoral training program in anesthesiology which affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;

(b) A board-approved nurse anesthesia program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs that affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;

(c) Successful completion of a minimum of two (2) years advanced clinical training in anesthesiology from a Joint Commission on Accreditation of Healthcare Organization (JCAHO) accredited institution that meets the objectives set forth in part two (2) of the American Dental Association's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry; or

(d) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia.

Section 11. Multiple Application Levels Permitted. Dentists with education and training for more than one (1) level of sedation may mark their levels of qualification on the Application for Sedation or Anesthesia Permit, based on the requirements of Sections 6 through 10 of this administrative regulation.

Section 12. Location Requirement. A dentist holding a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit shall advise the board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the Anesthesia and Sedation Permit Location Notification Form within ten (10) business days of the change.

Section 13. Anesthesia and Sedation Facility Certificates. (1) The owner or operator of a facility shall obtain an Anesthesia and Sedation Facility Certificate from the board for any location at which:

(a) A dentist holding a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit may administer anesthesia and sedation under the permit; or

(b) The treating dentist may allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry.

(2) A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate shall:

- (a) Submit an Application for an Anesthesia and Sedation Facility Certificate;
- (b) Pay the fee required by 201 KAR 8:520; and
- (c) Successfully pass a facility inspection as outlined in Section 14 of this administration.

(3) A dentist currently in an advanced training course for sedation may request the Board of Dentistry complete a Sedation

Facility Inspection prior to completion of the course.

(4) The owner or operator of a facility shall not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so under this administrative regulation.

(5) The owner or operator of a facility shall maintain for five (5) years for inspection by the board the name and license number of each dentist, physician anesthesiologist, or certified registered nurse anesthetist who has administered anesthesia or sedation at that location.

(6) The owner or operator of a facility shall ensure that the facility:

(a) Remains properly equipped in accordance with Section 14 of this administrative regulation; and

(b) Remains properly staffed in accordance with Section 15 of this administrative regulation.

(7) In addition to the requirements contained in subsection (6) of this section, the owner or operator of a facility shall ensure that the facility has appropriate nonexpired emergency and sedation medications.

Section 14. Facility Inspection Criteria. (1) To qualify for an Anesthesia and Sedation Facility Certificate, the facility shall pass an evaluation of facility equipment, medications, and clinical records.

(a) The following shall be provided by the facility to qualify:

1. Oxygen and gas delivery system, backup system fail-safe;
2. Gas storage facility;
3. Safety indexed gas system;
4. Suction and backup system;
5. Auxiliary lighting system;
6. Suitability of operating room to include:

a. Size, which shall be at a minimum ten (10) feet by eight (8) feet or eighty (80) square feet;

b. Operating primary light source and secondary portable back-up source, unless back-up generator is available; and

c. Accessibility by emergency medical staff;

7. Recovery area, including oxygen, suction, and visual and electronic monitoring, which may include the operating room;

8. Preoperative medical history and physical evaluation form; and

9. Anesthesia and monitoring equipment checked to insure proper working order.

(b) The following shall be provided by the facility or by an individual listed in Section 22 of this administrative regulation:

1. Appropriate drugs for each procedure, all of which shall be unexpired, including reversal agents and emergency medications;

2. Appropriate devices to maintain an airway with positive pressure ventilation;

3. Anesthesia records, including monitoring and discharge records and a check sheet.

a. The check sheet shall be signed by the provider and the dentist and placed in each record.

b. If the dentist is the provider, only the dentist's signature shall be required;

4. Monitoring equipment, including pulse oximeter and blood pressure monitoring;

5. Electrocardiogram (EKG):

a. May be present for use by Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, and Moderate Pediatric Sedation permit holders for patients with significant cardiac history; and

b. Shall be present for use by Deep Sedation or General Anesthesia permit holders;

6. Defibrillator or automated external defibrillator (AED) for moderate and Deep Sedation or General Anesthesia permits; and

7. For deep sedation or general anesthesia in pediatric patients:

a. A precordial stethoscope; or

b. A pretracheal stethoscope.

(2) During a facility inspection, inspectors shall:

(a) Examine the facility's equipment to determine if it is in proper working order;

(b) Determine if appropriate emergency drugs are present; and

- (c) Determine if emergency drugs are nonexpired.

Section 15. Inducing a Level of Sedation for a Patient. (1) Administration of minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient requires at least the following appropriately trained individuals:

- (a) The treating dentist;
  - (b) An individual trained and competent in basic life support (BLS) or its equivalent to assist the treating dentist; and
  - (c) Another individual trained and competent in BLS or its equivalent in close proximity to assist if needed.
- (2) A dentist administering minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient shall not leave the site until the patient:

- (a) Is conscious;
- (b) Is spontaneously breathing;
- (c) Has stable vital signs;
- (d) Is ambulatory with assistance; and
- (e) Is under the care of a responsible adult.

(3) A treating dentist who allows a physician, another dentist, or certified registered nurse anesthetist to administer minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia under Section 22 of this administrative regulation shall ensure that the physician, dentist, or certified registered nurse anesthetist shall not leave the site until the patient:

- (a) Is conscious;
- (b) Is spontaneously breathing;
- (c) Has stable vital signs;
- (d) Is ambulatory with assistance; and
- (e) Is under the care of a responsible adult.

Section 16. Conscious Sedation Permits and General Anesthesia permits. (1) A dentist who holds a current general anesthesia permit may continue to administer anesthesia and sedation consistent with a Deep Sedation or General Anesthesia permit until the expiration date of the permit.

(2) A dentist who holds a current conscious sedation permit and meets the requirements of Section 9(4) of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Pediatric Sedation permit until the expiration date of the permit.

(3) A dentist who holds a current conscious sedation permit and meets the requirements of Section 8 of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Parenteral Sedation permit until the expiration date of the permit.

(4) During the license renewal process, current general anesthesia permit holders shall convert the permit to a Deep Sedation or General Anesthesia permit.

(5) During the license renewal process, current conscious sedation permit holders shall convert the permit to a minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, or moderate pediatric sedation permit.

(6) A dentist who currently practices enteral sedation without a permit may continue without a permit until January 1, 2012 and shall receive a Moderate Enteral Sedation permit by the submission of:

- (a) Twenty-four (24) hours of didactic education plus twenty (20) sedation records documenting their experience; and
- (b) Satisfactory completion of an on-site inspection as outlined in Section 14 of this administrative regulation.

Section 17. Issuance and Expiration of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permits.

(1) Once an applicant has met the qualifications for obtaining a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit the board shall issue a

permit in sequential numerical order.

(2) Each permit issued under this administrative regulation shall expire on the same date as the permit holder's license to practice dentistry.

Section 18. Renewal of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia Permits. An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia permits shall:

(1) Submit a completed and signed Application for Renewal of Sedation or Anesthesia Permit;

(2) Pay the fee required by 201 KAR 8:520; and

(3) Provide evidence to the board that the applicant meets the continuing education requirements outlined in Section 19 of this administrative regulation.

Section 19. Continuing Education Requirements for Renewal of a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia Permit. (1) An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, or Moderate Pediatric Sedation permit shall:

(a) Complete at least six (6) hours of clinical continuing education related to sedation or anesthesia in a classroom setting that includes hands-on airway management during the two (2) year term of the permit; or

(b) Maintain ACLS or PALS certification.

(2) An individual desiring renewal of an active Deep Sedation or General Anesthesia permit shall:

(a) Complete not less than four (4) hours of on-site clinical continuing education related to sedation or anesthesia during the two (2) year term of the permit; and

(b) Maintain ACLS or PALS certification.

(3) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and

(b) Be in addition to other continuing education requirements of 201 KAR 8:532.

Section 20. Facilities Inspected Prior to February 1, 2011. A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate for a facility which passed an inspection by the board prior to February 1, 2011 shall provide proof to the board of having passed a facility inspection for the purpose of issuing a conscious sedation or general anesthesia.

Section 21. Issuance of an Anesthesia and Sedation Facility Certificate. Once an applicant has met the qualifications for obtaining an Anesthesia and Sedation Facility Certificate the board shall issue a certificate in sequential numerical order.

Section 22. Administration by a Physician Anesthesiologist, Dentist, or Certified Registered Nurse Anesthetist at the Facility of a Treating Dentist. (1) A treating dentist may allow at his or her dental facility, administration of sedation or anesthesia by a:

(a) Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist; or

(b) Dentist who holds an anesthesia and sedation permit.

(2) Administration by an individual listed in subsection (1)(a) of this section shall:

(a) Comply with this administrative regulation; and

(b) Not require board review.

(3) Nothing in this section shall preclude a dentist from working with a Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist in an ambulatory care center or hospital.

Section 23. Morbidity and Mortality Incident Reports. (1) A

dentist shall report to the board, in writing, any death caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after its occurrence.

(2) A dentist shall report to the board, in writing, any incident that resulted in hospital in-patient admission caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after its occurrence.

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

- (a) The date of the incident;
  - (b) The name, age, and address of the patient;
  - (c) The patient's original complete dental records;
  - (d) The name and license number of the licensee and the name and address of all other persons present during the incident;
  - (e) The address where the incident took place;
  - (f) The preoperative physical condition of the patient;
  - (g) The type of anesthesia and dosages of drugs administered to the patient;
  - (h) The techniques used in administering the drugs;
  - (i) Any adverse occurrence including:
    1. The patient's signs and symptoms;
    2. The treatment instituted in response to adverse occurrences;
    3. The patient's response to the treatment; and
    4. The patient's condition on termination of any procedures undertaken; and
  - (j) A narrative description of the incident including approximate times and evolution of symptoms.
- (4) The duties outlined in this section shall apply to every dentist who administers any type of sedation or anesthesia.

Section 24. Registered Dental Assistant Duties permitted when working with Sedation Permit holders: (1) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia permit holders may, under direct supervision:

- (a) Apply noninvasive monitors;
- (b) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative and post-operative (recovery) phases of treatment;
- (c) Report monitoring parameters to the operating dentist on a periodic basis and when changes in monitored parameters occur;
- (d) Record vital sign measurements in the sedation record; and
- (e) Remove IV lines (Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders only).

(2) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders, may under direct supervision assist in the management of emergencies.

(3) A registered dental assistant working with Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders may, under direct supervision:

- (a) Administer medications into an existing IV line upon the verbal order and direct supervision of a dentist with a Moderate Parenteral Sedation, Moderate Pediatric or Deep Sedation or General Anesthesia permit; and
- (b) Establish an IV line under direct supervision if they have completed a course approved by the Board of Dentistry in intravenous access.

Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Sedation or Anesthesia Permit", February 2011;
- (b) "Application for Sedation or Anesthesia Facility Certificate", February 2011; and

(c) "Sedation of Anesthesia Permit Location Notification Form", February 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

DR. JASON E. FORD, DMD, Board President

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at noon

CONTACT PERSON: David J. Beyer, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222; phone (502) 429-7280; fax (502) 429-7282; or email [david.beyer@ky.gov](mailto:david.beyer@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David J. Beyer

Board of Dentistry

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 313.035(1) requires the board to promulgate administrative regulations related to conscious anesthesia and sedation permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 313.035(1) which requires the board to promulgate administrative regulations related to conscious anesthesia and sedation permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement KRS 313.035(1) requires the board to promulgate administrative regulations related to conscious anesthesia and sedation permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement KRS 313.035(1) requires the board to promulgate administrative regulations related to conscious anesthesia and sedation permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia. The amendment clarifies that dental assistants may only deliver nitrous oxide at a rate specified by a dentist. The existing regulation created some confusion whether dental assistants had the authority to establish the rate on their own.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that dental assistants may only deliver nitrous oxide at a rate specified by a dentist. The existing regulation created some confusion whether dental assistants had the authority to establish the rate on their own.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies that dental assistants may only deliver nitrous oxide at a rate specified by a dentist. The existing regulation created some confusion whether dental assistants had the authority to establish the rate on their own.

(c) How the amendment conforms to the content of the authorizing statute: KRS 313.035(1) requires the board to promulgate administrative regulations related to conscious anesthesia and sedation permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia. The amendment clarifies that dental assistants may only deliver nitrous oxide at a rate specified by a dentist. The existing regulation created some confusion whether dental assistants had the authority to establish the rate on their own.

(d) How the amendment will assist in the effective

administration of the statutes: This administrative regulation and proposed amendment fulfills the requirements for KRS 313.035(1) which requires the board to promulgate administrative regulations related to conscious anesthesia and sedation permits. This administrative regulation establishes requirements for permits to perform conscious sedation or anesthesia. The amendment clarifies that dental assistants may only deliver nitrous oxide at a rate specified by a dentist. The existing regulation created some confusion whether dental assistants had the authority to establish the rate on their own.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will assist the dentists in Kentucky with employing properly training dental assistants for their offices and understanding what dental assistants are permitted to do pursuant to KRS 313.035. Currently, there are approximately 3,000 Kentucky dentists who could benefit from this amendment. Additionally, the Kentucky Board of Dentistry will 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: This regulation will not require any new actions on behalf of the dental assistant(s) as their registration is held by the dentist and not the board. The Kentucky Board of Dentistry is charged by KRS 313 et.seq to regulate the practice of dentistry in the Commonwealth.

(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 new cost to the individual with this amendment to the regulation. The board is a self-funded agency whose budget was approved in HB 265 of the Regular Session of the General Assembly. HB 265 provided for FY 2012 – 2013 an allotment of \$753,000 and for FY 2013 – 2014 and allotment of \$760,900. The Kentucky Board of Dentistry receives no monies from the General Fund.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will assist the dentists in Kentucky with employing properly training dental assistants for their offices. Currently, there are approximately 3,000 Kentucky dentists who could benefit from this amendment. The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for its licensees to legally practice as a registered dental assistant in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost associated with this regulation. The board is a self-funded agency whose budget was approved in HB 265 of the Regular Session of the General Assembly. HB 265 provided for FY 2012 – 2013 an allotment of \$753,000 and for FY 2013 – 2014 and allotment of \$760,900. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self-funded agency and derives its funding from fees paid by its licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520 make the agency financially solvent.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all registered dental assistants.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Dentistry is the only state government entity which will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal effect on the Kentucky Board of Dentistry as the agency is a fully self-funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in HB 265 of the Regular Session of the General Assembly.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in HB 265 of the Regular Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? The board is a self-funded agency whose budget was approved in HB 265 of the Regular Session of the General Assembly. HB 265 provided for FY 2012 – 2013 an allotment of \$753,000 and for FY 2013 – 2014 and allotment of \$760,900. The Kentucky Board of Dentistry receives no monies from the General Fund.

(d) How much will it cost to administer this program for subsequent years? The board is a self-funded agency whose budget was approved in HB 265 of the Regular Session of the General Assembly. HB 265 provided for FY 2012 – 2013 an allotment of \$753,000 and for FY 2013 – 2014 and allotment of \$760,900. The Kentucky Board of Dentistry receives no monies from the General Fund.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education  
Department of Education  
(Amended After Comments)

### 704 KAR 3:370. Professional Growth and Effectiveness System.

RELATES TO: KRS 156.557

STATUTORY AUTHORITY: KRS 156.070, 156.557(5)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide professional growth and effectiveness system for the purposes of supporting and improving the performance of all certified school personnel and to develop written guidelines for local school districts to follow in implementing a statewide system of evaluation for certified school personnel. This administrative regulation establishes a statewide professional growth and effectiveness system to support and improve the performance of all certified school personnel.

Section 1. Definitions. (1) "Artifact" means a product of a certified school personnel's work that demonstrates knowledge and skills.

(2) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR.

(3) "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR.

(4) "Certified school personnel" means a certified employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing[evaluator] feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluator" means the primary evaluator as described in KRS 156.557(5)(c)2.

(8) "Formative evaluation" is defined in KRS 156.557(1)(a).

(9) **"Improvement plan" means a plan for improvement of up to twelve (12) months in duration for teachers who are rated ineffective in professional practice and have a low overall student growth rating and for principals who are rated ineffective in professional practice and have high, expected, or low overall student growth rating.**

(10) "Job category" means a group or class of certified school personnel positions with closely related functions.

(11)(14) "Local contribution" means a rating based on the degree to which a teacher, principal, or assistant principal meets student growth goals and is used for the student growth measure.

(12)(14) "Local formative growth measures" is defined in KRS 156.557(1)(b).

(13)(12) "Observation" means a data collection process conducted by a certified observer for the purpose of evaluation and may include notes and professional judgments made during one (1) or more classroom or worksite visits of any duration, may include examination of artifacts, and may be conducted in person or through video.

(14)(13) "Observer certification" means a process of training and ensuring that certified school personnel who serve as observers of evaluatees have demonstrated proficiency in rating teachers for the purposes of evaluation and feedback.

(15)(14) "Observer recalibration" means the process of ensuring that certified school personnel have maintained proficiency and accuracy in observing teachers for the purposes of evaluation and providing feedback.

(16)(15) "Other professionals" means certified school personnel and does not include teachers, administrators, assistant principals, or principals.

(17)(16) "Overall student growth rating" means the rating that is calculated for a teacher evaluatee pursuant to the requirements of **Section 7(9) and (10)(Sections 8(5) and (6))** of this administrative regulation and that is calculated for an assistant principal or principal evaluatee pursuant to the requirements of **Section 10(8)(Sections 11(4) and (5))** of this administrative regulation. **[(17) "Peer assistance and review process" means a process created to provide peer assistance and review for the purposes of supporting and improving instructional practice and making personnel decision recommendations.]**

(18) "Peer observation" means observation and documentation by trained certified school personnel.

(19) "Performance criteria" means the areas, skills, or outcomes on which certified school personnel shall be evaluated.

(20) "Performance rating" means the summative description of a teacher, principal, or assistant principal evaluatee's performance and includes the following ratings:

(a) "Exemplary" means the rating for performance that consistently exceeds expectations for effective performance;

(b) "Accomplished" means the rating for performance that consistently meets expectations for effective performance;

(c) "Developing" means the rating for performance that inconsistently meets expectations for effective performance; and

(d) "Ineffective" means the rating for performance that consistently fails to meet expectations for effective performance.

(21) "Preschool teacher" means a certified school personnel who holds a certificate required by 16 KAR 2:040 and who meets the preschool lead teacher qualifications required by 704 KAR 3:410, Section 7.

(22) "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR 3:050.

(23) "Professional growth and effectiveness system" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557(1)(c), (2), and (3) and that uses clear and timely feedback to guide professional development.

(24) "Professional growth plan" means an individualized plan for a certified personnel that is focused on improving professional practice and leadership skills, aligned with performance standards and the specific goals and objectives of the school improvement plan or the district improvement plan, built using a variety of sources and types of data that reflect student needs and strengths, evaluatee data, and school and district data, produced in consultation with the evaluator **as described in Sections 9(1), (2), (3), and (4) and 12(1), (2), (3), and (4) of this administrative regulation**, and includes:

(a) Goals for enrichment and development that are established by the evaluatee in consultation with the evaluator;

(b) Objectives or targets aligned to the goals;

(c) An action plan for achieving the objectives or targets and a plan for monitoring progress;

(d) A method for evaluating success; and

(e) The identification, prioritization, and coordination of presently available school and district resources to accomplish the goals.

(25) "Professional practice" means the demonstration, in the school environment, of the evaluatee's professional knowledge and skill.

(26) "Professional practice rating" means the rating that is calculated for a teacher evaluatee pursuant to Sections 8(2), (3), and (4) of this administrative regulation and that is calculated for a principal or assistant principal evaluatee pursuant to the requirements of Section 10(2) of this administrative regulation.

(27) "Self-reflection" means the annual process by which certified school personnel assess the effectiveness and adequacy of their knowledge and performance for the purpose of identifying areas for professional learning and growth.

(28) "Sources of evidence" means the multiple measures listed in KRS 156.557(4) and in Sections 8 and 10 of this administrative regulation.

(29) "State contribution" means the student growth percentiles, as defined in 703 KAR 5:200, Section 1(11), for teachers and the next generation learners goal for principals and assistant principals.

(30) "Student growth" is defined in KRS 156.557(1)(c).

(31) "Student growth goal" means a goal focused on learning, that is specific, appropriate, realistic, and time-bound, that is developed collaboratively and agreed upon by the evaluatee and evaluator, and that uses local formative growth measures.

(32) "Student growth percentile" is defined in 703 KAR 5:200, Section 1(11).

(33) "Student voice survey" means the **[department-approved]** student perception survey **provided by the department** that is administered annually to a minimum of one (1) district-designated group of students per teacher evaluatee and provides data on



specific aspects of the classroom experience and professional practice of the teacher evaluatee.

(34) "Summative evaluation" is defined by KRS 156.557(1)(d).

(35) "Teacher" means a certified school personnel who has been assigned the lead responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate under 16 KAR 2:010 or 16 KAR 2:020.

(36) "Working conditions survey goal" means a school improvement goal set by a principal or assistant principal every two (2) years with the use of data from the department-approved working conditions survey.

Section 2. Implementation Timeline. (1) During the 2014-2015 school year, all local districts shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel except other professionals, preschool teachers, and teachers of career and technical education in area technology centers, and may, if the system plan is approved by the local board of education, use the results from the system to inform personnel decisions. The use of a district's present evaluation plan, in addition to the system, during the 2014-2015 school year, will comply with this administrative regulation. During the 2014-2015 school year, the overall school and district accountability scores described in 703 KAR 5:225 shall not include the results from the system.

(2) During the 2014-2015 school year, all school districts shall pilot the system for other professionals and preschool teachers. During the 2014-2015 school year, school districts shall evaluate preschool teachers and other professionals pursuant to the requirements of Section 13 of this administrative regulation. Beginning in the 2015-2016 school year, all school districts shall fully implement the system for other professionals and preschool teachers.

(3) Beginning in the 2015-2016 school year, all school districts shall fully implement the system for all certified school personnel, use the system to inform personnel decisions for all certified school personnel, and the overall school and district accountability scores described in 703 KAR 5:225 shall include the results from the system.

Section 3. Approval of Local Professional Growth and Effectiveness System Plan and Procedures. (1) Each local school district shall submit to the department a professional growth and effectiveness system plan and procedures to establish the district's evaluation system for all certified school personnel.

(2) The department shall approve each local school district's plan and procedures that comply with the requirements established in KRS 156.557 and this administrative regulation.

Section 4. Local Professional Growth and Effectiveness Policies. The local board of education shall establish a written policy for implementing the system for all certified school personnel in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy for evaluation of the district superintendent, consistent with the requirements of KRS 156.557(6) and this administrative regulation.

Section 5. Local Evaluation Procedures and Forms. (1) A local evaluation committee shall develop, and the local board of education shall review and adopt[act upon], system procedures and forms for the evaluation of certified school personnel positions.

(2) The local board of education shall review and approve[adopt] procedures and forms that meet the requirements of KRS 156.557(5)(c) and include the requirements established in this subsection.

(a) The district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator.

(b) The district shall require a minimum of one (1) peer observation of a teacher evaluatee during the summative evaluation year, documentation of peer observations in the

department-approved technology platform, and sharing the documentation with the teacher for formative evaluation purposes. At the request of a teacher, peer observations may be used in the formative process.

(c) Beyond the minimum observation requirements set forth in KRS 156.557 and this administrative regulation, the district may establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation.

(d) The district shall require a teacher evaluator to conduct a minimum of three (3) observations of a teacher evaluatee during the summative evaluation cycle and, at a minimum, one (1) full classroom observation during the summative year and to document all observations in the department-approved technology platform.

(e) The district shall require a principal evaluator to conduct a minimum of two (2) site visits each year.

(f) The district shall create a process for selection of peer observers.

(g) The district shall require a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation by the evaluator.

(h) The district shall require the summative evaluation conference be held at the end of the summative evaluation cycle and include all applicable system data.

(i) The district shall require summative evaluation, with multiple observations, to occur annually for each teacher who has not attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and may utilize the formative data collected during the beginning teacher internship period, pursuant to 16 KAR 7:010, in the summative evaluation of an intern teacher.

(j) The district shall require multiple observations of a certified school personnel who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and whose observation results are determined to be ineffective.

(k) The district shall require summative evaluation at least once every three (3) years for a teacher who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7).

(l) The district, upon the request of a teacher, may use peer observation data in the formative process.

(m) The district shall require summative evaluation annually for a certified administrator, assistant principal, or principal.

(n) The district shall require a summative evaluation of a certified school personnel be documented in writing and be included in the evaluatee's official personnel record.

(o) The district shall require documentation of a summative evaluation of a teacher, principal, and assistant principal in the department-approved technology platform.

(p) All evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.~~The district shall require inclusion of the overall performance rating sources of evidence in the documentation of a certified school personnel's summative evaluation.~~

(q) The district shall provide an opportunity for a written response by the evaluatee, and require the response be included in the official personnel record.~~[(r) The district may develop and implement a peer assistance and review process.]~~

(3) The local board of education shall develop, adopt, and submit to the department for approval procedures for evaluation of the district superintendent, consistent with the requirements of KRS 156.557(6) and this administrative regulation.

Section 6. Training and Testing of Evaluators and Observers.

(1) The district shall include evaluation and observation training in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements of the district's system plan and procedures prior to evaluating a certified school personnel.

(3) An evaluator shall be trained and tested and approved on a four (4) year cycle.

(4) Year one (1) of the district's evaluator training cycle shall include the following training requirements:

(a) Training on all statutes and administrative regulations applicable to the evaluation of certified school personnel;

(b) Training in identifying effective teaching and management practices, in effective observation and conferencing techniques, in development of student growth goals, in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques;

(c) Training provided by the department for all certified administrator evaluators who have never evaluated certified school personnel. Other certified administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may also be trained by the department; and

(d) Training, for all other evaluators, by a provider who has been approved by the department as a trainer for the Instructional Leadership Improvement Program established in 704 KAR 3:325.

(5) Year one (1) of the district's evaluator training cycle shall include the testing requirements established in this subsection.

(a) An evaluator shall successfully complete testing of research-based and professionally accepted teaching and management practices and effective evaluation techniques.

(b) The testing shall be conducted by the department or an individual or agency approved by the department.

(c) The testing shall include certification as an observer through the department-approved observer certification process for an evaluator who is observing teachers for the purpose of evaluation.

(6) The department shall issue year one (1) approval as an evaluator upon the evaluator's successful completion of the required evaluation training and testing program and successful completion of observer certification.

(7) Years two (2) and three (3) of the district's evaluator training and testing cycle shall include a minimum of six (6) hours in each year and include:

(a) Observer recalibration training, in the department-approved technology platform, for all evaluators who observe teachers for the purpose of evaluation; and

(b) Update training on professional growth and effectiveness statutes and administrative regulations and training for evaluators on any changes to the Professional Growth and Effectiveness System and certified evaluation plan, policies, or procedures~~[A minimum of six (6) hours of evaluation training on any changes to the district's system plan, policies, or procedures, or to statutes or administrative regulations related to the evaluation of certified school personnel].~~

(8) Year four (4) of the district's evaluator training and testing cycle shall include refresher evaluator training and, if evaluating teachers, refresher observer certification training and testing.

(9) The district shall require peer observers to complete the department-developed peer observer training at least once every three (3) years.

(10) The district shall designate a contact person responsible for monitoring evaluator training and for implementing the system.

Section 7. Professional Practice Rating and Student Growth Rating for Teachers. (1) The district's professional practice rating form shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation and shall include the following:

(a) Planning and Preparation Domain. Components shall include: Knowledge of Content and Pedagogy, Demonstrating Knowledge of Students, Setting Instructional Outcomes, Demonstrating Knowledge of Resources, Designing Coherent Instruction, and Designing Student Assessments;

(b) Classroom Environment Domain. Components shall include: Creating an Environment of Respect and Rapport, Establishing a Culture of Learning, Managing Classroom

Procedures, Managing Student Behavior, and Organizing Physical Space;

(c) Instruction Domain. Components shall include: Communicating with Students, Questioning and Discussion Techniques, Engaging Students in Learning, Using Assessment in Instruction, and Demonstrating Flexibility and Responsiveness; and

(d) Professional Responsibilities Domain. Components shall include: Reflecting on Teaching, Maintaining Accurate Records, Communicating with Families, Participating in a Professional Community, Growing and Developing Professionally, and Showing Professionalism.

(2) The district's professional practice rating evaluation form shall list, in each component, the performance criteria that characterize effective teaching and apply to the teacher evaluatee.

(3) The district shall explain and discuss the professional practice rating domains, components, and performance criteria, and the evaluation process with a teacher evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year. Amendments to local systems of teacher evaluation approved by the department after the end of the teacher's first thirty (30) calendar days of the school year shall not apply to the teacher until the following school year.

(4) A professional practice rating evaluation form shall be specific to the teacher's job category.

(5) The evaluator shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for the teacher on each of the four (4) domains.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, observation, and student voice surveys, in combination with professional judgment, to inform the teacher's rating on each of the four (4) domains listed in subsection (1) of this section.

(7) The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the teacher's professional practice rating.

(8) The evaluator shall utilize the following decision rules for determining the professional practice rating for a teacher:

(a) If a teacher is rated ineffective in the classroom environment domain or in the instruction domain, the teacher's professional practice rating shall be not be exemplary or accomplished;

(b) If a teacher is rated ineffective in the classroom environment domain and in the instruction domain, the teacher's professional practice rating shall be ineffective;

(c) If a teacher is rated ineffective in any domain, the teacher's professional practice rating shall be accomplished, developing, or ineffective;

(d) If a teacher is rated developing in two (2) domains and accomplished in two (2) domains, the teacher's professional practice rating shall be accomplished;

(e) If a teacher is rated developing in two (2) domains and exemplary in two (2) domains, the teacher's professional practice rating shall be accomplished; and

(f) If a teacher is rated accomplished in two (2) domains and exemplary in two (2) domains, the teacher's professional practice rating shall be exemplary.

(9) The district shall determine the teacher's overall student growth rating as established in this subsection.

(a) The student growth measure shall consist of a state contribution, when available, and a local contribution.

(b) The Kentucky Board of Education shall determine the scale for low, expected, and high growth regarding the state contribution and the department shall provide the scale to local school districts.

(c) Student growth goals shall be determined as established in this paragraph.

1. The teacher shall develop and implement a minimum of one (1) student growth goal each year.

2. Because individualized education plan (IEP) goals are student-specific, IEP goals may inform, but shall not be used as, student growth goals.

3. The district shall ensure that student growth goals and measures of student growth are rigorous and comparable across schools in the local school district.

(d) The local school district shall determine the scale for low, expected, and high student growth goal ratings. In determining the scale, local school districts shall consider the definition of typical yearly[student] growth contained in 703 KAR 5:200, Section 1(12).

(10) The local school district shall develop a process for using professional judgment and the following sources of evidence to determine the overall student growth rating:

(a) Growth trends consisting of the three (3) most recent years of student growth percentile data, as defined in 703 KAR 5:200, Section 1(11)(9), when available, for teachers; and

(b) Growth trends consisting of the three (3) most recent years of student growth goal data, when available, for all teachers.

Section 8. Overall Performance Category of Teachers. (1) The overall performance category for teachers shall be determined by combining the teacher's professional practice rating and the teacher's overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers.

(2) The district shall determine the teacher's overall performance category with the decision rules established in this subsection.

(a) A teacher's overall performance rating shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) A teacher's overall performance rating shall be accomplished if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is expected; or

3. The professional practice rating is developing and the overall student growth rating is high;

(c) A teacher's overall performance category shall be developing if:

1. The professional practice rating is accomplished and the overall student growth rating is low;

2. The professional practice rating is developing and the overall student growth rating is expected;

3. The professional practice rating is developing and the overall student growth rating is low; or

4. The professional practice rating is ineffective and the overall student growth rating is high.

(d) A teacher's overall performance category shall be ineffective if:

1. The professional practice rating is ineffective and the overall student growth rating is expected; or

2. The professional practice rating is ineffective and the overall student growth rating is low.

Section 9. Professional Growth Plan and Cycle for Tenured Teachers. A teacher shall be placed on an appropriate[growth] plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan and Cycle[Model] for Tenured Teachers.

(1) A teacher whose professional practice rating is exemplary or accomplished and who has an expected or high overall student growth rating shall have a professional growth plan that includes: goals set by the teacher, with evaluator input; activities that are teacher-directed and implemented with colleagues; a formative review annually; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(2) A teacher whose professional practice rating is

accomplished or exemplary, with a low overall student growth rating, or developing, with a high overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher with evaluator input; if there is a low student growth rating, one (1) goal shall focus on low student growth outcome; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(3) A teacher whose professional practice rating is developing, with an expected overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher with evaluator input; one (1) goal that addresses professional practice or student growth; activities that are teacher-directed and implemented with colleagues; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(4) A teacher whose professional practice rating is developing, with a low overall student growth rating, or whose professional practice rating is ineffective, with an expected or high overall student growth rating, shall have a professional growth plan that includes goals determined by the evaluator: goals shall focus on professional practice and student growth, include an annual formative review, and include a summative evaluation that occurs at the end of one (1) year.

(5) A teacher whose professional practice rating is ineffective, with a low overall student growth rating, shall have an improvement plan with goals determined by the evaluator: the goals shall focus on low performance areas and a summative evaluation shall occur at the end of the plan, whose duration is determined by the evaluator and may last up to one (1) year.

Section 10. Professional Practice Rating and Overall Student Growth Rating for Principals and Assistant Principals. (1) The district's professional practice rating form shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, and shall include the performance standards and descriptors established in this subsection.

(a) Instructional Leadership Performance Standard. The evaluatee fosters the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic growth and school improvement.

(b) School Climate Performance Standard. The evaluatee fosters the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate.

(c) Human Resources Management Performance Standard. The evaluatee fosters effective human resources management by assisting with selection and induction and by supporting, evaluating, and retaining quality instructional and support personnel.

(d) Organizational Management Performance Standard. The evaluatee fosters the success of all students by supporting, managing, and overseeing the school's organization, operation, and use of resources.

(e) Communication and Community Relations Performance Standard. The evaluatee fosters the success of all students by communicating and collaborating effectively with stakeholders.

(f) Professionalism Performance Standard. The evaluatee fosters the success of all students by demonstrating professional standards and ethics, engaging in continuous professional learning, and contributing to the profession.

(2) The district's professional practice rating evaluation form for assistant principals and principals shall list, in each standard, the performance criteria that characterize professional effectiveness and apply to the evaluatee.

(3) The district shall explain and discuss the professional practice rating standards, indicators, and performance criteria, and the evaluation process to assistant principal and principal evaluatees no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the

end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) The district's professional practice rating evaluation form shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(5) The evaluator shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for an assistant principal or principal evaluatee on each of the performance standards.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, the department-approved survey of perception of superintendents, district personnel, and teachers on principal practice; and the department-approved working conditions survey goal. The evaluator shall also use evidence from site visits, for principals only. The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the evaluatee's rating on each of the six (6) standards listed in subsection (1) of this section.

(7) The evaluator shall use the following decision rules to determine a professional practice rating:

(a) If the evaluatee is rated exemplary in at least four (4) of the standards and no standard is rated developing or ineffective, the professional practice rating shall be exemplary;

(b) If the evaluatee is rated accomplished in at least four (4) standards and no standard is rated ineffective, the professional practice rating shall be accomplished;

(c) If the evaluatee is rated developing in at least five (5) standards, the professional practice rating shall be developing; and

(d) If the evaluatee is rated ineffective in two (2) or more standards, the professional practice rating shall be ineffective.

(8) The overall student growth rating for principals and assistant principals shall be determined as established in this subsection.

(a) The student growth measure for principals and assistant principals shall consist of a state contribution and a local contribution.

(b) The state contribution for principals and assistant principals shall be based on the degree to which the evaluatee meets the next generation learners goal. A principal's next generation learners goal shall be the assistant principal's next generation learners goal as well.

(c) The local contribution for the student growth measure for principals and assistant principals shall be a rating based on the degree to which the principal or assistant principal meets student growth goals. Assistant principals shall share the principal's student growth goals.

(d) All principals and assistant principals shall develop and implement a minimum of two (2) student growth goals each year, one (1) of which shall focus on school gap population data.

(e) One (1) goal shall address the needs outlined in the school's comprehensive school improvement plan.

(f) One (1) goal shall be based on local student growth data.

(g) The district shall ensure that student growth goals are rigorous and comparable across schools in the local district.

(h) The scale for low, expected, and high student growth goal ratings shall be determined by the local school district. In determining the scale, local school districts shall consider the schools goals and measures of success in the comprehensive school improvement plan required in 703 KAR 5:225, Section 9.

(i) The district shall develop a process for using professional judgment and evidence from the following sources of evidence to determine the overall student growth rating:

1. Growth trends over the three (3) most recent years of next generation learners student growth data, calculated pursuant to 703 KAR 5:200; and

2. Growth trends over the three (3) most recent years of student growth goal data.

Section 11. Overall Performance Category of Principals and Assistant Principals. (1) The overall performance category for

principals and assistant principals shall be determined by combining the principal or assistant principal's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals.

(2) The district shall determine the overall performance category for principals and assistant principals with the decision rules established in this subsection.

(a) An evaluatee's overall performance category shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) An evaluatee's overall performance category shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high;

(c) An evaluatee's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected; or

4. The professional practice rating is developing and the overall student growth rating is low.

(d) An evaluatee's overall performance category shall be ineffective if the professional practice rating is ineffective.

Section 12. Professional Growth Plan for Principals and Assistant Principals. The evaluator shall place an assistant principal or principal evaluatee on an appropriate professional growth plan based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan[Model] for Assistant Principals and Principals.

(1) An evaluatee whose professional practice rating is exemplary, with an expected to high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(2) An evaluatee whose professional practice rating is accomplished, with an expected to high student overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(3) An evaluatee whose professional practice rating is developing, with a high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(4) An evaluatee whose professional practice rating is developing, with a low to expected overall student growth rating, shall have, at a minimum, a professional growth plan with goals determined by the evaluator and a summative evaluation at the end of each school year.

(5) An evaluatee whose professional practice rating is ineffective shall have, at a minimum, an improvement[an improvement] plan with the goals determined by the evaluator and a summative evaluation at the end of the plan, as determined by the evaluator, not to exceed one (1) year in duration.

Section 13. Evaluation of Other Professionals and Preschool Teachers During the 2014-2015 School Year. (1) The district shall include, in its professional growth and effectiveness plan, a plan for

the evaluation of other professionals and preschool teachers during the 2014-2015 school year.

(2) The district's procedures for other professional and preschool teacher evaluatees, whose evaluation cycle requires evaluation during the 2014-2015 school year, shall include the requirements established in this subsection.

(a) Beyond the minimum requirements set forth in this administrative regulation, the local district may establish requirements as to the length, frequency, and nature of observations conducted by an evaluator.

(b) The district shall require the evaluation to include a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation, the summative evaluation conference held at the end of an evaluation cycle that ends during the 2014-2015 school year, all evaluation data.

(c) The district shall require multiple observations to be conducted of an evaluatee who has earned continuing service status pursuant to KRS 161.740 and whose observation results are ineffective.

(d) The district shall require a summative evaluation to occur, if required by the evaluation cycle of the evaluatee.

(e) The district shall include the evaluation in the evaluatee's official personnel record.

(f) The district shall provide in the evaluation process an opportunity for a written response by the evaluatee and shall include the response in the evaluatee's official personnel record.

(g) A copy of the evaluation shall be provided to the evaluatee.

(3) The evaluation form shall include a list of performance criteria. Under each criterion, specific descriptors or indicators that can be measured or observed and recorded shall be listed. Additionally, standards of performance shall be established for each criterion. The performance criteria shall include those that are identified in KRS 156.557(4) applicable[that—apply] to the evaluatee.

(4) The evaluation criteria and process shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the 2014-2015 school year.

(5) An evaluative form shall be specific to each job category. The district, at its discretion, may use forms for pre- and post-evaluation conferences.

(6) The district shall provide evaluatees an opportunity for an appeal to the local evaluation appeals committee as outlined in Section 18 of this administrative regulation.

(7) An evaluatee who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education as outlined in Section 19 of this administrative regulation.

Section 14. Evaluation of Certified Administrators in the 2014-2015 School Year. (1) The district shall include, in the professional growth and effectiveness plan, a plan for the evaluation of certified administrators.

(2) Beyond the minimum requirements set forth in KRS 156.557 and this administrative regulation, the local district may establish requirements as to the length, frequency, and nature of observations conducted by an evaluator.

(3) The district shall require the evaluation to include a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation, the summative evaluation conference held at the end of the summative evaluation cycle, and the inclusion of all professional growth and effectiveness data.

(4) The district shall document the certified administrator's summative evaluation decision, shall include documentation of the sources of evidence used in determining the performance rating of the evaluatee, and shall include these documentations in the evaluatee's official personnel record.

(5) The district shall provide an opportunity for a written response by the evaluatee, and the response shall be included in the evaluatee's official personnel record.

(6) A copy of the evaluation shall be provided to the evaluatee.

(7) The evaluation form for certified administrators shall include a list of performance criteria that characterize effective administrative practices.

(8) Under each criterion, specific descriptors or indicators shall be listed.

(9) The performance criteria shall include those that are identified in KRS 156.557(4) applicable[that—apply] to the evaluatee.

(10) The evaluation criteria and process used to evaluate certified administrators shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year.

(11) The district's evaluation form shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(12) The district shall provide certified administrator evaluatees an opportunity for an appeal to the local evaluation appeals committee as outlined in Section 18 of this administrative regulation.

(13) An evaluatee who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education as outlined in Section 19 of this administrative regulation.

Section 15. District Evaluation Plan. (1) The local board of education shall review, as needed, the district's evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.

(2) If a substantive change is made to the district's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)1, in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeal procedures.

(3) The local board of education shall review and approve revisions to the plan and submit the amended plan to the department for approval.

Section 16. Reporting. (1) Beginning in the 2014-2015 school year, districts shall report to the department the percentage of principals, assistant principals, and teachers in each overall performance category listed in Sections 8 and 11 of this administrative regulation and the percentage of teachers on each plan listed in Section 9 of this administrative regulation.

(2) The department shall publicly report, by district, the aggregate number of principals, assistant principals, and teachers in each overall performance category.

Section 17. Monitoring. A district implementing an alternative professional growth and effectiveness plan approved by the department pursuant to KRS 156.557(7) shall be monitored within three (3) years of the initial implementation of the alternative plan, and subsequently at the discretion of the department.

Section 18. Local Evaluation Appeals Panel. The district shall provide in its system plan, for an appeal to the local evaluation appeals panel, the following:

(1) A right to a hearing as to every appeal;

(2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the local evaluation appeals panel; and

(3) A right to presence of evaluatee's chosen representative.

Section 19. State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as established in this subsection.

(a) The Kentucky Board of Education shall appoint a

committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level ~~and any documents submitted pursuant to paragraph (c) of this subsection~~.

(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. An appeal not filed in a timely manner shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.

(c) A brief, written statement, or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.

(e) A determination of district noncompliance with the local evaluation plan or absence of a district local evaluation plan shall render the evaluation void, and the certified employee shall have the right to be reevaluated.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Framework for Teaching Evaluation Instrument, 2011 Edition", May 2014;

(b) "Principal and Assistant Principal Performance Standards", May 2014;

(c) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers", May 2014;

(d) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals", May 2014;

(e) "Teacher Evaluation Crosswalk", May 2014;

(f) "Principal and Assistant Principal Performance Standards Crosswalk", May 2014;

(g) "Kentucky Professional Growth Plan and Cycle ~~Model~~ for Tenured Teachers", June ~~May~~ 2014; and

(h) "Kentucky Professional Growth Plan ~~Model~~ for Assistant Principals and Principals", June ~~May~~ 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 1st 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., Commissioner of Education  
ROGER MARCUM, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 4 p.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.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a statewide professional

growth and effectiveness system, as required by KRS 156.557, for the evaluation and support and improvement of performance of all certified school personnel in school districts.

(b) The necessity of this administrative regulation: KRS 156.557 requires the agency to develop a framework for a statewide personnel evaluation system for all certified school personnel in school districts and to establish a statewide professional growth and effectiveness system for the evaluation and support and improvement of performance of all certified school personnel in school districts. This administrative regulation includes a framework for a statewide personnel evaluation system and establishes a uniform method of evaluation of certified school personnel in school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: As required by KRS 156.557, this administrative regulation establishes a uniform method of evaluation of certified school personnel in school districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the requirements for the uniform evaluation of certified school personnel, below the level of superintendent.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statute:

(d) How the amendment will assist in the effective administration of the statutes:

(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 implementation of a new certified school personnel evaluation system.

(a) List 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 consistent and accurate implementation of the requirements of the statewide evaluation system for certified school personnel.

(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): Evaluation of certified school personnel will lead to the support and improvement of the performance of all certified school personnel and promote the continuous professional growth and development of skills needed to be a highly effective teacher or administrator.

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

(a) Initially: Any funds currently being spent in the local school district on teacher evaluation shall be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

(b) On a continuing basis: Any funds currently being spent in the local school district on teacher evaluation shall be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General 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 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? No, tiering does not apply because the requirements of this administrative regulation apply to all school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All 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 156.557.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Any funds currently being spent in the local school district on teacher evaluation shall be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Any funds currently being spent in the local school district on teacher evaluation shall be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and 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 Community Based Services Division of Family Support (Amended After Comments)**

#### **921 KAR 2:055. Hearings and appeals.**

RELATES TO: KRS Chapter 13B, 45.237, 205.211, 205.231, 205.237, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2),

194A.050(1), 205.231(5), 42 U.S.C. 602, 8624

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 602 and 42 U.S.C. 8624 require states receiving Temporary Assistance for Needy Families(TANF) and Low Income Home Energy Assistance Program (LIHEAP) grants, respectively, to provide a grievance procedure for participants and outline this procedure in the applicable state plan. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), or the State Supplementation Program (SSP).

Section 1. Hearing Information. (1) A participant shall be informed of:

(a) The right to a hearing;

(b) The procedures for requesting a hearing, as defined in Section 3 of this administrative regulation; and

(c) Who may represent the participant in a hearing as defined in Section 2 of this administrative regulation.

(2) When the participant files an application, the cabinet shall inform the participant of the right to hearing both orally and in writing.

(3) When an action is taken which affects the benefits of the participant, the cabinet shall inform the participant of the right to hearing in writing.

Section 2. Request for a Hearing. (1) An individual shall request a hearing by:

(a) Completing and submitting a PAFS-78, Request for Hearing, Appeal, or Withdrawal;

(b) Submitting a written request; or

(c) Making an oral request.

(2) The hearing request may be:

(a) Submitted to the local Department for Community Based Services office; or

(b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 275 East Main, Frankfort, Kentucky 40621.

(3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

(a) Forty (40) days of the date of the advance notice of adverse action;

(b) Thirty (30) days of the notice of:

1. Denial of an application; or

2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3) of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.

(3) An appellant may be granted good cause by the cabinet:

(a) For:

1. A delay in requesting a hearing;

2. A delay in requesting a continuation of benefits;

3. Failure to appear for a hearing; or

4. Postponement of a scheduled hearing; and
- (b) If the appellant:
  1. Was away from home during the entire filing period;
  2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;
  3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;
  4. Had a household member who was seriously ill; or
  5. Was not at fault for the delay of the request, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) If a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.

(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:

(a) Ten (10) days of the date on the notice of adverse action; or

(b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3) of this administrative regulation.

(3) If the program benefit has been reduced or discontinued as a result of a change in law, administrative regulation, or policy of the cabinet, subsection (2) of this section shall not apply.

(4) If the action taken by the agency is upheld, continued or reinstated benefits shall be:

- (a) Considered overpayments as defined in KRS 205.211; and
- (b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.

(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:

- (a) Hearing process, including the right to case record review prior to the hearing;
- (b) Right to representation;
- (c) Availability of free representation by legal aid or assistance from other organizations within the community; and
- (d) Time and location of the hearing.

(3) The cabinet may deny or dismiss a hearing request in accordance with 45 C.F.R. 205.10(a)(5)(v).

Section 6. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:

- (a) Hearing; or
- (b) Final order being issued if the hearing has already been conducted.

(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:

- (a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and
- (b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant's Hearing Rights. (1) In addition to the rights described in Section 5[6] of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.

(2) The appellant shall have the right to a medical assessment or professional evaluation at the expense of the cabinet by a source:

- (a) [person] Not associated with the original action; and
- (b) Agreeable to both the appellant and the cabinet if:
  1. The hearing [-(a)] involves medical issues; and
  2. [(b)] The hearing officer considers it necessary.

(3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:

- (a) Be in writing; and
- (b) Specify the reason for the denial.

Section 8. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:

(a) Request for the postponement is made prior to the hearing; and

(b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3) of this administrative regulation.

(2) The hearing officer shall decide if a hearing is postponed.

(3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing. (1) A hearing shall be:

(a) Scheduled by the hearing officer; and

(b) Conducted in accordance with KRS 13B.080 and 13B.090.

(2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.

(3) To secure all pertinent information on the issue, the hearing officer may:

- (a) Examine each party or witness who appears; and
- (b) If necessary, collect additional evidence from a party.

(4)(a) If consent is obtained from each party to the appeal and from each party required to testify under oath, a telephonic hearing may be conducted.

(b) Parties to a telephonic hearing shall:

1. [(a)] Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and

2. [(b)] Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:

- a. [1-] Are introduced as evidence into the hearing record; and
- b. [2-] Have not been supplied to the opposing party prior to the hearing.

(5) If evidence addressed in subsection (4)(b) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order in accordance with KRS 13B.110, which:

- (a) Summarizes the facts of the case;
- (b) Specifies the:

1. Reasons for the recommended order; and
2. Address to which a party in the hearing may send an exception to the recommended order; and
- (c) Identifies the:
  1. Findings of fact;
  2. Conclusions of law;
  3. Supporting evidence; and
  4. Applicable state and federal regulations.

(2) A copy of the recommended order shall be sent simultaneously to the:

- (a) Appellant or representative;
- (b) Appeal Board for Public Assistance established in accordance with KRS 205.231 [Local Department for Community Based Services office and the office's management]; and
- (c) Department for Community Based Services' Division of Family Support.

Section 11. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception in accordance with KRS 13B.110(4) with the Appeal Board for Public Assistance [Commissioner of the Department for Community Based Services or designee].

(2) A written exception [exceptions] or rebuttal shall:

- (a) Be filed within fifteen (15) days of the date the recommended order was mailed;
- (b) Be based on facts and evidence presented at the hearing;
- (c) Not refer to evidence that was not introduced at the hearing; and
- (d) Be sent to each other party involved in the hearing.



Section 12. Appeal Board Review. (1) In accordance with KRS ~~13B.120[13A.120]~~ and 205.231, the Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the recommended order and subsequent appeal to the:

(a) Parties to the hearing; and  
(b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:

(a) Offer the opportunity to:

1. File a brief; or

2. Request permission to submit new or additional evidence; and

(b) State the tentative date on which:

1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and

2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:

(a) Submit written arguments; and

(b) Be allowed to present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal[Final Order. Unless the issue is remanded to the hearing officer for further action, the commissioner or designee shall issue a final order within forty-five (45) days of receipt of the recommended order.

Section 13. Appeal of the Final Order. (1) A participant or authorized representative may appeal a final order by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) A request for appeal of a final order shall be submitted either orally or in writing to the:

(a) Local Department for Community-Based Services office; or

(b) Appeal board.

(3) The date a request is received by the cabinet is considered the date the request is filed.

(4) An appeal request shall be considered timely if the request is received within:

(a) Twenty (20) days of the date the final order was mailed; or

(b) Thirty (30) days of the date the final order was mailed if good cause, in accordance Section 3(3) of this administrative regulation, is met.

Section 14. Appellant's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the appellant and authorized representative:

(2) The acknowledgment shall:

(a) Advise the appellant that:

1. A brief may be filed; or

2. New evidence or exhibits may be submitted in accordance with Section 15(1)(b) of this administrative regulation; and

(b) State the date by which the appellant's brief, new evidence, or new exhibits are to be received by the appeal board for consideration.

Section 15. Appeal Board Review. (1) The appeal board shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the appeal board in accordance with subsection (2) or (3) of this section.

(2) The appeal board shall provide an appellant opportunity to submit new evidence or exhibits available since the hearing.

(3) If an appeal is being considered on the record, the parties may:

(a) Submit written arguments; and

(b) Be permitted to present oral arguments if a party provides justification to the board that the party cannot present new evidence or exhibits available since the hearing in writing. Telecommunications may be utilized for the presentation of oral arguments].

Section 13.[16.] The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be in accordance with KRS ~~13B.120[13A.120]~~ and 205.231.

(2) The Appeal Board for Public Assistance shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the Appeal Board for Public Assistance's decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383f;

2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;

3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944;

4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v; or

5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

(3) A party aggrieved by the Appeal Board for Public Assistance's decision shall have the right to pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150.

Section 14.[17.] Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order issued by the Appeal Board for Public Assistance[or a decision of the appeal board] and shall include:

(a) The month of application; or

(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order issued by the Appeal Board for Public Assistance[or a decision of the appeal board].

Section 15.[18.] Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;

(c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or

(d) \$300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:

(a) Appellant and legal counsel agree to the fee; and

(b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:

(a) Be the responsibility of the counsel or agent; and

(b) Not be deducted from the benefits provided to an appellant.

Section 16. Incorporation[19-Incorporated] by Reference. (1) The form, "PAFS-78, Request for Hearing, Appeal, or Withdrawal", 6/14[edition 03/13], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort,

Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 2 p.m.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-income Home Energy Assistance Program (LIHEAP), and the State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform standards for conducting hearings regarding public assistance programs.

(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 hearings process for K-TAP, LIHEAP, and SSP.

(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 hearings process for public assistance programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by reassigning the final order responsibility from the Commissioner of the Department for Community Based Services to the Appeal Board for Public Assistance; revising the non-discrimination statement on material incorporated by reference; and making other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Cabinet for Health and Family Services has undertaken a comprehensive review of its administrative hearing and complaint processes for various improvements, including timeliness, congruency with KRS Chapter 13B requirements, and objectivity. The amendment to this administrative regulation is necessary to align hearings for public assistance with the reassignment of final order responsibilities from the Commissioner of the Department for Community Based Services to the Appeal Board for Public Assistance and to assure congruency with another simultaneously filed administrative regulation, 921 KAR 3:070, which governs hearings for the Supplemental Nutrition Assistance Program (SNAP). Because the incorporated material is also used by SNAP applicants/recipients, the U.S. Department of Agriculture-Food and Nutrition Service (FNS) requires that the material contains certain statements regarding nondiscrimination (7 C.F.R. 273.2). Recently, FNS revised the required nondiscrimination statement, which necessitated revision to this administrative regulation's incorporated material. This amendment is also necessary to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by aligning hearing processes for public assistance programs with the forthcoming reassignment of final order responsibilities to enhance timeliness, objectivity, and congruency with KRS Chapter 13B and federal law requirements; and by ensuring compliance with federal requirements regarding programmatic notice of applicants/recipients' nondiscrimination rights.

(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 through its enhancement of hearing processes for public assistance programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP, LIHEAP, and SSP. Material incorporated by reference, the form PAFS-78, Request for Hearing, Appeal, or Withdrawal, is also used by recipients of SNAP benefits. In November 2013, there were 23,432 K-TAP families; 6,291 Kinship Care families; 408,474 SNAP families; and 3,060 State Supplementation recipients. LIHEAP served 130,481 households in Federal Fiscal Year 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: Parties to an administrative hearing will direct exceptions to recommended orders to the Appeal Board for Public Assistance, rather than the Commissioner of the Department for Community Based Services.

(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 will create no new or additional cost for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation improves upon existing cabinet procedures and intends to ensure overall cabinet timeliness, objectivity, and compliance with KRS Chapter 13B.

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

(a) Initially: The amendment to this administrative regulation is not projected to initially create new or additional costs for the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to create new or additional costs for the administrative body on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be General Funds and federal funds made available through the Temporary Assistance for Needy Families and Low Income Home Energy Assistance Program Block Grants. The funding has 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 will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes the maximum fees outlined to be paid by the appellant to legal representation in accordance with KRS 205.237. This administrative regulation does not directly or indirectly increase or change any fees.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 8621-8630

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter, additional or different responsibilities or requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family 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 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 42 U.S.C. 601-619, 8621-8630

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 program has been operational for numerous years and will not generate any new or additional revenues in the first year.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any new or additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any new or additional cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amended After Comments)

#### 921 KAR 3:070. Fair hearings.

RELATES TO: KRS Chapter 13B, 45.237, 205.231, 7 C.F.R. 273.16

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds 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 requires each state to administer a Supplemental Nutrition Assistance[Food Stamp] Program (SNAP). 7 C.F.R. 273.15 requires the agency administering SNAP[the Food Stamp Program] to provide a hearing system for any SNAP[Food Stamp Program] applicant or recipient who is dissatisfied with an agency decision or action. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This

administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance[Food Stamp] Program.

Section 1. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction:

(a) On the part of the cabinet; and

(b) That affects the SNAP[food stamp] benefits of the household.

(2) A fair hearing shall be conducted;

(a) On a state level;

(b) By a hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch; and

(c) 1. At the local office administering the benefits of the appellant; or

2. An alternate site, if the appellant:

a. Is unable to travel to the local office; and

b. Requests an alternate site.

(3) If consent is obtained from each party required to testify under oath, a telephonic hearing may be conducted.

(4) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(i).

**(5) An administrative hearing shall be conducted in accordance with KRS Chapter 13B, this administrative regulation, and the Correspondence from the Office of Attorney General dated June 4, 2014.**

Section 2. Notification of Hearing Rights. (1) At the time of application, a participant shall receive written notification of the:

(a) Right to a hearing;

(b) Procedures for requesting a hearing, as specified in Section 4 of this administrative regulation; and

(c) In accordance with 7 C.F.R. 273.15(f), option to designate a representative for a hearing, such as:

1. Legal counsel;

2. A relative;

3. A friend; or

4. An individual to act on behalf of the participant.

(2) Written notification shall be provided to remind a participant of the right to request a fair hearing if:

(a) An action is taken that affects the benefits of the participant; or

(b) The participant disagrees with an action taken by the cabinet and expresses this disagreement to the cabinet.

(3) The participant shall be informed in writing of the availability of free representation from legal aid or other organizations within the community.

Section 3. ~~Timeframe~~**Criteria** for a Hearing Request. (1) Within a certification period, an active household may request a fair hearing to dispute current benefits.

(2) In accordance with the timeframes of 7 C.F.R. 273.15(g), a SNAP[food stamp] household may request a hearing on any cabinet action.

**(3) If a hearing officer determines an appellant meets good cause criteria in accordance with Section 8 of this administrative regulation, the appellant shall be granted an additional thirty (30) days to submit a hearing request.**

Section 4. Request for a Hearing. (1)~~An individual shall follow the procedures for submitting a hearing request set forth in 921 KAR 2:055, Section 3.~~

~~(2)]~~ The request for a hearing shall clearly state the reason for the request.

~~(2)]~~~~(3)]~~ If the reason for the request is unclear, the cabinet may request additional clarification from the appellant.

~~(3)]~~~~(4)]~~ In accordance with 7 C.F.R. 273.15(h), a request for a hearing shall not be interfered with or limited in any way.

~~(4)]~~~~(5)]~~ Upon request, and in accordance with 7 C.F.R. 273.15(i), the cabinet shall:

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(a) Help an appellant with a hearing request; and  
(b) Make available, without charge, the materials necessary for an appellant to:

1. Determine whether a hearing may be requested; or
2. Prepare for a hearing.

**(5) [(6)]** As determined by the hearing officer, an appellant may have the hearing process expedited in accordance with 7 C.F.R. 273.15(i)(2).

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.

(2) The notice of the hearing shall:

(a) Comply with the requirements of KRS 13B.050(3), **subject to the exemption granted by the attorney general in the Correspondence from the Office of Attorney General dated June 4, 2014. The notice may provide all parties involved with ten (10) days advance written notice of an administrative hearing, but not less unless requested by the appellant.**

(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and

(c) Specify that the hearing request shall be dismissed if an appellant or representative fails to appear for a hearing without good cause as specified in Section 8(2) of this administrative regulation.

(3) In accordance with 7 C.F.R. 273.15(1), unless an appellant's request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

Section 6. Continuation of Benefits. Unless the appellant requests a discontinuance of benefits, benefits shall be continued, in accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) In accordance with 7 C.F.R. 273.15(c), within sixty (60) days of a request for a fair hearing, the cabinet shall:

(a) Acknowledge the request in accordance with Section 5 of this administrative regulation;

(b) Conduct a hearing; and

(c) Issue a final order.

(2) In accordance with 7 C.F.R. 273.15(c), benefits shall be adjusted:

(a) Within ten (10) days of the final order; or

(b) With the next issuance following receipt of the final order.

(3) If an appellant requests a postponement of a hearing, the:

(a) Hearing shall be postponed;

(b) Postponement shall not exceed thirty (30) days from the request for the postponement; and

(c) Time limit for issuing a final order may be extended for the same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A hearing request shall be denied or dismissed if the:

(a) Request does not meet the criteria specified in Section 3 of this administrative regulation;

(b) Appellant submits a written request to withdraw of the hearing request; or

(c) Appellant or representative fails to appear for the scheduled hearing without:

1. Notifying the cabinet prior to the hearing; or

2. Establishing good cause for failure to appear as defined in subsection (2) of this section, within ten (10) days.

(2) Good cause for the delay of a hearing request or failure to appear at a hearing may be granted if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or comprehend the notice;

(c) Moved, resulting in a delay in receiving or failure to receive the notice;

(d) Or other household member had a serious illness;

(e) Was not at fault for the delay, as determined by the hearing officer; or

(f) Did not receive the notice.

(3) The cabinet shall notify an appellant of the dismissal of a hearing request through the issuance of a Recommended Order of Dismissal.

Section 9. Consolidation of Hearings. (1) A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the:

(a) Issues of the hearings are based on the same or related circumstances; and

(b) Appellant receives prior notice of the hearings being combined.

(2) If a fair hearing and an administrative disqualification hearing are combined the:

(a) Timeframe for conducting an administrative disqualification hearing specified in ~~Section 2 of~~ 921 KAR 3:060, Section 4(2), shall be followed; and

(b) Thirty (30) day advance notice period required by 921 KAR 3:060, Section 3 may be waived if requested by the appellant.

(3) An appellant shall lose the right to a subsequent fair hearing on the amount of a claim if a combined hearing is held to determine:

(a) The amount of the claim; and

(b) If an intentional program violation occurred.

Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:

(a) Individual issues of fact are not disputed; and

(b) The issues relate to the same state or federal:

1. Laws;

2. Regulations; or

3. Policy.

(2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an appellant adversely affected by an action of the cabinet.

(2) The appellant shall be informed that an agency conference:

(a) Is optional; and

(b) Shall not delay or replace the fair hearing process.

(3) A fair hearing shall be dismissed if:

(a) An agency conference leads to an informal resolution of the dispute; and

(b) The appellant makes a written withdrawal of the request for a hearing.

(4) An agency conference shall be attended by the:

(a) Appellant's caseworker;

(b) Local office supervisor; and

(c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the appellant or representative shall be provided the opportunity to:

(a) Examine:

1. The contents of the case file; and

2. All documents and records to be used at the hearing;

(b) Present the case or have the case presented by a representative or legal counsel;

(c) Bring witnesses, friends, or relatives;

(d) Present arguments without undue interference;

(e) Submit evidence to establish the pertinent facts and circumstances of the case; and

(f) Question; or:

1. Refute testimony or evidence; and

2. Cross-examine an adverse witness.

(2) Upon request, a copy of the portions of the case file that are relevant to the hearing shall be provided to the appellant at no charge.

(3) Confidential information, such as the following, shall be protected from release:

(a) Names of individuals who have disclosed information about

the appellant's household; and

(b) The nature or status of pending criminal prosecutions.

(4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:

(a) Confidential information as specified in subsection (3) of this section;

(b) Documents, testimony, or records irrelevant to the hearing; and

(c) Other information for which the appellant is not provided an opportunity to contest or challenge.

Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:

(a) Is employed by the cabinet's Division of Administrative Hearings, Health and Family Services Administrative Hearings Branch; and

(b) Meets the criteria specified in KRS 13B.040 and 7 C.F.R. 273.15(m).

(2) When conducting a hearing, a hearing officer shall:

(a) Have the authority set forth in KRS 13B.080;

(b) Order an independent medical assessment or professional evaluation from a source;

1. Not associated with the original action; and

2. Agreeable to both the appellant and the cabinet if:

a. The hearing involves medical issues; and

b. The hearing officer considers it necessary;

(c) Maintain a hearing record in accordance with KRS 13B.130 and 921 KAR 3:050, Section 13; and

(d) Issue a recommended order;

1. In accordance with KRS 13B.110; and

2. As specified in Section 14 of this administrative regulation[to the Commissioner of the Department of Community Based Services or designee, in accordance with KRS 13B.110.

(3) The Commissioner or designee shall:

(a) Serve as the hearing authority as specified in 7 C.F.R. 273.15(n); and

(b) Issue the final order on behalf of the cabinet].

Section 14. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order which:

(a) Summarizes the facts of the case;

(b) Specifies the:

1. Reasons for the recommended order; and

2. Address to which a party in the hearing may send an exception to the recommended order; and

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence; and

4. Applicable state and federal regulations.

(2) A copy of the recommended order shall be sent simultaneously to the:

(a) Appellant or representative; [and]

(b) Department for Community Based Services' Division of Family Support; and

(c) Appeal Board for Public Assistance established in accordance with KRS 205.231[Local Department for Community Based Services office].

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception with the Appeal Board for Public Assistance[commissioner or designee].

(2) A written exception or rebuttal shall:

(a) Be filed within fifteen (15) days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 16. Appeal Board Review. (1) The Appeal Board for

Public Assistance shall send a written acknowledgement of the exception to the recommended order to the:

(a) Parties to the hearing; and

(b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:

(a) Offer the opportunity to:

1. File a brief; or

2. Request permission to submit new or additional evidence; and

(b) State the tentative date on which:

1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and

2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:

(a) Submit written arguments; and

(b) Be allowed to present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.[Final Order. (1) A final order shall be issued in accordance with 7 C.F.R. 273.15(c).

(2) If the final order differs from the recommended order, it shall include information and documentation in accordance with KRS 13B.120 and 7 C.F.R. 273.15(q).

Section 17. Appeal of the Final Order. (1) A participant or authorized representative may appeal a final order by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) A request for appeal of a final order shall be submitted:

(a) 1. Orally; or

2. In writing; and

(b) To the:

1. Local department for community based services office; or

2. Appeal board.

(3) An appeal request shall be considered:

(a) Filed on the day the request is received by the cabinet; and

(b) Timely, if the request is received within twenty (20) days of the date of the final order.

Section 18. Appellant's rights prior to appeal board consideration. (1) The appeal board shall send the appellant and the authorized representative written acknowledgement of the request for appeal.

(2) The acknowledgement shall:

(a) Offer the opportunity to:

1. File a brief; or

2. Request permission to submit new or additional evidence; and

(b) State the tentative date on which the board shall consider the appeal.

Section 19. Appeal Board Review. (1) The appeal board shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the appeal board in accordance with subsection (2), (3), or (4) of this section.

(2) If an appeal is being considered on the record, the parties may:

(a) Present written arguments; and

(b) At the board's discretion, be allowed to present oral arguments.

(3) If needed, the appeal board may request additional evidence to resolve the appeal.

(4) Additional evidence shall be accepted by the board after a party to the hearing has been given seven (7) days notice of the

opportunity to:

- (a) Object to the introduction of additional evidence; or
- (b) Rebut or refute any additional evidence].

Section 17.[20-] The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), (g)[shall:

- (a) Establish in writing the facts on which the decision is based; and
- (b) Be issued within forty-five (45) days of the request for an appeal].

(2) If necessary, benefits of the appellant shall be adjusted:

(a) Based on the decision of the Appeal Board for Public Assistance; and

(b) Within ten (10) days of the Appeal Board for Public Assistance's decision.

(3) A party aggrieved by the Appeal Board for Public Assistance's decision shall have the right to pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150.

**Section 18. Incorporation by Reference. (1) The "Correspondence from the Office of Attorney General dated June 4, 2014", June 4, 2014, is incorporated by reference.**

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

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 2 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, tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the fair hearing process used by the cabinet in the administration of SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for SNAP fair hearings.

(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 fair hearing procedures used by the cabinet in the administration of the SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by reassigning the final order responsibility from the Commissioner of the Department for Community Based Services to the Appeal Board for Public Assistance; revising the non-discrimination statement on material incorporated by reference; and making other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Cabinet for Health and Family Services has undertaken a comprehensive review of its administrative hearing and complaint processes for various improvements, including timeliness, congruency with KRS Chapter 13B requirements, and objectivity. The amendment to this administrative regulation is

necessary to align hearings for public assistance with the reassignment of final order responsibilities from the Commissioner of the Department for Community Based Services to the Appeal Board for Public Assistance and to assure congruency with another simultaneously filed administrative regulation, 921 KAR 2:055, which governs hearings for public assistance programs. This amendment is also necessary to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by aligning hearing procedures for SNAP with the forthcoming reassignment of final order responsibilities to enhance timeliness, objectivity, and congruency with KRS Chapter 13B and federal law requirements.

(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 through its enhancement of hearing processes for SNAP.

(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 all SNAP applicants and recipients in the Kentucky. Currently, there are approximately 406,074 households with 840,047 members participating in the SNAP in Kentucky. There were 252 SNAP fair hearings requested and 110 SNAP fair hearings conducted from July 1, 2012, through June 30, 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: Parties to an administrative hearing will direct exceptions to recommended orders to the Appeal Board for Public Assistance, rather than the Commissioner of the Department for Community Based Services.

(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 will create no new or additional cost for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation improves upon existing cabinet procedures and intends to ensure overall cabinet timeliness, objectivity, and compliance with KRS Chapter 13B.

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

(a) Initially: The amendment to this administrative regulation is not projected to initially create new or additional costs for the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to create new or additional costs for the administrative body on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be split between state funds and federal funding made available to state agencies administering SNAP. The funding has 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 will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as application of this policy is applied in a like manner for all individuals statewide.

## VOLUME 41, NUMBER 1 – JULY 1, 2014

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.4, 273.15
2. State compliance standards. KRS Chapter 13B, 194A.010(2), 194A.050(1), 205.231(5)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter, additional, or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter, additional, or different responsibilities or requirements than those required by the federal mandate.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family 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 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 program has been operational for numerous years and will not generate any new or additional revenues in the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any new or additional revenues in subsequent years.
  - (c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any new or additional cost in the first year.
  - (d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any new or additional cost in subsequent years.

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

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

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Commissioner's Office (Amended After Comments)

#### 922 KAR 1:320. Service appeals.

RELATES TO: KRS Chapter 13B, 23A.010, 194A.005, 194A.030(11), 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(43), 605.090(1)(b), (6), 620.020(1), 620.180(2)(a)1, 620.230, 45 C.F.R. 98, 205.10, 1355.21(b), 1355.30(p), [29 U.S.C. 794,] 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670[625, 629a], 671(a)(23), 673, 675, 1397, 9858-9858q

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds, including 45 C.F.R. 205.10, made applicable to titles IV-B and IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p). This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 through 5.

Section 1. Definitions. (1) "Adoption assistance" means a payment under:

- (a) KRS 199.555(2) and 922 KAR 1:050, State-funded adoption assistance; or
- (b) KRS 199.557 and 922 KAR 1:060, Federal Title IV-E adoption assistance.

(2) "Adult" is defined by KRS 209.020(4) or 209A.020(4).

(3) "Caretaker relative" means a relative:

- (a) With whom a child is, or shall be, placed by the cabinet; and

(b) Who is seeking to qualify as a kinship caregiver in accordance with 922 KAR 1:130, Kinship Care Program.

(4) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed outside the home.

(5) "Case plan" is described in 922 KAR 1:430, Child Protective Services In-home Case Planning and Service Delivery, for a child who remains in the home. [(5) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed outside the home.]

(6) "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1.

(7) "Child care assistance" means subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.

(8) "Child welfare services" means benefits or services on behalf of a child meeting a purpose of 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, or 1397 [is defined by 42 U.S.C. 625 and described in 42 U.S.C. 629a].

(9) "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(10) "Contract agency" means a business or organization that offers child welfare, adult or domestic violence protective, or child care services to the public through a contract or agreement with the cabinet.

(11) "General adult services" means a voluntary preventative service in accordance with 922 KAR 5:090, General adult services.

(12) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.

(13) "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130, Kinship Care Program.

(14) "Parent" is defined by:

(a) KRS 600.020(43) and 42 U.S.C. 675(2) for child welfare benefits and services; or

(b) 45 C.F.R. 98.2 for child care assistance.

(15) "Protective services" is defined by KRS 209.020(5) or 209A.020(5).

(16) "Registered child care provider" means a caregiver registered under 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

(17) "Resource home" means a home in which an individual has been approved by the cabinet in accordance with 922 KAR 1:350, Family preparation, to:

- (a) Provide foster care services for a child placed by the cabinet;

- (b) Adopt a child:
  - 1. Whose parents' parental rights have been terminated; and
  - 2. Who is under the custodial control of the cabinet; or
- (c) Provide respite service for a family approved to care for a child under the custodial control of the cabinet.

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 11(3); or

2. 922 KAR 1:430, Section 4(4)(b); or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan, or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet the mandated time frames for child protective services specified in 922 KAR 1:330.

(2) A resource home parent or adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to a resource home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050, State funded adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance; or

4. Provide an adoptive parent with known relevant facts regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050, State funded adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance;

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child when the adoption assistance agreement is renewed under 922 KAR 1:050, State funded adoption assistance, or 922 KAR 1:060, Federal Title IV-E adoption assistance; or

(d) Closure of a resource home under 922 KAR 1:350, Family preparation, unless a provision of Section 3(1)(f), (g), (h), or (i) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19.

(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055, Hearings and appeals.

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.

(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of general adult services or protective services to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable

promptness to a request for:

1. General adult services; or

2. Protective services for an adult.

(8) An applicant for child care assistance or the parent of a child receiving assistance may request an administrative hearing for the denial, reduction, suspension, or termination of benefits pursuant to 922 KAR 2:160, Section 18.

(9) An applicant for child care registration or a registered child care provider may request an administrative hearing in accordance with 922 KAR 2:180, Section 9.

(10) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 through 5 expressly permits the appeal of a cabinet action or alleged act.

(11) A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:

(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 5; or

(b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 5.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;

(e) A decision to deny:

1. Approval of an individual seeking to provide foster or adoptive services in accordance with 922 KAR 1:350 or 922 KAR 1:310; or

2. A caretaker relative approval as a kinship caregiver if the:

a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or

b. Child is ineligible in accordance with 922 KAR 1:130, Section 9;

(f) Removal of a foster child from a resource home if the resource home parent or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Resource home parent or other individual waived the right to appeal the substantiated incident; or

2. Substantiated incident was upheld after:

a. An administrative hearing; or

b. Judicial review;

(g) Removal of a child from a resource home for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1:140, Foster care and adoption permanency services; or

2. Uniting or reuniting the child with a sibling at the next placement;

(h) Closure of a resource home if the cabinet has not placed a child in the home within the previous two (2) years;

(i) Closure of a resource home according to the terms of the contract between the cabinet and the resource home;

(j) A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is incorrect;



(k) The per diem rate of reimbursement paid to a resource home parent who provides foster care services; or

(l) Decision to not recommend a resource home parent in accordance with 922 KAR 1:350, Section 9(12) for enrollment in specialized training as an emergency shelter, medically fragile, specialized medically fragile, or care plus resource home.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, caretaker relative, kinship caregiver, or an adult may:

(a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed:

1. By that office; or
2. Pursuant to paragraph (a) of this subsection.

(2)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The commissioner or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and
2. Notice of the extension is provided to the complainant.

(3)(a) A parent, caretaker relative, kinship caregiver, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) days of receipt of the written response provided in accordance with subsection (2) of this section.

(c) Upon completion of the review, the commissioner shall render a written determination[order] regarding the complaint within thirty (30) days unless:

1. Extenuating circumstances prolong the review of the complaint; and
2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination[order].

(4) The department shall compile data regarding service complaints to:

- (a) Fulfill federal and state reporting requirements; and
- (b) Use for program development and evaluation.

Section 5. Appeal of a Child Abuse or Neglect Investigative Finding. An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480, Appeal of child abuse and neglect investigative findings.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy of the:

(a) DPP-154, Protection and Permanency Service Appeal Request, to an individual:

1. At each case planning conference;
2. Upon denial, reduction, modification, suspension, or termination by the cabinet of:
  - a. Child welfare services provided by the cabinet;
  - b. General adult services or protective services, if notification does not present a risk of harm to the victim;
  - c. Adoption assistance; or
  - d. Other federally-funded program benefit described in 922

KAR Chapter 1, 3, or 5; or

3. Upon determination that a student is not eligible for a tuition waiver or education and training voucher; or[:]

(b) DCC-88, Child Care Service Appeal Request, to an individual:

1. Upon the denial, reduction, or termination of child care assistance;

2. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program, for a:

- a. Withdrawal or denial of child care registration application, not at the request of the applicant; or
- b. Revocation or closure of a registered child care provider, not at the request of the provider;

3. Upon a reduction or revocation of a child care provider's STARS level in accordance with:

- a. 922 KAR 2:170, STARS for KIDS NOW Program Type I licensed child-care centers; or
- b. 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child-care homes; or

4. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.

(2) At least ten (10) days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail a:

(a) DPP-154A, Protection and Permanency Notice of Intended Action;

(b) DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or

(c) Notice in accordance with 922 KAR 2:160, Section 12(6).

(3) The cabinet may take emergency action under KRS 13B.125.

(4) A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection (2) of this section was issued; or
2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or
2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;[and]
2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (2) of this section, if available.

(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and
2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or **10[8]** of this administrative regulation.

(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or
2. Participate in a proceeding related to an administrative hearing.

Section 7. Administrative Hearing. ~~[(1)] Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B. [(2) Unless waived by the appellant, final administrative action shall be taken in accordance with the ninety (90) day time frame established by KRS 13B.120(4).]~~

Section 8. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

- (a) Each party to the administrative hearing;
  - (b) The commissioner of the Department for Community Based Services; and
  - (c) The secretary of the Cabinet for Health and Family Services or designee.
- (2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:
- (a) Be filed within fifteen (15) days of the date the recommended order was mailed;
  - (b) Be based on facts and evidence presented at the hearing;
  - (c) Not refer to evidence that was not introduced at the hearing; and
  - (d) Be sent to each other party involved in the hearing.

Section 9. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Unless waived by an appellant, final administrative action shall be taken within ninety (90) days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

- (a) KRS 13B.140 to 13B.160; or
- (b) KRS 23A.010.

Section 10. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

- (a) Section 4 of this administrative regulation; or
- (b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written ~~response[decision]~~ rendered by a contract agency ~~regarding[~~in response to~~]~~ a complaint may request that the commissioner review the complaint and the contract agency's written response[final decision].

(b) A request for review shall be submitted to the commissioner within ten (10) days of the contract agency's written response[final decision].

(c) Upon completion of the review, the commissioner shall render a written determination[order] regarding the complaint within thirty (30) days unless:

1. Extenuating circumstances prolong the review of the complaint; and
  2. The commissioner notifies the client of the need for an extension to the timeframe specified in this subparagraph.
- (d) The contract agency shall abide by the commissioner's written determination[order].

Section 11[9:]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DCC-88, Child Care Service Appeal Request", 11/09;
- (b) "DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", 11/09;
- (c) "DPP-154, Protection and Permanency Service Appeal

Request", 11/09; and

(d) "DPP-154A, Protection and Permanency Notice of Intended Action", 11/09.

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

TERESA C. JAMES, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 2 p.m.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures related to service appeals and complaints for benefits and services under 922 KAR Chapter 1 through 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide service appeal and complaint procedures for benefits and services governed by 922 KAR Chapters 1 through 5.

(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 service complaint and due process in accordance with KRS Chapter 13B and 45 C.F.R. 205.10.

(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 through its establishment of service appeal and complaint processes for benefits and services permitted by 922 KAR Chapter 1 through 5.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by updating the definition of "child welfare services" to reflect changes made to federal laws, clarifying terminology to ensure that the commissioner's determination regarding a complaint is not confused with an administrative hearing order, specifying the recommended and final order processes, and making technical corrections and updates in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Cabinet for Health and Family Services has undertaken a comprehensive review of its administrative hearing and complaint processes for various improvements, including timeliness, congruency with KRS Chapter 13B requirements, and objectivity. The amendment to this administrative regulation is necessary to align service appeals with the reassignment of final order responsibilities from the Commissioner of the Department for Community Based Services to the Secretary of the Cabinet for Health and Family Services and to assure congruency with another simultaneously filed administrative regulation, 922 KAR 1:480, which governs the appeals of child abuse and neglect investigative findings. The amendment is also necessary to comply the drafting and format 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 by clarifying terminology and by aligning service appeals for benefits and services under Title 922 KAR Chapters 1 through 5 with the forthcoming reassignment of final order responsibilities to enhance timeliness, objectivity, and congruency with KRS Chapter 13B and federal law requirements.

(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 enhancement of due process for individuals aggrieved under Title 922 KAR Chapters 1 through 5.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals receiving child welfare or adult services, applicants and recipients of the Child Care Assistance Program, and child care trainers and programs seeking quality rating are entities impacted by this administrative regulation, which governs service appeals for Title 922 Chapters 1 through 5. In State Fiscal Year (SFY) 2013, the Department for Community Based Services investigated nearly 40,000 reports of child maltreatment and 67,000 reports involving a vulnerable adult and served approximately 7,400 children per month in foster care. During the same time, slightly more than 23,000 children were served on average each month in the Child Care Assistance Program. For the first half of SFY 2014, over 900 child care providers participated in the quality rating program, and nearly 700 individuals are credentialed child care trainers.

(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: Parties to an administrative hearing will direct exceptions to recommended orders to the Secretary of the Cabinet for Health and Family Services, rather than the Commissioner of the Department for Community Based Services.

(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 incur no 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 upon existing cabinet procedures and intends to ensure overall cabinet timeliness, objectivity, and compliance with KRS Chapter 13B.

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

(a) Initially: The administrative body projects no new or additional initial costs as a result of the amendment to this administrative regulation.

(b) On a continuing basis: The administrative body projects no new or additional ongoing costs are as a result of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, Child Care and Development Fund Block Grant, Title IV-E (of the Social Security Act) funds are federal funds that support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

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

(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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 205.100, 1355.21(b), 1355.30(p)

2. State compliance standards. KRS Chapter 13B, 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.100, 1355.21(b), 1355.30(p)

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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 Chapter 13B, 194A.010(2), 194A.050(1), 45 C.F.R. 205.100, 1355.21(b), 1355.30(p)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 for the first year.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will generate no new or additional costs of the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will generate no new or additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amended After Comments)

**922 KAR 1:480. Appeal of child abuse and neglect investigative findings.**

RELATES TO: KRS Chapter 13B, 13B.010(2), (7), 23A.010.194A.005(1)[13B.090(4)], 600.020(1), (6), 620.050(5), 45 C.F.R. 205.10, 42 U.S.C. 5106a(b)(2)(B)(viii), (ix)[5106a(b)(2)(A)(viii), (ix), EO-2004-726]

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 5106a

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. 42 U.S.C. 5106a requires the Secretary of Health and Human Services to make grants for the purpose of assisting states in improving the delivery of child protective services, including procedures for appealing and

responding to appeals of substantiated reports of abuse and neglect. In order to maintain continued eligibility after the initial grant application, 42 U.S.C. 5106a requires states to submit a plan every five (5) years thereafter assuring operation of a statewide program related to child abuse and neglect that includes provisions, procedures, and mechanisms by which a perpetrator who disagrees with an official finding of child abuse or neglect may appeal the finding. ~~[EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.]~~ This administrative regulation establishes the cabinet's procedures for responding to appeals of child abuse and neglect investigative findings.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative hearing" is defined by KRS 13B.010(2).

(3) "Appellant" means a perpetrator who requests an administrative hearing or on whose behalf an administrative hearing is requested by the perpetrator's legal representative.

(4) "Cabinet" is defined by KRS 194A.005(1) and 600.020(6).

(5) "Compelling need" means a hearing officer determines that a probability exists by which a child would be unable to reasonably communicate because of emotional distress produced by the perpetrator's presence.

(6) ~~(5)~~ "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

(7) ~~(6)~~ "Hearing officer" is defined by KRS 13B.010(7).

(8) ~~(7)~~ "Perpetrator" means a person who, as a result of an investigation, has been determined by the cabinet to have abused or neglected a child.

Section 2. Right to Appeal. A person who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's **investigative** finding through an administrative hearing.

Section 3. Notification and Request for Appeal. (1) The cabinet shall provide to a perpetrator:

(a) Notice of a substantiated finding of child abuse or neglect in accordance with 922 KAR 1:330, Section 8; and

(b) A copy of the Request for Appeal of Child Abuse or Neglect Investigative Finding, form DPP-155, incorporated by reference.

(2) The cabinet shall disclose confidential information in accordance with 42 U.S.C. 5106a(b)(2)(B)(viii) ~~[5106a(b)(2)(A)(viii)]~~, (ix) to any federal, state, or local government entity, or an agent of a government entity, that has a need for the information in order to carry out its responsibility under the law to protect children from abuse and neglect.

(3) A request for appeal shall:

(a) Be submitted:

1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and

2. To the cabinet no later than thirty (30) calendar days from the date:

a. The notice of a substantiated finding of child abuse or neglect is mailed; or

b. Of delivery of the notice if not mailed;

(b) Describe the nature of the investigative finding;

(c) Specify the reason the appellant disputes the cabinet's substantiated finding of child abuse or neglect;

(d) Specify the name of each known cabinet staff person involved with the investigation; and

(e) Include a copy of the notice of a substantiated finding of child abuse or neglect if available.

(4) Upon receipt of a written request for appeal, the cabinet shall confirm whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the matter:

1. Is not appealable; and

2. May be pursued through the service complaint process described in 922 KAR 1:320, Section 4 or 10[8].

(5) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

Section 4. Matters Not Appealable Through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a civil court having competent jurisdiction:

1. Has heard evidence and made a final judicial determination that abuse or neglect of a child did or did not occur; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A matter in which an appellant has been criminally charged and convicted of an action that is the basis of the cabinet's finding of abuse or neglect of a child;

(c) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(d) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(e) Failure to submit a written request for appeal within the time frame established by Section 3(3)(a) of this administrative regulation, unless an appellant demonstrates good cause; or

(f) An investigation that results in an unsubstantiated finding of abuse or neglect of a child.

(2) If an appellant is denied an administrative hearing in accordance with subsection (1)(a) of this section, the cabinet shall change its[an] investigative finding in accordance with a civil court's finding regarding abuse or neglect.

Section 5. Investigative Findings. (1) The cabinet shall reserve[ reserves ] the right, in its sole discretion, to amend, modify, or reverse its[an] investigative finding of child abuse or neglect at any time based upon:

(a) A review of the cabinet's records; or

(b) Subsequent discovery of additional information.

(2) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of a child, the cabinet shall act in accordance with Section 3(1) and (2) of this administrative regulation.

Section 6. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or its designee shall be held in accordance with KRS Chapter 13B.

~~(2) [Hearsay shall be admissible in accordance with KRS 13B.090(1).]~~ (3) The proceedings of an administrative hearing shall be disclosed only by authority of state or federal law.

~~(3) [(4)]~~ A hearing officer may, upon a determination of compelling need, permit a child to provide testimony in a manner in which the child is not able to hear or see the appellant.

~~(4) [(5)]~~ If a hearing officer orders the testimony of a child to be taken in accordance with subsection ~~(3) [(4)]~~ of this section, the hearing officer shall permit the appellant to hear the testimony of the child.

Section 7. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

(a) Each party to the administrative hearing;

(b) The commissioner of the Department for Community Based Services; and

(c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

(a) Be filed within fifteen (15) days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the

hearing; and

(d) Be sent to each other party involved in the hearing.

Section 8. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a)(6)) Final administrative action shall be taken, unless waived by an appellant, within ninety (90) days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010.

Section 9.[7-] Incorporation by Reference. (1) "DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding", [edition] 6/04, ["] is incorporated by reference.

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

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 2 p.m.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Elizabeth Caywood

(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 responding to appeals of child abuse and neglect investigative findings.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for appealing and responding to perpetrators who disagree with an investigative finding of child abuse and neglect.

(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 appeal process for child abuse and neglect investigative findings.

(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 appeals of child protective services investigative findings.

(2) If 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 inserts a definition of "cabinet" and removes language related to hearsay in administrative hearings to avoid duplication and misinterpretation of KRS Chapter 13B. Language was provided regarding the distribution of recommended orders and clarifies processes for exceptions of recommended orders as provided in KRS 13B.110. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Cabinet for Health and Family Services has undertaken a comprehensive review of its administrative hearing processes for various improvements, including timeliness, congruency with KRS Chapter 13B requirements, and objectivity.

The amendment to this administrative regulation is necessary to align appeals of a child abuse and neglect investigative findings with the reassignment of final order responsibilities from the Commissioner of the Department for Community Based Services to the Secretary of the Cabinet for Health and Family Services and to assure congruency with another simultaneously filed administrative regulation, 922 KAR 1:320, governing other appeals available under Title 922 Kentucky Administrative Regulations. The amendment is also necessary in accordance with KRS Chapter 13A's drafting and format requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning appeals of child abuse and neglect investigative findings with the forthcoming reassignment of final order responsibilities to enhance timeliness, objectivity, and congruency with KRS Chapter 13B and federal law requirements.

(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 enhancement of due process for individuals against whom investigative findings of child abuse and neglect have been made.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: From July 1, 2012, through June 30, 2013, over 58,000 child protective service calls met acceptance criteria for an investigation or FINSA. Over 11,000 substantiations of child maltreatment were made the same year. During the same time period, there were slightly more than 1,700 requests to appeal investigative findings received, and nearly 900 of those were hearable matters.

(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: Parties to an administrative hearing concerning an investigative finding of child abuse and neglect will direct exceptions to recommended orders to the Secretary of the Cabinet for Health and Family Services, rather than the Commissioner of the Department for Community Based Services.

(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 incur no 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 upon existing cabinet procedures and intends to ensure overall cabinet timeliness, objectivity, and compliance with KRS Chapter 13B.

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

(a) Initially: The amendment is technical and conforming in nature. The administrative body does not anticipate any new or additional costs to implement the proposed regulatory amendment.

(b) On a continuing basis: The administrative body does not anticipate any new or additional ongoing costs to implement this proposed regulatory amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant and Title IV-E (of the Social Security Act) funds are federal funds that support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

(7) Provide an assessment of whether an 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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a, 45 C.F.R. 205.10
2. State compliance standards. KRS 194A.050(1)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a, 45 C.F.R. 205.10
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 or requirement, 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 Cabinet for Health and Family 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), 42 U.S.C. 5106a, 45 C.F.R. 205.10

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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 does not anticipate any additional costs to administer these appeals during the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body does not anticipate any additional costs to administer these appeals 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:

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
Office of Income Taxation  
(Amendment)

**103 KAR 15:180. Kentucky new markets development program tax credit.**

RELATES TO: KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

STATUTORY AUTHORITY: KRS 141.433(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7) requires the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity investments. This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity (CDE) in order for the department to certify qualified equity investments and to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the department to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit authorized by KRS 141.434.

(2) "Application" means Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue Form 41A720-S80), that is filed by a CDE with the department for certification as a qualified equity investment.

(3) "Applications fee" means a \$1,000 nonrefundable cashier's check that shall be attached to the application at the time of filing with the department.

(4) "CDE" means a qualified community development entity as defined by KRS 141.432(6).

(5) "CDFI Fund" means the U.S. Department of Treasury, Community Development Financial Institutions Fund.

(6) "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved by the department.

(7) "Department" means the Kentucky Department of Revenue.

(8) "Department's approval" means certified by the department as provided by KRS 141.433(3).

(9) "Identification number" means the:

(a) Social Security Number for an individual;

(b) Federal Employer Identification Number for a general partnership, estate, or trust; or

(c) Kentucky Corporation/LLET Account Number for a corporation or limited liability pass-through entity.

(10) "Long-term debt security" is defined by KRS 141.432(3).

(11) "Performance fee" is defined by KRS 141.433(8).

(12) "Qualified active low-income community business" is defined by KRS 141.432(5).

(13) "Qualified community development entity" is defined by KRS 141.432(6).

(14) "Qualified equity investment" is defined by KRS 141.432(7).

(15) "Qualified low-income community investment" is defined by KRS 141.432(8).

(16) "Tax credit" is defined by KRS 141.432(9).

(17) "Taxpayer" is defined by KRS 141.432(10).

Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that seeks to have an equity investment or long-term debt security certified by the department as a qualified equity investment eligible for the tax credit permitted by KRS

141.434 shall file an application with the department.

(2) The department shall notify the CDE within thirty (30) days after receipt of the application whether the application is approved or denied.

(a) If the department intends to deny the application, the CDE shall be notified in writing by the department of the reason for the denial, and the CDE may correct the application as provided by KRS 141.433(2).

(b) If the department determines that the application is in compliance with KRS 141.432 to 141.434, a copy of the application shall be returned to the CDE with written notice of the department's approval.

(c) 1. The department shall:

a. Accept an application on or after July 15, 2014~~[March 1, 2014]~~, if the application is received via hand-delivery, mail, express mail, or courier; and

b. ~~Not~~ ~~accept~~ an application received via facsimile, CD-Rom, CD, or electronic means.

2. The date that the application is stamped received by the Office of Income Taxation, Division of Corporate Tax, Tax Credits Section, shall be the date that the application is recorded as received pursuant to the provisions of KRS 141.133.

3. An application received prior to July 15, 2014~~[March 1, 2014]~~, shall be recorded as received on July 15, 2014~~[March 1, 2014]~~.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

(1) The CDE's name, mailing address, identification number, telephone number, and fax number;

(2) The name and identification number of the parent company, if the CDE is included in a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

(3) The type of entity of the CDE for Kentucky income tax purposes included in the application;

(4) The signature of the person completing the application and the date signed;

(5) The total number of taxpayers making qualified equity investments;

(6) The total amount of qualified equity investments for all taxpayers;

(7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C. 45D(c);

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund which includes the Commonwealth of Kentucky within the service area as set forth in the allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

(9) Proof of current certification with the CDFI Fund that includes the original application to CDFI and all subsequent updates;

(10) A statement of whether the entity's service area is a county, state, multi-state, or national. A map of the service area, articles of organization that describe the service area, bylaws that describe the service area, or other documentation that describes the service area shall be attached to the application;

(11) Information regarding the proposed use of the proceeds from the qualified equity investments, including a description of the qualified active low-income community business as provided by KRS 141.432(5);

(12) The name, identification number, type of investment (whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment;

(13) A signed certification indicating that the application has been executed by the executive officer of the CDE, declaring under the penalty of perjury:

(a) That the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and

(b) That the application, including all accompanying documents

and statements, is true, correct and complete;[and]

(14) The application fee; and

(15) The refundable performance fee.

Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the approved application is received by the CDE, the CDE shall issue qualified equity investments in exchange for cash in the amount of the certified purchase prices contained in the application.

(2) The CDE shall provide the department with evidence of the receipt of the cash for each qualified equity investment by filing with the department Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification (Revenue Form 41A720-S81).

(3) If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of Form 8874(K)-A shall be returned to the CDE and taxpayer with the department's written approval, including a statement of the tax credits available to the taxpayer for each of the next seven (7) years.

(4) If the department is not satisfied that the cash amount of the qualified equity investment was received by the CDE, the department shall notify the CDE in writing of the reason. If the CDE does not agree with the department's written determination, the CDE may file a protest as provided by KRS 131.110.

Section 5. Information Required on or Attached to the Form 8874(K)-A. The following information shall be required on or attached to the Form 8874(K)-A:

(1) The CDE's name and identification number;

(2) For the taxpayer making the qualified equity investment:

(a) The taxpayer's name and address; and

(b) The identification number of the taxpayer;

(3) The certified purchase price of the qualified equity investment;

(4) The date the CDE received cash for the qualified equity investment;

(5) The type of taxpayer making the qualified equity investment; and

(6) Certification by the executive director of the CDE, declaring under the penalty of perjury that the form, including all accompanying documents and statements, is true, correct and complete.

Section 6. New Markets Development Program Tax Credit Recapture. (1) If there is an event as provided by KRS 141.433(6) which would result in the recapture of any portion of the tax credit previously approved:

(a) The CDE shall notify the department upon discovery of the event; or

(b) The department, upon discovery of the event or after receiving notice from the CDE of the event, shall provide written notice of the proposed recapture to the CDE as provided by KRS 141.433(6)(b).

(2) If the entity fails or is unable to cure the deficiency within ninety (90) days after receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the department shall notify the CDE and each taxpayer of the amount of recapture or the balance of the tax credit on Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture (Revenue Form 41A720-S82).

(3) If the taxpayer is a pass-through entity, a Form 8874(K)-B shall also be sent to each partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

Section 7. Information Required on the Form 8874(K)-B. The following information shall be required on the Form 8874(K)-B:

(1) The CDE's name and identification number;

(2) For the taxpayer making the qualified equity investment:

(a) The taxpayer's name and address; and

(b) The identification number of the taxpayer;

(3) The certified purchase price of the qualified equity investment;

(4) The date the CDE received cash for the qualified equity investment;

(5) The type of taxpayer making the qualified equity investment;

(6) The date the tax credit with respect to a qualified equity investment was subject to recapture;

(7) An explanation of the recapture;

(8) The recapture amount of tax credit or balance of tax credit; and

(9) The signature of the authorized department employee and the date.

Section 8. Filing Requirements. (1) Form 8874(K)-A.

(a) A taxpayer claiming the tax credit shall attach each taxable[tax] year a copy of Form 8874(K)-A to the tax return on which the credit is claimed.

(b) A partner, member, or shareholder of a taxpayer claiming the tax credit shall attach each taxable[tax] year a copy of the appropriate form listed in this paragraph and incorporated by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the credit is claimed:

1. Schedule K-1, Form 720S[7205] (Revenue Form 41A720S(K-1));

2. Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or

3. Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1)[41A765-GP(K-4)]).

(2) Form 8874(K)-B.

(a) A taxpayer or a partner, member, or shareholder of a taxpayer having a tax credit recapture shall:

1. Attach a copy of Form 8874(K)-B to the tax return for the taxable[tax] year that includes the tax credit recapture date; and

2. Enter the recapture on the applicable line of the tax return.

(b) A taxpayer or a partner, member, or shareholder of a taxpayer claiming a tax credit shall attach each taxable[tax] year a copy of Form 8874(K)-B to the tax return on which the credit is claimed.

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

(a) Revenue Form 41A720-S80, Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit, May 2014[June, 2010];

(b) Revenue Form 41A720-S81, Notice of Kentucky New Markets Development Program Tax Credit and Certification, May 2014[June 2010]; and

(c) Revenue Form 41A720-S82, Notice of Kentucky New Markets Development Program Tax Credit Recapture, May 2014[June 2010].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 3, 2014

FILED WITH LRC: June 5, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 24th, 2014 from 10:00 a.m. to 12:00 p.m., in Room 381, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31st, 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: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes guidelines and the filing requirements of a qualified community development entity for taxable years beginning on or after January 1, 2014, when the qualified community development entity is applying for and administering Kentucky New Markets Development Program tax credits.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary in order to incorporate the amended provisions of KRS 141.432 to KRS 141.434 as provided by HB 445 of the 2014 Regular Session which are effective for tax years beginning on or after January 1, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.433(7) provides that the department shall promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation prescribes for taxable years beginning on or after January 1, 2014, forms to be used and procedures to be followed by a qualified community development entity in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(2) If 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 contains updated forms and procedures effective January 1, 2014, to conform with KRS 141.432 to KRS 141.434 that were amended by HB 445 of the 2014 Regular Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation to conform to KRS 141.432 to KRS 141.434 that were amended by HB 445 of the 2014 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 141.433(7) authorizes the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434.

(d) How the amendment will assist in the effective administration of the statutes: For taxable years beginning on or after January 1, 2014, this amendment will provide qualified community development entities forms and procedures to be used in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All qualified community development entities applying for New Markets Development Program tax credits will 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: For taxable years beginning on or after January 1, 2014, qualified community development entities will use the forms and procedures contained in this administrative regulation when applying for and administering the New Markets

Development Program tax credits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not increase the cost of qualified community development entities to administer the New Markets Development Program as provided by KRS 141.432 to KRS 141.434.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The guidance and clarification contained in this amended administrative regulation should reduce the cost of qualified community development entities to administer the New Markets Development Program as provided by KRS 141.432 to KRS 141.434.

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

(a) Initially: A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

(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: Funds will be provided by the department.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies to all qualified community development entities applying for New Markets Development Program tax credits as provided by KRS 141.432 to KRS 141.434.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.433(7).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be collected as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET**  
**Kentucky Board of Licensed Diabetes Educators**  
**(Amendment)**

**201 KAR 45:110. Supervision and work experience.**

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(a)

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Accumulation of Work Experience. An apprentice diabetes educator shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of application for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

Section 2. Supervision. (1)(a) The apprentice diabetes educator shall:

1. Interact with the supervisor no less than two (2) hours per month in any month in which the apprentice accumulates work experience to discuss the apprentice diabetes educator's work with clients; and

2. Review the apprentice diabetes educator's provision of diabetes self-management education.

(b) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours quarterly while being physically present in the same room.

(2) The hours of work experience and verification by the apprentice diabetes educator and supervisor shall be documented on the Application for Licensure, Form DE-01.

(3) A supervisor shall not serve as a supervisor for more than four (4) apprentice diabetes educators at a time.

(4) The supervision process shall focus on:

(a) Identifying strengths, developmental needs, and providing[provide] direct feedback to foster the professional development of the apprentice diabetes educator;

(b) Identifying and providing appropriate resources to facilitate learning and professional growth;

(c) Developing awareness of professional and ethical responsibilities in the practice of diabetes education; and

(d) Ensuring the safe and effective delivery of diabetes education services and fostering the professional competence and development of the apprentice diabetes educator.

Section 3. Documentation Requirements. The documentation required by the Supervised Work Experience Report, Form DE-05 shall be maintained for a period of five (5) years and provided to the board at the request of the board.

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

(a) "Application for Licensure", Form DE-01, 06/2014[(06/2013)]; and

(b) "Supervised Work Experience Report", Form DE-05, 06/2014[(06/2013)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort,

Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the work experience and supervision required for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains the amount of work experience needed for licensure and the standards for supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish administrative regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the definitions of work experience and supervision for apprentice diabetes educators.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The material incorporated by reference is being updated.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the application form.

(d) How the amendment will assist in the effective and administration of the statutes: This amendment will update the application form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 100 individuals have already been licensed as diabetes educators, and future applications may result in up to 250 individuals being licensed as diabetes educators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This amendment updates the forms that apprentice diabetes educators are required to file.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to apply for licensure and receive supervision.

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

(a) Initially: The budget for the board is unknown, as it is

unknown how many persons will ultimately apply for licensure.

(b) On a continuing basis: The budget for the board cannot be estimated for the future until the total number of licensees is known with more precision.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.334

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of apprentice diabetes educators for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of apprentice diabetes educators for the subsequent years.

(c) How much will it cost to administer this program for the first year? The board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

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

#### GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (Amendment)

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

RELATES TO: KRS 309.331, 309.335  
STATUTORY AUTHORITY: KRS 309.331(1), 309.335  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations

establishing procedures for annual renewal and reinstatement of licenses. This administrative regulation establishes procedures for annual renewal and reinstatement of licenses.

Section 1. Regular License Renewal. (1) A licensed diabetes educator or master licensed diabetes educator shall submit [the following] to the board by November 1 of each year:

(a) A completed Renewal Application, Form DE-02;

(b) Proof of the required continuing education as set forth in 201 KAR 45:130; and

(c) The renewal fee as established in 201 KAR 45:110.

(2) If a license is not renewed by January 30 of the new licensure year, it shall automatically expire.

Section 2. Reinstatement. (1) An expired license shall be reinstated upon the licensee:

(a) Paying the required fees established in 201 KAR 45:110; and

(b) Submitting proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year since the last date the license was active.

(2) An expired license may be reinstated within five (5) years of the date of expiration.

Section 3. Inactive Status. (1) A licensee may place his or her license in inactive status by submitting written notice to the board prior to November 1.

(2)(a) An individual with an inactive license shall not be permitted to practice diabetes education while the license is inactive.

(b) A licensee may remain in inactive status for a maximum of five (5) years.

(3)(a) During the period of inactive status, the licensee shall not be required to meet the annual continuing education requirements as established in 201 KAR 45:130.

(b) Upon the licensee's request for licensure reactivation, the licensee shall provide proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year the license was inactive.

(4)(a) An individual shall submit in writing a request to the board to be placed back in active status.

(b) The request shall be submitted at least one (1) week in advance of the board's regularly scheduled board meeting.

Section 4. Regular Permit Renewal. (1) An apprentice diabetes educator shall submit to the board by November 1 of each year:

(a) A completed Apprentice Renewal Application, Form DE-04[DE-02];

(b) Proof of the required continuing education established in 201 KAR 45:130; and

(c) The renewal fee established in 201 KAR 45:100.

(2)(a) If a permit is not renewed by January 30 of the new licensure year, it shall automatically expire, and the apprentice diabetes educator shall reapply for a permit as established in KRS 309.334.

(b) Work experience accumulated shall not carry over between permits.

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

(a) "Renewal Application", Form DE-02, 06/2013; and

(b) "Apprentice Renewal Application", Form DE-04, 06/2014[is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 24, 2014 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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:** Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the process to renew and reinstate a license and place a license into inactive status.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains how a licensee can renew his license before it expires, reinstate the license once it has expired and place it into an inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish administrative regulations for the licensing of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process to renew and reinstate a license and place a license into inactive status.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates an additional form by reference.

(b) The necessity of the amendment to this administrative regulation: An additional form needs to be incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment incorporates by reference a necessary application form.

(d) How the amendment will assist in the effective and administration of the statutes: This amendment incorporates by reference a necessary application form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 100 individuals have already been licensed as diabetes educators, and future applications may result in up to 250 individuals being licensed as diabetes educators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires licensees to fill out an application for renewal and reinstatement, along with paying a fee. The licensee applying for inactive status will provide written notice to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate

regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensee will be able to continue to practice diabetes education. The inactive license holder will not have to meet the regular requirements for licensure.

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

(a) Initially: The budget for the board is unknown, as it is unknown how many persons will ultimately apply for licensure.

(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the total number of licensees is known with more precision.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees but there will be a fee applied that is set in a separate regulation for renewal and reinstatement.

(9) TIERING: Is tiering applied? Tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of applicants for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of applicants for the subsequent years.

(c) How much will it cost to administer this program for the first year? The board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

**301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.**

RELATES TO: KRS 150.010, 150.170, 150.340, 150.370(1), 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(2) "Centerfire" means a type of firearm that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(3) "In-line muzzleloading gun" means a firearm:

(a) Capable of being loaded only from the discharging end of the barrel or cylinder; and

(b) That is equipped with an enclosed ignition system located directly behind the powder charge.

(4) "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026, Section 2(1).

(5) "Modern firearm season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November when breech-loading firearms may be used to take deer pursuant to 301 KAR 2:172.

(6) "Quota hunt" means a hunt in which a participant is selected by a random drawing.

(7) "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting established in 301 KAR 2:172.

(8) "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.

(9) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. General WMA Requirements. (1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) A hunter shall not take more than one (1) deer per day on a WMA in Zones 2, 3, or 4, except:

(a) During a quota hunt; or

(b) The Grayson Lake WMA open youth deer hunt.

(3) Except as established in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(4) Deer hunting on WMAs listed in Section 6 of this

administrative regulation shall be permitted only as established, except archery hunting shall be allowed pursuant to the statewide archery requirements established in 301 KAR 2:172, unless otherwise noted.

(5) An antlerless deer shall not count against a person's statewide or zone bag limit if harvested during:

(a) The Grayson Lake WMA open youth hunt;

(b) West Kentucky WMA firearms hunts; or

(c) Any WMA either-sex quota hunt.

(6) An open firearm deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season;

(b) Only be on a WMA designated as open for this special hunt; and

(c) Be according to statewide requirements established in 301 KAR 2:172.

(7) On all WMAs and Otter Creek Outdoor Recreation Area, a person:

~~(a) [Shall not use a nail, spike, screw-in device, wire, or tree climber for]~~ Attaching a tree stand or climbing a tree shall not use a:

1. Nail;

2. Spike;

3. Screw-in device;

4. Wire; or

5. Tree climber;

(b) May use a portable stand or climbing device that does not injure a tree;

(c) 1. Shall not place a portable stand in a tree more than two (2) weeks before opening day; and

2. Shall remove it within one (1) week following the last day of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand; and

(f) Shall not place, distribute, or hunt over bait.

(8) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign; or

(b) One (1) assistant, who shall not be required to have applied for the quota hunt, may accompany a mobility-impaired hunter who was drawn to hunt.

(9) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species or a person who is accompanying a hunter shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA while firearms deer hunting is allowed;

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or

(c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) A person shall forfeit all accumulated preference points if, in a given year, the person does not apply for or is ineligible to apply for:

(a) A deer quota hunt; and

(b) The no-hunt option.

- (5) A person who applies for the no-hunt option shall:
  - (a) Not be drawn for a quota hunt; and
  - (b) Be given one (1) preference point for each year the no-hunt option is selected.
- (6) If applying as a party:
  - (a) Each applicant's preference points shall be independent of each other; and
  - (b) The entire party shall be selected if one (1) member of the party is selected.
- (7) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.
- (8) A hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4, only one (1) of which may be an antlered deer, except as authorized in Section 6 of this administrative regulation.
- (9) If a hunter has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:
  - (a) The West Kentucky WMA firearms season;
  - (b) WMA quota hunts in Zone 1; and
  - (c) State Park quota hunts in Zone 1, except as established in Section 7 of this administrative regulation.
- (10) One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit established in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

- (1) Call the toll free number listed in the current fall hunting and trapping guide or apply online at fw.ky.gov by completing the Quota Hunt Application: Deer Quota Hunt Form, between September 1 and September 30;
- (2) Enter each applicant's Social Security number;
- (3) Select:
  - (a) A first and second choice of hunts; or
  - (b) The no-hunt option;
- (4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:
  - (a) Electronic funds transfer;
  - (b) Visa Card;
  - (c) Master Card; or
  - (d) Discover Card;
- (5) Not apply more than one (1) time;
- (6) Not apply as a group of more than five (5) persons; and
- (7) Not be eligible to participate in a quota hunt unless:
  - (a) Selected pursuant to this administrative regulation; or
  - (b) Accompanying a mobility-impaired hunter.

Section 5. Quota Hunt Participant Requirements. Except as otherwise established in this administrative regulation, a person selected to participate in a quota hunt shall:

- (1) ~~Possess, unless~~ [Except if] exempted pursuant to [by] KRS 150.170[~~, possess~~]:
  - (a) A valid annual Kentucky hunting license; and
  - (b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;
- (2) Hunt on the assigned dates and in assigned areas selected by a random drawing of applicants if applicable;
- (3) Comply with hunting equipment restrictions specified by the type of hunt;
- (4) Check in at the designated check station prior to hunting:
  - (a) Either:
    - 1. On the day before the hunt, between noon and 8 p.m. local time; or
    - 2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and
  - (b) With documentation of the participant's:
    - 1. Social Security number or draw confirmation number; and
    - 2. Purchase of a current license or permit which allows or includes statewide deer hunting privileges;
- (5) Check out at the designated check station:

- (a) If finished hunting;
- (b) If the hunter's bag limit is reached; or
- (c) By 8 p.m. Eastern time on the final day of the hunt;
- (6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;
- (7) Be declared ineligible to apply for the next year's drawing if the hunter fails to check out properly; and
- (8) Comply with all species quota hunt requirements~~[including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect,]~~ or be ineligible to apply for any quota hunt or no-hunt option for these species the following year.

Section 6. Wildlife Management Area Requirements. (1) Dr. Norman and Martha Adair WMA. The crossbow season shall be open pursuant to statewide requirements.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and youth firearm seasons shall be open pursuant to statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting;

(c) The crossbow, modern firearm, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements only on the 400 acre tract south of Sallie Crice Road.

(d) A hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

(3) Barren River WMA. The area shall be open pursuant to statewide requirements except that on the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt deer with a modern firearm.

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) antlered deer during the quota hunt.

(c) The crossbow season shall be open pursuant to statewide requirements.

(5) Big Rivers WMA.

(a) The crossbow and youth firearms seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(6) Boatwright WMA. The area shall be open pursuant to statewide requirements, except that:

(a) On the Swan Lake Unit the archery and crossbow season shall be open pursuant to statewide requirements through October 14; and

(b) The October youth deer season shall be open pursuant to statewide requirements.

(7) Cedar Creek Lake WMA. The crossbow season shall be open pursuant to statewide requirements.

(8) Clay WMA.

(a) On the main tract, crossbow, October muzzleloader, and youth firearm seasons shall be open pursuant to statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open pursuant to statewide requirements for the archery, crossbow, October muzzleloader, and youth seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in.

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(9) Dewey Lake WMA.

(a) The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.

(b) The use of firearms shall be prohibited for deer hunting on the portion of the area extending southward from the dam to

Shoreline Campground Number One, [and] including all property from the WMA boundary downslope to the lake edge.

(c) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

(d) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in December.

(e) There shall be a one (1) deer limit during the quota hunt.

(10) Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements.

(11) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The crossbow and youth firearm season shall be open pursuant to statewide requirements.

(12) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days; and

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October [as established in 301 KAR 3:140].

(d) The crossbow hunt shall be from the first Saturday in September through the third Monday in January, except during the November open youth hunt.

(e) The statewide youth firearm season shall be open pursuant to statewide requirements.

(13) Green River Lake WMA and Dennis-Gray WMA.

(a) The crossbow season shall be open pursuant to statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

(e) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(14) Griffith Woods WMA. The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.

(15) Higginson-Henry WMA.

(a) The youth firearm deer season shall be open pursuant to statewide requirements.

(b) A hunter shall not take more than one (1) deer from the WMA per license year.

(16) J.C. Williams WMA. The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.

(17) Kentucky River WMA. The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.

(18) Kleber WMA.

(a) The crossbow season shall be open pursuant to statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(c) The youth firearm season shall be open pursuant to statewide requirements.

(19) Knobs State Forest WMA. The crossbow season shall be open pursuant to statewide requirements.

(20) Lake Barkley WMA shall be open pursuant to statewide requirements except:

(a) The North Refuge is closed from November 1 to February 15; and

(b) Duck Island is closed from October 15 to March 15.

(21) Lewis County WMA.

(a) The modern firearm and youth firearm seasons shall be open pursuant to statewide requirements, except the use of centerfire rifles and handguns shall be prohibited.

(b) The crossbow and muzzleloader seasons shall be open pursuant to statewide requirements.

(22) Livingston County WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open pursuant to statewide requirements, except a person shall not hunt deer with a modern gun during the modern firearm deer season.

(23) Curtis Gates Lloyd WMA. The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.

(24) Marion County WMA.

(a) The crossbow, muzzleloader, and youth firearm seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for:

1. Five (5) consecutive days beginning the second Saturday in November; and

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

(c) A quota hunt participant shall not be required to check in and out of the WMA, but shall telecheck or internet-check harvested deer as established in 301 KAR 2:172.

(25) Mill Creek WMA.

(a) The crossbow season shall be open pursuant to statewide requirements.

(b) The quota hunt shall:

1. Be for two (2) consecutive days beginning the first Saturday in November; and

2. Have a one (1) deer bag limit.

(26) Miller-Welch Central Kentucky WMA. The archery and crossbow seasons shall be open pursuant to statewide requirements:

(a) On Monday through Thursday, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(27) Mud Camp Creek WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements.

(28) Mullins WMA. The crossbow season shall be open pursuant to statewide deer requirements.

(29) Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth season shall be open pursuant to statewide requirements.

(e) The remainder of the WMA shall be open pursuant to statewide requirements.

(30) Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.

(c) A person shall not use firearms for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(d) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

(31) Peabody WMA.

(a) The crossbow, youth firearms, and muzzleloader seasons

shall be open pursuant to statewide requirements.

(b) The modern firearm season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(32) Pennyryle State Forest-Tradewater WMA.

(a) The crossbow season shall be open pursuant to statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

(33) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern firearm;

(b) Shall not use an in-line muzzleloading gun;

(c) Shall not use a scope;

(d) May use a crossbow during the entire archery season; and

(e) Shall use only open or iron sights on any weapon.

(34) Redbird WMA. The crossbow season shall be open pursuant to statewide requirements.

(35) Dr. James R. Rich WMA.

(a) The crossbow season shall be open pursuant to statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December; and

(c) The youth firearm season shall be open pursuant to statewide requirements.

(36) Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(37) Sinking Valley WMA. The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.

(38) Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth firearm seasons shall be open pursuant to statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open pursuant to statewide requirements through the end of modern firearm season.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(39) [(38)] South Shore WMA.

(a) The youth firearm, October muzzleloader, and modern firearm seasons shall be open pursuant to statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open pursuant to statewide requirements, except the area shall be closed November 15 through January 15.

(40) [(39)] T.N. Sullivan WMA. The crossbow season shall be open pursuant to statewide requirements.

(41) [(40)] R.F. Tarter WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements.

(42) [(41)] Taylorsville Lake WMA.

(a) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the first Saturday in November for antlerless deer;

2. Two (2) consecutive days beginning the first Saturday in December; and

3. Two (2) consecutive days beginning the first Saturday in January.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth firearm season shall be open pursuant to statewide requirements.

(d) The crossbow season shall be open pursuant to statewide requirements.

(e) A participant in the November antlerless-only quota hunt

shall be given one (1) preference point for each female deer checked in, up to four (4).

(43) [(42)] Twin Eagle WMA. The crossbow season shall be open pursuant to statewide requirements.

(44) [(43)] Paul Van Booven WMA. The crossbow season shall be open pursuant to statewide requirements.

(45) [(44)] Veteran's Memorial WMA.

(a) The crossbow and youth firearms seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(46) [(45)] West Kentucky WMA.

(a) All tracts shall be open pursuant to statewide requirements for the archery and crossbow seasons, except that all tracts shall be closed to archery and crossbow hunting during department administered quota and firearm deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open firearm deer hunts.

(c) Tract 7 and "A" Tracts shall not be open for department administered quota or firearm deer hunts.

(d) The quota hunt shall be for five (5) consecutive days beginning the Saturday prior to Thanksgiving.

(e) The firearms season shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Be limited to the first 200 hunters;

3. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;

4. Shall require a hunter to check out at the designated check station:

a. When finished hunting; or

b. By 7 p.m. Central time on the final day of the hunt;

5. Have an unlimited bag limit, only one (1) of which may be an antlered deer; and

6. Require every person to check in during the firearms season, except for:

a. A person traveling on an established public road; or

b. A person in an area designated as open by signs.

(f) Firearm hunters shall not use centerfire rifles or handguns.

(g) All persons shall check in daily at the designated check-in locations before entering the "A" tracts.

(h) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(i) A participant in the quota hunt or open firearms season shall:

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. Except after noon, not hunt outside of that tract.

(47) [(46)] Yatesville WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open pursuant to statewide requirements, except a person shall not take antlerless deer with a firearm during the modern firearm deer season.

(48) [(47)] Yellowbank WMA. The crossbow and youth firearm deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of firearm hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a) Lake Barkley State Resort Park. Deer hunting shall be permitted on the first Tuesday of January for two (2) consecutive days.

(b) Greenbo Lake State Resort Park. Deer hunting shall be permitted on the first Tuesday of January for two (2) consecutive days.



(c) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be permitted beginning the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be permitted beginning the third Thursday of December for four (4) consecutive days.

3. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.

(d) Yatesville Lake State Park. Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted pursuant to statewide deer requirements on the third Monday of December for three (3) consecutive days.

(e) Jenny Wiley State Resort Park.

1. Deer hunting shall be permitted on the first Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

5. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.

Section 8. State Park Deer Hunt Requirements. (1) Except for the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park, a person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's hunting party; or

(c) The person was selected as part of a process administered by the Department of Parks, pursuant to Section 7 of this administrative regulation.

(2) A person participating in a state park hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172; and

(b) Check harvested deer daily at the designated park check station, except that deer taken in the Green River Lake State Park quota hunts and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked or checked in on the department's Web site at fw.ky.gov, pursuant to 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;

(b) Hunt over bait;

(c) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a firearm within 100 yards of a maintained road or building; and

(f) Hunt:

1. In an area posted as closed by signs; or

2. Outside park boundaries.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait, feed, minerals, or other attractants.

(2) The[following] areas established in paragraphs (a) through (g) of this subsection may schedule a firearm, crossbow, or archery deer hunting season between September 1 and January 31:

(a) Big South Fork National River and Recreation Area;

(b) Clark's River National Wildlife Refuge;

(c) Daniel Boone National Forest;

(d) Jefferson National Forest;

(e) Land Between the Lakes National Recreation Area;

(f) Ohio River Islands National Wildlife Refuge; and

(g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

(a) Shall not take more than:

1. Two (2) deer during archery hunts; and

2. One (1) deer during quota hunts;

(b) Who is a quota deer hunter shall:

1. Apply in advance at Land Between the Lakes; and

2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset; and

(c) Who harvests a deer shall:

1. Check in the carcass pursuant to U.S. Forest Service requirements; and

2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) Zone 1 bag limits shall apply during the open archery season;

(b) A person shall not take more than two (2) deer by firearm, only one (1) of which shall be antlered;

(c) A quota hunt participant shall:

1. Tag deer with a tag issued by the Refuge; and

2. Comply with the Refuge check-in requirements; and

(d) A person who is archery hunting shall:

1. Only take deer using the appropriate statewide or additional deer permit; and

2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

(a) The archery and crossbow seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the third Saturday in November; and

2. Two (2) consecutive days beginning the second Saturday in December.

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1)

The[following] areas established in paragraphs (a) through (e) of this subsection may schedule a firearm, archery, or crossbow deer hunting season between September 1 and January 31:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell;
- (c) Fort Knox;
- (d) Hidden Valley Training Center; and
- (e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

- (a) Not count against a hunter's statewide bag limit; and
- (b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

- (a) Obtain a permit from the area before hunting;
- (b) Only hunt on assigned dates;
- (c) Remain in assigned areas;
- (d) Tag deer with tags issued on the area, unless otherwise established in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches.

(6) At Hidden Valley Training Area, a person shall not use a firearm to hunt deer.

Section 11. Incorporation by Reference. (1) "Quota Hunt Application: Deer Quota Hunt Form", March 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner  
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 11, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing 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 July 31, 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) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.go.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the deer hunting seasons, limits, and equipment restrictions under which deer may be taken on wildlife management areas, state parks, and other lands controlled by

state or federal government agencies.

(b) The necessity of this administrative regulation: To establish deer hunting seasons, limits, and methods of taking deer to control and manage deer populations and hunting pressure on wildlife management areas, state parks, and other public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations governing hunting seasons, including deer. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations. KRS 150.620 authorizes the department to manage public lands for hunting and fishing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by establishing guidelines for effectively managing deer herds on Wildlife Management Areas (WMAs), state parks, and other public lands, including the establishment of guidelines to ensure safe, orderly hunting practices on public lands.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a new WMA, Sinking Valley WMA in Pulaski County, along with establishing the deer hunting opportunities for the area. It also contains modifications to conform with administrative regulation style requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maximize hunter opportunity without harm to the deer resource.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is unknown how many deer hunters will hunt on Sinking Valley WMA, but the addition of this area will certainly increase deer hunting opportunity in Pulaski County. Youth deer hunters will be able to hunt with a firearm during youth firearms deer season.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt deer on WMAs and state parks must comply with the individual hunt requirements for those sites, as listed in the fall hunting guide produced by the department. This will also be true for those who choose to hunt Sinking Valley WMA.

(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 direct cost to hunters as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Deer hunters will benefit from increased hunting opportunity on the new WMA. Youth deer hunters will benefit during youth firearms seasons.

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

(a) Initially: There will be no additional cost to the agency to implement this regulation.

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

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

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

administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used because all persons who hunt deer on WMAs, state parks, or other public lands are required to abide by these guidelines.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 148.029(5), 150.025(1), 150.390(1) and 150.620.

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

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

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

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

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (Amendment)

##### 503 KAR 3:005. Definitions.

RELATES TO: KRS 15A.070

STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation provides definitions of certain terms used in 503 KAR Chapter 3, which pertain to such training.

Section 1. Definitions. As used in this administrative regulation:

(1) "Branch manager" means the manager of a branch in the training division of the Department of Criminal Justice Training or his designee.

(2) "Class coordinator" means the department staff member responsible for the day-to-day supervision of a class of basic trainees or his designee.

(3) "Commissioner" means the Commissioner of the Department of Criminal Justice Training or his designee.

(4) "Department" means the Department of Criminal Justice Training.

(5) "Director" means the director of the training division of the department or his designee.

(6) "Instructor" means the department staff member or other person in charge of a particular training activity for a class of trainees or basic recruits.

(7) "Legal officer" means the general counsel of the department or his designee.

(8) "Recruit" means a person attending the basic training course conducted by the basic training section of the department.

(9) "Section supervisor" means the supervisor of the basic training section of the department or his designee.

(10) "Trainee" means a person attending a training course (other than the law enforcement basic training course) conducted by a training section of the department.

(11) "In-service" means a training course that is available to a certified officer who has previously completed a KLEC approved basic training academy.

(12) "Submit" includes mail, transmit by facsimile, or transmit via electronic means and is completed upon receipt of the person to whom it was directed.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2014, at 9:00 a.m. in Room 211, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Dana M. Todd, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana M. Todd

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the definitions incorporated throughout 503 KAR Chapter 3.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear and consistent terms relating to the administrative regulations contained in 503 KAR Chapter 3.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable, and consistent terms relating to conduct requirements, procedures, and penalties for those who attend law enforcement basic and in-service training, telecommunications training, and certified court security officer training.

(2) If 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 add two definitions for use throughout the chapter.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to clarify the meaning of "in-service" and to add to the chapter, through the use of today's technology, the ability for law enforcement agencies to use computers to transmit applications, data, etc., to the Department of Criminal Justice Training.

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows agencies to easily and efficiently enroll their law enforcement and telecommunications personnel for training via electronic means.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the commonwealth that utilize DOJT training, which is approximately 412 agencies, including most state, county and local agencies, but excluding Kentucky State Police, Lexington-Fayette Urban County Government Division of Police, and Louisville Metro Police 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: No actions needed for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies will be able to transmit information, as well as receive information, in a timelier manner.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All law enforcement agencies in the Commonwealth that utilize DOJT training.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070.

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the Department of Criminal Justice Training or to the employing agencies of basic training recruits, in-service trainees, telecommunications trainees, and certified court security officer trainees.

(d) How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation are relatively minor and should have no additional fiscal impact.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (Amendment)

#### 503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070(1)

STATUTORY AUTHORITY: KRS 15A.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations. This administrative regulation establishes conduct requirements of recruits attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms, Operator's License, and Criminal History Records Check Required. (1) A recruit shall:

(a) Provide the uniforms required in Section 6(8) of this administrative regulation; and

(b) Present a valid motor vehicle operator's license to participate in the basic training course.

(2) The recruit's employing agency shall submit Form 151[a letter] to the department that:

(a) A criminal history check, in accordance with 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the recruit attends law enforcement basic training; and

(b) The recruit is not prohibited by state or federal law from:

1. Possessing a firearm; or

2. Accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(3) If the recruit has been in precertified status, pursuant to KRS 15.386(1), for less than ninety (90) days before arriving for law enforcement basic training, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Recruit from the Course. (1) Unqualified recruit. If a recruit is not qualified to participate in the basic training course, he shall:

(a) Be removed from basic training by the:

1. Commissioner;

2. Director;

3. Branch manager; or
4. Section supervisor; and

(b) Receive no credit for the part of the course he has completed.

(2) If a recruit is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) A recruit shall be considered unqualified if he:

(a) Or his law enforcement agency files an incomplete or fraudulent application to attend basic training, or otherwise fails to comply with admissions requirements, including Form 151~~[the criminal history letter]~~ required in Section 1(2) of this administrative regulation;

(b) Is not presently employed as a law enforcement officer and has not received special permission to attend;

(c) Arrives at the beginning of basic training physically unable to participate because of:

1. Physical injury;

2. Being under the influence of alcohol or drugs (prescription or illegal); or

3. Failure of the physical training entry requirements as found in 503 KAR 1:110 if the recruit is required to complete basic training in order to fulfill the peace officer certification provisions as found in KRS 15.380 to 15.404;

(d) Has had prior disciplinary action while at DOCJT which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous DOCJT training course; or

(e) Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;

(4) Agency's request: The department shall remove a recruit from basic training upon the department's receipt of a written request from the recruit's law enforcement agency. The recruit shall receive no credit for the part of the course he has completed.

Section 3. Gifts. Gifts from recruits to department staff members shall conform to the Executive Branch Code of Ethics (KRS 11A.040).

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a recruit's failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The recruit is dismissed from the course, and all privileges are terminated. The recruit shall not reapply for admission to the department's basic training course for two (2) years from the date of expulsion.

(b) Suspension. The recruit is suspended from training for a specified period of time, not to exceed one (1) year; all privileges are rescinded during the suspension period.

(c) Probation. The recruit is placed on probation for a specified period of time, not to exceed the final date of the basic training course in which he is currently enrolled. A loss of privileges may be imposed during the period of probation. A violation of any conduct or Honor Code requirement during the period of probation shall result in an extension of the period of probation, additional loss of privileges, suspension, or expulsion.

(d) Loss of privileges. The recruit's privileges as specified in the imposed penalty are rescinded for a stated period of time. The recruit's participation in training activities is not affected.

(e) Written reprimand. The recruit is reprimanded in writing for violating a conduct or Honor Code requirement.

(f) Verbal warning. The recruit is warned verbally that he has violated a conduct or Honor Code requirement.

(2) Second and subsequent violations.

(a) If a recruit has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties in Sections 6 and 7 of this administrative regulation which may be imposed for the second violation.

(b) If a recruit has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third

or subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties in Sections 6 and 7 of this administrative regulation shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to recruit. The department shall give written notice to a recruit of any penalty imposed upon him.

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a recruit.

(b) A copy of any penalty imposed on a recruit shall be placed in his basic training file.

(c) Only the department, including the department's use of redacted records for accreditation purposes, the recruit, and the recruit's agency head shall have access to the penalty records in a recruit's basic training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a recruit constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A recruit attending the basic training course shall meet the following conduct requirements: (1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the recruit's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct, insubordination. A recruit shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, probation,~~or~~ suspension, or expulsion.

(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand, probation,~~or~~ suspension, or expulsion.

(3) General conduct, grooming. The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit's agency and good cause shown. A recruit's hair shall be clean and neat and shall not be over the collar. Penalty: verbal warning or written reprimand.

(4) General conduct, alcoholic beverages and other intoxicants.

(a) Regardless of amount, a recruit shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while attending a basic training course which shall include all dates of training and periods when residing in the dormitory, including the weekend if the recruit is granted permission to stay beyond the normal Friday evening checkout. "Attending a basic training course" shall not include the weekend period during which recruits check out of the dormitory and return to their homes. A recruit shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances. A recruit shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense. Testing shall not be required to impose a penalty under this subsection, but may be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director or commissioner has a reasonable suspicion that the recruit has violated the provisions of this section. Testing may be randomly requested of all members of a basic training class or all dormitory residents. If a test is requested, a recruit shall be considered to have consumed

alcoholic beverages if his or her blood alcohol concentration is 0.01 percent or greater. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(b) If a recruit has taken a controlled substance as prescribed by a physician or a qualified medical professional or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be impaired or may endanger himself or other persons or property. A recruit shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully possessed~~[unlawfully-possessed]~~ intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), knives other than an ordinary pocket knife, fireworks, or instruments used by law enforcement for control purposes including batons, stun guns, Mace, and pepper spray, on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully possessed~~[unlawfully-possessed]~~ weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A recruit shall not recklessly, negligently, or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a basic training class. Depending on the nature of the conduct, the recruit shall be penalized by a verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion. Additionally, the appropriate prosecutorial authority shall be notified of the activity if it constitutes a felony or class A misdemeanor, and may be notified of other activity if appropriate.

(b) Engage in conduct which creates a danger or risk of danger to the recruit or another, possess obscene matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct,

engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(c) Engage in conduct which violates an Eastern Kentucky University policy or rule. The location of the policies and rules shall be provided to each recruit at the beginning of basic training. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Training activities, uniforms.

(a) A recruit shall acquire all necessary uniforms and wear them as required by the department. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(b) Navy blue utility uniforms shall be:

1. Clean, pressed and in good condition;

2. Appropriately sized to fit the recruit and not excessively loose, baggy, or tight;

3. Worn over a clean white or department-issued tee-shirt, visible at the neck; and

4. Worn with a wide black police-type belt, clean black police-type footwear, black or navy blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) Jewelry.

1. The recruit may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

2. Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator. Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Optional clothing may be worn during a training activity if authorized by the class coordinator.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for ten (10) minutes or more. A recruit is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A recruit shall give advance notice of an absence if possible. Penalty for an unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from basic training shall be approved by the section supervisor or branch manager.

(c) If a recruit is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the class coordinator and class administrative specialist. Failure to make up the work shall be deemed a failure of that training area.

(10) Training activities, breaks. Recruits shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.

(a) A recruit shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A recruit shall not possess any electronic devices during scheduled training hours unless approval~~[written permission]~~ is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A recruit shall not use tobacco products during, or bring food or drink into a training activity~~[unless so permitted by the training staff]~~. Penalty: verbal warning or written reprimand.

(d) A recruit shall not engage in conduct which creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(e) A recruit shall complete assignments by the deadline established by the instructor or coordinator. Penalty: verbal warning or written reprimand.

(12) Training activities, dishonesty.

(a) A recruit shall not cheat or attempt to cheat on a test, or alter or attempt to alter a test grade or other evaluation result. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: suspension or expulsion.

(b) A recruit shall not cheat or attempt to cheat on any other assignment or activity, engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during basic training. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(13) Residence hall.

(a) During the basic training course a recruit shall reside in the residence hall designated by the department.

(b) A recruit shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, probation.

(c) A recruit shall observe "lights out" thirty (30) minutes past the designated curfew. This time may be temporarily moved up or extended by the branch manager or designee based upon training or testing activities the following day. Penalty: verbal warning or written reprimand.

(d) Each recruit shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a recruit shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(f) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(g) A recruit residing at the residence hall shall not:

1. Have any person of the opposite sex in his room, or visit in the room of a recruit of the opposite sex without the permission of the class coordinator. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make

the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(2) The coordinator shall designate a minimum of one (1) Honor Code representative during the first week of basic training. The Honor Code representative may be replaced:

(a) For nonperformance of duties, including conduct violations; or

(b) If the coordinator determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All recruits shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a recruit with an Honor Code violation without a prior report from the Honor Code representative. A penalty recommendation for the violation shall be solicited from the Honor Code representative.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

(1) Recruit performance report which shall be completed at least three (3) times throughout the current KLEC-approved basic training course[six (6) week intervals] and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:

1. Bar;

2. Tavern;

3. Lounge;

4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.

(4) Written notice of any conduct or Honor Code penalty imposed upon the recruit.

(5) Notice if a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

(6) Notice if a recruit has been removed from training pending an initial appearance before the commissioner as defined in Section 10 of this administrative regulation, or if a recruit has been removed from training pending a disciplinary hearing as defined in Section 14(3) of this administrative regulation.

(7) Immediate notice of concerns related to the recruit's safety, or physical or emotional health.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a recruit unless charges have first been brought by the legal officer. (1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose

summary discipline, the staff member shall have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, or written reprimand.

(c) The branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.

(2) Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the recruit with the opportunity to give an explanation.

Section 10. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) If a charge is filed against a recruit, the commissioner or director may remove the recruit from some or all training until the recruit's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit has been charged with misconduct for which suspension or expulsion is authorized, and the facts demonstrate that suspension or expulsion is the appropriate penalty should the recruit be found guilty of the conduct violation.

(2) A recruit who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds to believe that a recruit has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor or his or her designee receives a complaint of or witnesses apparent misconduct, he or she shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall:

(a) File charges against the recruit as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;

(c) State the time, date, and place the recruit shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the recruit at least forty-eight (48) hours

before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than five (5) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the recruit; and

2. Explain to the recruit:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the recruit the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.

(d) The recruit shall be requested to answer the charges.

(e) If the recruit chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the recruit within forty-eight (48) hours of the initial appearance before the commissioner.

(g) If the recruit remains silent or refuses to answer the charges, the commissioner may suspend the recruit from training until the recruit answers the charges or the legal officer drops the charges.

(3) The commissioner may remove the recruit from some or all training until the hearing if:

(a) He has reasonable grounds to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Incorporation by Reference. (1) DOCJT Form 151, "Applicant Confirmation", 05-08-14, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2014, at 9:00 a.m. in Room 211, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative



regulation. Written comments shall be accepted until July 31, 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:** Dana M. Todd, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana M. Todd

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training law enforcement basic training course.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear conduct requirements for law enforcement recruits and to establish the procedures and penalties for those who violate the conduct requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable, and consistent conduct requirements, procedures, and penalties for all who attend law enforcement basic training.

(2) If 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 now require a form instead of a previously required letter; adds expulsion as a possible penalty to general conduct violations; deletes the requirement that written permission be obtained in order for a recruit to possess electronic devices; and restricts all use of tobacco products during basic training in accordance with the new policy issued from Eastern Kentucky University, where DOCJT is located.

(b) The necessity of the amendment to this administrative regulation: The change in the department's tobacco policy reflects Eastern Kentucky University's new tobacco-free campus policy that will become effective June 1, 2014. The other amendments reflect current practices that are utilized, or will be utilized, during basic training.

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment amends language in the DOCJT disciplinary requirements in order to improve and better reflect academy practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the commonwealth that utilize DOCJT basic training, which is approximately 412 agencies, including most state, county and local agencies, but excluding Kentucky State Police, Lexington-Fayette Urban County Government Division of Police, and Louisville Metro Police 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: Other than submitting information to the department using a form format in place of a letter format, agencies should not have to take any actions. These amendments

relate only to rules for students in basic training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The DOCJT Form 151 is a simple, streamlined form that will require less time to complete than the preparation of a letter.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect city and county police departments, sheriffs' offices, Kentucky Vehicle Enforcement Officers and other state agencies whose enforcement officers must be a certified police officer. New city, county, and state law enforcement are required to attend law enforcement basic training and abide by all disciplinary rules.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(a) and (h).

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the Department of Criminal Justice Training or to the employing agencies of basic training recruits.

(d) How much will it cost to administer this program for subsequent years? No additional costs over that which the Department of Criminal Justice Training currently spends to administer the law enforcement basic training program.

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

Revenues (+/-): None.

Expenditures (+/-): None.  
Other Explanation: None.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Criminal Justice Training  
(Amendment)**

**503 KAR 3:040. Telecommunications (Public Safety Dispatch) Academy trainee requirements; misconduct; penalties; discipline procedures.**

RELATES TO: KRS 15.530-15.590

STATUTORY AUTHORITY: KRS 15.590, 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner to promulgate administrative regulations. This administrative regulation establishes conduct requirements of trainees attending the telecommunications (public safety dispatch) academy conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms and Criminal History Records Check Required. (1) A trainee shall wear a uniform, approved by the department, while participating in the academy.

(2) The required uniform shall consist of:

(a) Men:

1. Polo shirt with DOCJT logo, supplied by the department;
2. Solid black dress pants with belt loops. Cargo pants or low-cut pants shall not be worn;
3. Black belt;
4. Black socks above the ankles. Footies shall not be worn;

and

5. Black, plain-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(b) Women:

1. Polo shirt with DOCJT logo, supplied by the department;
2. Solid black dress pants with belt loops or knee-length skirt. Cargo pants or low-cut pants shall not be worn;
3. Black belt;
4. Black socks or hose above the ankles. Footies or anklets shall not be worn; and
5. Black, plain, closed-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(3) The following may be worn with the uniform:

- (a) A dark blue or black jacket or sweater;
- (b) A black undershirt or turtleneck; and
- (c) The Department of Criminal Justice Training cap.

(4) The trainee's employing agency shall submit Form 151[a letter] to the department that:

(a) A criminal history check, in accordance with 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the trainee attends the Academy; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(5) If the criminal history check required by KRS 15.540(1)(c) has been performed within ninety (90) days before the trainee arrives for the Academy, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If a trainee does not meet the law enforcement telecommunicator qualifications in KRS 15.540, he shall:

(a) Be removed from the academy by the:

1. Director;
2. Branch manager; or
3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except if required by law, a trainee's training file shall not be available for access except by:

1. The department, including the department's use of redacted records for accreditation purposes;
2. The trainee; or
3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

(b) Refrain from vulgarity, rudeness, confrontation, or other

disrespectful conduct directed toward a department staff member, trainee, or other department trainee or guest. Penalty: verbal warning, written reprimand, or suspension.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;

2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and

3. Shall not wear a beard unless he receives permission from the department, based upon:

a. A written request from the trainee's agency; and

b. A showing of good cause.

(b) A trainee's hair, male or female, shall:

1. Not be unkempt; and

2. Be kept above the collar.

(c) Jewelry.

1. A trainee may wear one (1) ring per hand. A wedding ring and engagement ring worn together shall be considered one (1) ring.

2. Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator.

(d) A trainee shall:

1. Practice good hygiene at all times; and

2. Not wear excess perfume, cologne, or other scented body products.

(e)[(d)] Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) A trainee shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while enrolled in the academy. Penalty: written reprimand, loss of privileges, suspension, or expulsion.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional. Penalty: verbal warning, written reprimand, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, or other department staff observes an unlawfully possessed[unlawfully-possessed] intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) A trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, knives (except an ordinary pocketknife), or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes an unlawfully possessed[unlawfully-possessed] weapon or other dangerous device, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by

the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) A trainee shall not have successfully completed the academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the academy. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting, engage in violent, tumultuous or threatening conduct, or engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(c) Engage in conduct which violates an Eastern Kentucky University policy or rule. The location of the policies and rules shall be provided to each trainee at the beginning of the academy training. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Academy activities - uniforms.

(a) A trainee shall wear the uniform required by Section 1 of this administrative regulation. Penalty: verbal warning or written reprimand.

(b) Uniforms shall be clean, pressed, and in good condition. Penalty: verbal warning or written reprimand.

(c) A name tag, provided by the department, shall be worn on the right shirt breast. Penalty: verbal warning or written reprimand.

(d) Sleeves on long-sleeved shirts shall not be rolled up. Penalty: verbal warning or written reprimand.

(e) Additional clothing may be worn during an academy activity if authorized by the instructor.

(9) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty: verbal warning or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the academy shall be approved by the section supervisor or branch manager.

(d) If a trainee's absence is excused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.

(e) If a trainee's absence is excused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point at which the trainee was absent. The time period for reenrollment in a subsequent class shall not exceed six (6) months from the date of the class from which the trainee was withdrawn.

(f) If a trainee's absence is unexcused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and receive no credit for completed training.

(10) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction, if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(11) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not possess any electronic devices during scheduled training hours unless written permission is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into an academy activity unless so permitted by the branch manager, training director, or commissioner. Penalty: verbal warning or written reprimand.

(d) A trainee shall not engage in conduct which creates or may create a risk of injury to others.

(12) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(13) Residence hall.

(a) During the academy a trainee shall reside in the residence hall designated by the department.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, or loss of privileges.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, or loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of hot plates is prohibited. Penalty: verbal warning, written reprimand, or loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation, and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning, written reprimand, or loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, or loss of privileges.

4. Engage in dangerous, disruptive, immoral, or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The trainee shall abide by the provisions of the honor code which reads as follows: We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As trainees of the Department of Criminal Justice Training, Telecommunications (Public Safety Dispatch) Academy, we will not lie, steal or cheat nor tolerate any among us who do. We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will

never allow personal feelings, prejudices, ill will, or friendships to influence our decisions. We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence. We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of public safety. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - public safety.

(2) The penalty for violating the honor code shall be: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(3) All trainees shall report honor code violations to the class coordinator.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the police chief, sheriff, or chief administrator of the trainee's agency:

(1) Trainee performance report which shall be completed at the completion of the academy and shall include trainee conduct, demonstrated leadership abilities, examination scores, and overall effort on performance, observed social/interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance, misconduct, or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking an agency-owned or assigned vehicle at a:

1. Bar;

2. Tavern;

3. Lounge;

4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a complaint by a citizen, student, or department staff member.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer. (1) The following department staff members shall have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal From the Academy Pending an Initial Appearance Before the Commissioner. (1) If a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds

to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of a witness's apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date, and place the trainee shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Incorporation by Reference. (1) DOCJT Form 151, "Applicant Confirmation", 05-08-14, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2014, at 9:00 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana M. Todd

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training Telecommunications Academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear conduct requirements for telecommunications trainees and to establish the procedures and penalties for those who violate the conduct requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend the Telecommunications Academy.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds:

1. The requirement for DOCJT Form 151 to be completed and signed by the trainee's agency head in lieu of a letter;

2. Language for the appropriate wearing of jewelry while attending training under general conduct requirements; and

3. Minor drafting changes.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to reflect anticipated practices of the department.

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment amends language in the DOCJT disciplinary requirements in order to improve and better reflect academy practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that employ law enforcement telecommunicators or dispatchers.

(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 agencies should not have to take any action other than completing a form (available on-line) where a letter was previously required attesting that an employee has a clear criminal record check, no prohibition to use restricted databases, and no prohibition to carry a firearm.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies, as well as the department, will be assured that dispatchers qualify for the job before training takes place.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect city, county, and state agencies that employ law enforcement dispatchers. New city, county, and state telecommunicators are required to attend the Telecommunications Academy and abide by all disciplinary rules.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(a) and (h).

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the Department of Criminal Justice Training or the employing agencies of academy trainees.

(d) How much will it cost to administer this program for subsequent years? No additional costs over that which the Department of Criminal Justice Training currently spends to administer the telecommunications public safety dispatch training program. The amendments to this administrative regulation are relatively minor and should have no additional fiscal impact.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

## JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (Amendment)

### 503 KAR 3:110. Certified Court Security Officers academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.380(1)(c), KRS 15.3975

STATUTORY AUTHORITY: KRS 15.3975(1), 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations. This administrative regulation establishes conduct requirements of trainees attending the Certified Court Security Officers academy conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms and Criminal History Records Check Required. (1) A trainee shall acquire and wear the designated uniform of his or her employing agency while participating in the academy. If an agency has not adopted a uniform, male trainees shall wear a shirt and tie and female trainees shall wear business casual for women. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(2) A uniform shall be:

(a) Clean, pressed, and in good condition; and

(b) Appropriately sized to fit the trainee and not excessively loose, baggy, or tight.;

(c) ~~Worn over a clean white or department-issued tee shirt, visible at the neck; and~~

(d) ~~Worn with a wide black police-type belt, clean police-type footwear, brown or black socks, and when outdoors, a department cap.~~

(e) The penalty for violation of this subsection shall be a verbal warning or written reprimand.

(3) Jewelry.

(a) The trainee may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

(b) Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator.

(c) The penalty for violation of this subsection shall be a verbal warning or written reprimand.

(4) ~~A name tag, provided by the department, shall be worn on the left shirt pocket flap. Penalty: verbal warning or written reprimand.~~

(5) ~~Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.~~

(6) Optional clothing may be worn during a training activity if authorized by the class coordinator or an instructor.

(5) ~~(7)~~ The trainee's employing agency shall submit Form 151 ~~a letter~~ to the department that:

(a) A criminal history check, in accordance with 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the trainee attends the Academy for Certified Court Security Officers; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(8) If the criminal history check required by KRS 15.3971(1)(e) and (k) has been performed within ninety (90) days before the trainee arrives for the academy, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If the Department discovers that a trainee does not meet the Certified Court Security Officer qualifications in KRS 15.3971, he shall:

(a) Be removed from the academy by the:

1. Director;
2. Branch manager; or
3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy he may request an administrative hearing, conducted in accordance with the requirements of KRS Chapter 13B, within thirty (30) days of the removal. The request for an administrative hearing shall be in writing.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties that may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties that may be imposed for the third or subsequent violation.

(3) Notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice if a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except if required by law, a trainee's training file shall not be available for access except by:

1. The department, including the department's use of redacted records for accreditation purposes;
2. The trainee; or
3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow the chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning or written reprimand, loss of privileges, probation, or suspension.

(b) Refrain from:

1. Engaging in sexual activity on Department property;
2. Physical contact with another person that is inappropriate in a professional training setting, for example, hugging or kissing;
3. Vulgarity;
4. Sexual harassment;
5. Rudeness;
6. Confrontation; and
7. Other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest.

8 Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;
2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and
3. Shall not wear a beard unless he receives permission from the department, based upon:

a.] a written request from the trainee's agency; and

b.] A showing of good cause].

(b) A trainee's hair shall:

1. Not be unkempt; and

2. Be kept above the collar.

(c) Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) Regardless of amount, a trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while attending a basic training course which shall include all dates of training and periods when residing in the dormitory, including the weekend if the trainee is granted permission to stay beyond the normal Friday evening checkout.

(b) "Attending a basic training course" shall not include the weekend period during which trainees check out of the dormitory and return to their homes.

(c) A trainee shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances.

(d) A trainee shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense.

(e) Testing shall not be required to impose a penalty under this subsection, but may be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director, or commissioner has a reasonable suspicion that the trainee has violated the provisions of this section.

(f) Testing may be randomly requested of all members of an academy class or all dormitory residents. If a test is requested, a trainee shall be considered to have consumed alcoholic beverages if his or her blood alcohol concentration is 0.01 percent or greater.

(g) If a trainee has taken a controlled substance as prescribed by a physician or a qualified medical professional or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional.

(h) Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(i) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully possessed~~[unlawfully-possessed]~~ intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is returned to the trainee at the completion of the academy, or disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) Due to the accidents that have occurred in the training setting in other jurisdictions, a trainee shall not possess the following on property used by the department except under circumstances specifically authorized by the department:

1. Deadly weapons as defined in KRS 500.080;
2. Ammunition;
3. Destructive devices as defined in KRS 237.030;
4. Booby trap devices as defined in KRS 237.030;
5. Hazardous substances as defined in KRS 224.01-512;
6. Fireworks; or
7. Instruments used by law enforcement for control purposes, such as batons, stun guns, Mace, and pepper spray.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in academy activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs that may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor.

(c) Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(d) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes a weapon or other dangerous device possessed in violation of this subsection, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) A trainee shall not have successfully completed the academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor, or violation, while enrolled in the academy.

(b) Engage in conduct that creates a danger or risk of danger to the trainee or another;

(c) Possess obscene material as defined in KRS 531.010;

(d) Engage in conduct that is annoying;

(e) Engage in fighting or in violent, tumultuous, or threatening conduct;

(f) Engage in sexual harassment; or

(g) Engage in conduct that is offensive.

(h) Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(8) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty for unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension. Penalty for unexcused tardiness: verbal reprimand or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the academy shall be approved by the section supervisor or branch manager.

(d) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.

(e) If a trainee is absent for a combined period of more than ten (10) percent of the academy, he or she may be required to return to a later class in order to complete all coursework.

(9) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(10) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not possess any electronic devices during scheduled training hours unless approval~~[written permission]~~ is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into an academy activity~~[unless so permitted by the~~



~~training director or commissioner~~]. Penalty: verbal warning or written reprimand.

(d) A trainee shall not engage in conduct that creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(11) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: suspension or expulsion.

(12) Residence hall.

(a) During the academy a trainee shall reside in the residence hall designated by the department. Exceptions shall be approved by the training director or his designee.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand or loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning, written reprimand or loss of privileges.

(f) A hot plate shall not be used in the residence hall. Penalty: verbal warning, written reprimand or loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation, and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning, written reprimand, or loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, or loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. The trainee shall abide by the provisions of the honor code which reads as follows: We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As trainees of the Department of Criminal Justice Training, Certified Court Security Officers Academy, we will not lie, steal or cheat nor tolerate any among us who do. We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions. We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence. We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of

privileges, probation, suspension, or expulsion.

All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the certified court security officers academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the sheriff of the trainee's agency:

(1) Immediate notice of specific nonperformance, misconduct, or lack of progress.

(2) Immediate notice of any off-campus activity that reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:

1. Bar;

2. Tavern;

3. Lounge;

4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer. (1) The following department staff members shall have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal from the Academy Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the

matter.

- (2) After investigating the matter, the section supervisor shall:
  - (a) Take no action if none is justified by the evidence;
  - (b) Impose appropriate summary discipline; or
  - (c) File, with the legal officer, a written request that charges be brought against the trainee.

1. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated.

2. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

- (a) File any charges against the trainee that he believes are justified by the evidence; or
- (b) Deny the request for charges if the evidence does not support any charges.

(4) If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(5) The charging document shall:

- (a) Be in writing;
- (b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;
- (c) State the time, date, and place the trainee shall make an initial appearance before the commissioner to answer the charges.
- (d) Be signed by the legal officer; and
- (e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and
2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee that he shall answer the charges by:

1. Admitting the charges are true;
2. Denying the charges are true but waiving a hearing; or
3. Denying the charges are true and requesting a hearing.

(c) The commissioner shall advise the trainee of the penalty that shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and
2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing, notice of which shall be provided in writing to the trainee.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

- (a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or
- (b) The trainee is charged with misconduct serious enough to

authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Incorporation by Reference. (1) DOCJT Form 151, "Applicant Confirmation", 05-08-14, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2014, at 9:00 a.m. in Room 211, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Dana M. Todd, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana M. Todd

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training Certified Court Security Officers Academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear conduct requirements for Court Security Officer trainees and to establish the procedures and penalties for those who violate the conduct requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend the Certified Court Security Officers Academy.

(2) If 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 now require a form instead of a previously required letter; amends some of the requirements that make up the trainees' uniforms and general grooming requirements; and restricts all use of tobacco products in accordance with the new policy issued from Eastern Kentucky University, where DOCJT is located.

(b) The necessity of the amendment to this administrative

regulation: The change in the department's tobacco policy reflects Eastern Kentucky University's (EKU) new tobacco-free campus policy that will become effective June 1, 2014. The other amendments reflect current practices that are utilized, or will be utilized, while trainees are attending the academy.

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment amends language in the regulation in order to comply with the implementation of EKU's tobacco-free campus policy and to improve and better reflect academy practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 120 sheriffs' offices in Kentucky that employ Certified Court Security Officers.

(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 agencies should not have to take any actions. These amendments relate only to rules for trainees in the Certified Court Security Officers Academy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better-trained officer upon graduation.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect county sheriffs' offices that employ certified court security officers. New court security officers are required to attend the Certified Court Security Officers Academy and abide by all disciplinary rules.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(a) and (h).

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

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

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

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

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the Department of Criminal Justice Training or to sheriffs' offices.

(d) How much will it cost to administer this program for subsequent years? There should be no additional costs to the Department or to the affected sheriffs' offices because this regulation addresses conduct requirements, penalties, and disciplinary procedures while attending training.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

##### 791 KAR 1:020. Standards for Licensure~~[approval of Associate Degree Programs]~~.

RELATES TO: KRS 165A.310(5), 165A.330(2), 165A.370(1)

STATUTORY AUTHORITY: KRS 165A.330(1), 165A.340(3), (7), 165A.360(1), (2), (7), 165A.370(1), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.370(1) requires that a school shall not be issued a certificate of approval until the commission[Board] has determined the school is in compliance with minimum standards leading to the awarding of a certificate, a diploma, or an associate degree which indicates the satisfactory completion of a program of study. This administrative regulation establishes the requirements for a school to be licensed by the commission[award an associate degree].

Section 1. A school shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The school shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements required by 791 KAR 1:010;

(b) The name and contact information of the bank or other financial institution used by the school as a reference;

(c) Good standing with the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department; and

(e) A school surety bond or other collateral per KRS 165A.360 and 791 KAR 1:150 and agent surety bond or other collateral per KRS 165A.350 and 791 KAR 1:150.

(2) Accreditation.

(a) If a school is accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish information regarding its accreditation status.

(b) If a school is not accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish a statement indicating if, when, and from whom the school will seek accreditation.

(c) A school shall not:

1. Be the subject of an interim action by a state agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;

2. Have had its state license suspended, revoked, or

terminated, even if the required due process procedures have not been completed;

3. Have been denied candidacy or accreditation by an accrediting agency;

4. Have voluntarily withdrawn its candidacy or accreditation while not in good standing from an accrediting agency;

5. Have had its candidacy or accreditation withdrawn or been placed on public probation by an accrediting agency;

6. Be the subject of an interim action by an accrediting agency potentially leading to the suspension, revocation, or withdrawal of candidacy or accreditation; or

7. Have been notified of the loss of any agency's accreditation even if the due process procedures have not been completed.

(3) Agents. A school shall be responsible for the actions of its agents when acting on behalf of the school, and an agent shall have an agent permit and agent bond per KRS 165A.350 and 791 KAR 1:150 and shall comply with KRS 165A.330.

(4) Personnel requirements.

(a) The school shall furnish information regarding the administrative officer, the directors, the owners, and the instructors on the Form PE-11, Form for Instructional Staff and Key Administrative Personnel.

(b) The chief administrator shall be qualified pursuant to KRS 165A.370(1)(d).

(c) Each qualifying degree possessed by personnel shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

(d) Verification of credentials. A school shall maintain official transcripts for credentials that qualify instructors to teach their assigned courses and for those credentials that are listed in the catalog. All these credentials shall be on file in the administrative offices at the campus location nearest to where the instructor is primarily employed.

(e) A principal party, owner, or administrator involved with the school shall not have had a felony conviction involving moral turpitude, fraud, or a capital crime.

(f) Instructor qualifications. To teach, an instructor shall comply with KRS 165A.370(1)(e). Appropriate training or experience related to the responsibilities of the position shall include a high school diploma or GED along with one (1) or more of the following:

1. Completed a training or degree program in the applicable occupational area;

2. Demonstrated outstanding professional experience;

3. Demonstrated outstanding professional contributions to the discipline being taught; or

4. Professional licensure or certification in the field.

(g) Teaching loads of instructors shall be consistent with recognized educational practices and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(h) Instructor development.

1. A school shall establish instructor development plans including both in-service and professional growth activities to enhance instructor expertise.

2. There shall be documented evidence on an annual basis of these development plans and their implementation.

3. A school shall establish plans that are appropriate given each instructor's training, education, and related work experience and that provide the proper mix of in-service training and professional growth based on the academic and experiential background of the instructor.

(5) Facilities and equipment.

(a) Enrollment shall not exceed the design characteristics of the facilities.

(b) A school shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(c) If a school has an expansion of a school facility, it shall comply with 791 KAR 1:160.

(d) If a school has multiple campuses, it shall comply with 791 KAR 1:150.

(e) If a school is only seeking licensure with the commission to offer a course or courses not for college credit, and it will not conduct its course or courses at a permanent location but rather will utilize the facilities of hotels or other public buildings, it shall:

1. Notify the commission in writing, at least thirty (30) days in advance of the location where any course will be offered;

2. Receive prior approval of the Kentucky Real Estate Commission, the Kentucky Insurance Commission, the Kentucky Bar Association, or other appropriate official agency or group authorized to approve the course or courses; and

3. Not advertise or promote the course or courses until the commission has received in writing the course content, name and qualification of the instructor, and a copy of the approval to offer the course from an authorizing agency.

(6) Library resources. The library shall be appropriate to support the programs offered by the school in accordance with this subsection.

(a) A school, through ownership or formal agreements, shall provide and support student and instructor access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the program level offered by the school, and shall be sufficient to support all educational, research, and public service programs at the school.

(b) A school that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the commission at the time of license application, and prior to the offering of any courses.

(c) A school that is dependent on another school or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the commission and to students and instructors.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited schools of similar types.

(e) Library staff shall be qualified as required for accredited schools of similar types.

(f) The school shall have sufficient seating and work space for a reasonable proportion of the instructors and students to be accommodated at one (1) time.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(7) Curriculum.

(a) A course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited schools if the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level. A course may be offered that is not transferable based on the uniqueness of a program that is occupational in nature.

(b) A school shall have a systematic program of curriculum revision in order to maintain the general standards of accredited schools with similar programs.

(c) A school shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(d) A school shall offer with sufficient frequency the courses required for each program for the student to complete the program within publicized time frames.

(8) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program shall include:

(a) Adequate supervision by the school; and

(b) Other instructional support necessary to maintain the program.

(9) Truth in advertising. A school shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or other materials produced by or on behalf of the school which are distributed in

Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the school, its personnel, its services, the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the school shall not indicate that the school is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Kentucky Commission on Proprietary Education, or by any other state agency. A statement using the name of the Kentucky Commission on Proprietary Education, if any, shall be in exactly the following form: "(Name of School) is licensed by the Kentucky Commission on Proprietary Education."

(c) A school shall:

1. Publicly disclose, both in print and Web-based materials, information about its student enrollment, degrees conferred, and job placement rate of program graduates in the field of study as reported to the commission per 791 KAR 1:010 and per KRS 165A.340(6); and

2. Use numbers most recently reported to the commission in its advertising.

(d) A school shall publicly disclose information about articulation agreements and transfer of credits per KRS 165A.340(6)(a)2.c., and shall furnish copies of the articulation agreements and rights and responsibilities of students regarding transfer of credits to the commission.

(e) The commission staff may require that a school furnish proof to the commission of any of its advertising claims. If proof cannot be furnished, a retraction of the advertising claims published in the same format as the claims themselves shall be published by the school and the continuation of the advertising shall be grounds for denial, suspension, or revocation of the school's license.

(10) Recruitment and enrollment procedures. A school shall furnish the following to each prospective student prior to enrollment, and shall require that the student sign and date the school's form to be placed in the student's file, which shall either be part of the enrollment contract or a pre-enrollment checklist verifying that the student received:

(a) The school's most recent catalog including policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits;

(e) The complaint procedures available to students, including the process for filing a complaint with the commission;

(f) The existence of the student protection fund created in KRS 165A.450; and

(g) The student enrollment application, contract, or agreement.

(11) Student affairs.

(a) Students admitted to the school shall have completed a state-approved secondary school program or its equivalent.

(b) The school shall provide academic advising by instructors or staff to each student at the time of admission and throughout the program.

(c) The school shall make assistance and advising available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The school shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes.

(e) The school shall comply with recordkeeping requirements per KRS 165A.370 and 791 KAR 1:027.

(f) Administrative officers of the school shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(g) A school shall make provision for the maintenance of student records if the school ceases operations. The location of student records shall be approved in advance by the commission

in accordance with KRS 165A.390(5). A school shall comply with KRS 165A.450.

(12) School policies.

(a) The school shall maintain records in an orderly manner and make them available for inspection by the commission or its designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the school including:

1. General information:

a. Official name and address of the school, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The school's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of instructors, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the school;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund policy and schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all programs offered.

(13) Site visits.

(a) The commission shall conduct site visits in accordance with KRS 165A.370(1) and (2).

(b) The costs of the site visit shall be paid in accordance with 791 KAR 1:025.

(c) The commission may or may have conducted an announced or unannounced site visit of a licensed school during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the school's compliance with this administrative regulation and KRS Chapter 165A.

(d) Within ninety (90) working days of receipt of a complete application or annual report, the commission may conduct or may have conducted a site visit.

(e) The purpose of a site visit shall be to make an assessment of a school using the standards for licensure as set forth in this administrative regulation.

(f) Failure to provide full access to the school's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 2. General Standards for Approval of Associate Degree Programs. (1) In addition to meeting the requirements and standards in Section 1 of this administrative regulation, a school requesting consideration for approval to award an associate degree shall:

(a) Have been in operation and licensed in Kentucky or in another jurisdiction whose standards substantially meet or exceed those contained in this administrative regulation, for a continuous period of at least two (2) years immediately preceding the

application;

(b) Be accredited by an accrediting agency recognized by the United States Department of Education;

(c) Meet the standards set forth in KRS 165A.370 and this administrative regulation;

(d) File a completed, signed, and dated Application to Award an Associate Degree (Form PE-10) with the commission[board]; and

(e) Pay the fee for application to award an associate degree set forth in 791 KAR 1:025[201 KAR 40:025], Section 8;

(f) Ensure that marketing techniques and advertisements shall not guarantee employment;

(g) Not offer to the public, advertise, or enroll students in a new associate degree program until all necessary forms have been submitted to the commission[board] office for review, and written approval of the application is received from the commission[board]; and

(h) Be inspected by a member of the commission[board] or commission[board] designee with prior notification to the school of the date and time of the inspection to determine compliance with KRS 165A.370 and this administrative regulation.

(2) A class in the program shall not commence before the inspection report evidences that the program is in compliance.

Section 3.2. Associate of Arts Degree or Associate of Science Degree. (1) The granting of an associate of arts degree or associate of science degree shall be limited to a school accredited by an accrediting agency recognized by the U.S. Department of Education.

(2) The associate of arts degree or associate of science degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours of study.

(a) Of the total credit hours, a minimum of thirty (30) semester credit hours or forty-five (45) quarter credit hours, shall be in the appropriate business, technical, or other major field of study as indicated in the program title and description.

(b)1. A minimum of fifteen (15) semester credit hours or twenty-two and one-half (22 1/2) quarter credit hours, shall be required in general education studies.

2. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities, and shall offer balance to the total program. ~~[(3)(a) At least one-half (1/2) of those subjects which are part of the curriculum in an associate of arts degree or an associate of science degree program shall be taught by faculty members possessing:~~

1. Related graduate, professional, or baccalaureate degrees;

or

2. Professional certification.

~~(b) An exception to the requirement of an advanced degree may be justified for instructors of subjects in areas which are not normally academically credentialed or which are not normally credentialed with graduate degrees.]~~

Section 4.3. Specialized Associate Degree. (1) The granting of a specialized associate degree designated as an associate of applied science degree or associate of occupational studies degree is limited to schools accredited by an accrediting agency recognized by the U.S. Department of Education, as a business or specialized school.

(2)(a) The associate of applied science degree or associate of occupational studies degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours.

(b) The degrees shall have at least nine (9) semester hours, thirteen and one-half (13 1/2) quarter hours, or its recognized clock hour equivalent in general education or applied general education studies. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities. Applied general education studies shall include courses that apply to a specific occupation

(e.g., technology, medication math, psychology for health professionals, and business math) and also satisfy general education requirements. ~~These degrees shall not require the inclusion of general education studies courses, but general education studies courses may be a part of the program.~~

~~(3) Faculty qualifications shall require that a minimum of a baccalaureate degree is held by faculty or that faculty possess the following alternate competency:~~

~~(a) Professional licensure or certification in the specialized area or in a related specialized area; or~~

~~(b) Postsecondary education or training, plus at least two (2) years of documented practical experience in the specialized area or in a related specialized area.]~~

Section 5.4. Additional Standards. (1) Additional standards applicable to an associate degree granting school approved by this commission[board] include:

(a) The library or learning resource center items shall include relevant periodical subscriptions or computer data bases and shall contain professionally accepted references in the field or fields of study which shall be appropriate for the program offered.

(b) The library or learning resource center shall be accessible for all students to use the items and shall provide access to materials at hours other than times classes are being taught.

(c)1. A designated staff member shall be responsible for the library or learning resource center, and sufficient funds for support of the facility and acquisition of library or learning resource center items shall be provided.

2. In determining whether sufficient funds are provided, current student enrollment shall be considered.

(d) All equipment and training aids shall be relevant to the program offered and shall be in sufficient quality and quantity to accommodate the current student enrollment.

(e) The school shall provide a listing of the program requirements and prerequisites for the degrees offered.

(f)1. A catalog shall be printed containing a description for each course that is required or which may be taken to meet the requirements for the degree.

2. The catalog shall include all prerequisites.

(g) All promotional literature and advertising shall appropriately identify the degree offered.

(h)1. A completed Form for Instructional Staff and Key Administrative Personnel (Form PE-11) for each instructor shall be submitted to the commission[board] before classes listed on the application begin.

2. Official transcripts, and if applicable, copies of certifications, licenses, and other designations for each instructor in the degree program shall be maintained on file at the school.

(i) The school shall maintain on file a current course syllabus for each course taught.

(j) The school shall maintain on file for the commission[board] or its designee a copy of its last accreditation self-study and correspondence with accrediting agencies.

(2) The school shall make the following materials available to a member of the commission[board] or its designee at the on-site visit:

(a) Promotional literature;

(b) School catalog;

(c) Course syllabi;

(d) Inventory of classroom equipment;

(e) Student files;

(f) Faculty files;

(g) Staff files;

(h) A list of all personnel by position indicating part-time and full-time employees; and

(i) A current organizational chart.

Section 6. Failure to Meet Standards for Licensure. A school's failure to meet the standards for licensure set forth in this administrative regulation shall be grounds for denial of a license, or suspension or revocation of an existing license. The commission shall notify the school by registered mail, return receipt, of the denial, suspension, or revocation of the school's license. ~~Section 5.~~

~~Revision of an Existing Associate Degree Program. (1)(a) Written notification detailing cumulative curriculum changes in contact hours, credit hours, curriculum content (courses offered) or program length of a currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period shall be submitted to the commission on a Notification to Revise an Existing Program for Less Than 25% (Form PE-12).~~

~~(b) A change in the name of an existing program that does not change the overall objective of the program shall not be considered in the computation of the cumulative curriculum changes.~~

~~(2)(a) A school licensee shall submit an Application to Revise an Existing Program for 25% or More (Form PE-13) for approval by the commission if cumulative curriculum changes in contact hours, credit hours, curriculum content (courses offered), or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period.~~

~~(b) A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.~~

~~(3) A school shall notify the commission in writing of program name changes, course name changes, or course description changes.~~

~~Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application to Award an Associate Degree", Form PE-10, 2007 edition;~~

~~(b) "Form for Instructional Staff and Key Administrative Personnel", Form PE-11, 2007 edition;~~

~~(c) "Notification to Revise an Existing Program for Less Than 25%", Form PE-12, 2007 edition; and~~

~~(d) "Application to Revise an Existing Program for 25% or More", Form PE-13, 2007 edition.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3<sup>rd</sup> Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].~~

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, KY 40601, phone (502) 564-4185, fax (502) 564-4248.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administration regulation establishes the standards that a for-profit school that offers only below the bachelor's degree shall meet in order to be licensed by the Kentucky Commission on Proprietary

Education (KCPE).

(b) The necessity of this administrative regulation: KRS 165A requires the KCPE to license for-profit schools that offer only below the bachelor's degree level.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Per KRS 165A.340(6) and KRS 165A.400, the KCPE shall have the authority to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administration regulation establishes the standards that a school shall meet in order to be licensed by the KCPE.

(2) If 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 existing administrative regulation only addressed standards for associate degree programs; however the KCPE also licenses certificate and diploma programs. Accordingly, the amendments provide for standards for the licensure of certificate and diploma programs as well. The amendments set forth the licensing standards for schools to be licensed by the KCPE including financial requirements, personnel requirements, facilities and equipment requirements, library resource requirements, curriculum requirements, program supervision and instructional support requirements, truth in advertising requirements, recruitment and enrollment procedure requirements, student affairs requirements, and school policies requirements. The amendments also address site visits. The regulation keeps the standards from the existing regulation for associate programs, including associate of arts, associate of science, and specialized associate degree programs.

(b) The necessity of the amendment to this administrative regulation: These requirements will help ensure that Kentucky students are receiving quality instruction at any licensed school they attend, that the schools demonstrate financial stability, that the schools are adhering to approved advertising, and recruitment and enrollment procedures, and that there are requisite student and learning resources available to students, including that the school's policies are provided to students along with the KCPE's contact information should a student have a complaint.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with KRS 165A but helping ensure that schools licensed by the KCPE provide a quality educational experience for Kentucky students.

(d) How the amendment will assist in the effective administration of the statutes: The amendment helps to better ensure quality education for Kentucky students and provides a licensure process better aligned with the statutory goals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 135 proprietary education schools affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Not only schools offering associate degree programs, but all schools seeking licensure with the KCPE will have to demonstrate that they meet the standards for licensure set forth 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): There should be no additional cost for staff resources for the entities as the schools will continue to complete the same applications for licensure. The schools will have to pay the cost of site visits when the KCPE conducts a site visit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools will have clear understanding what is expected of them, and what standards that staff or consultants conducting site visits will use to evaluate them.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: No additional cost is anticipated to implement this regulation initially.

(b) On a continuing basis: No additional cost is anticipated to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by fees paid by the proprietary education schools.

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

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

(9) TIERING: Is tiering applied? No tiering is applied as the standards will be applied to all schools to be licensed by the KCPE.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340 and KRS 165A.400.

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

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

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

(c) How much will it cost to administer this program for the first full year? No additional cost is anticipated to administer this regulation for the first full year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

##### 791 KAR 1:025. Fees.

RELATES TO: KRS 165A.350(3), 165A.360(1), (2), (9), 165A.380

STATUTORY AUTHORITY: KRS 165A.340(3), (6), (10), 165A.370(4), 165A.390, 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3), (6), and (10), 165A.400, and 165A.450 authorize[authorizes] the commission[board] to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A, including establishment of fees and other charges. This administrative regulation establishes the fees for the Kentucky Commission on Proprietary Education[applications for initial licensure and renewal of licensure for resident and non

resident schools, issuance of initial permits and renewals for agents of proprietary schools, award of associate degree, change of the name of a proprietary school, change of location of a proprietary school, addition of a new certificate or diploma program, revision of an existing program, transfer of ownership, transcript requests from a closed proprietary school, and contributions to the student protection fund].

Section 1. Definitions. (1) "Actual cost" means the amount sufficient to reimburse the commission for all travel and expenses incurred, including the expense of contract labor, consultant fees, or other miscellaneous expenses necessitated by a site visit or inspection.

(2) "Gross revenue"["Net tuition income"] means the total amount of tuition earned by a[the resident] school less any tuition refunds to the students during the immediate past school year, July 1 through June 30[calendar year, January 1 through December 31].

(3)[(2)] "Transfer of ownership" means any change or transfer in ownership whether or not the change results in a change in control.

Section 2. Initial Licensure Fee and Student Protection Fund Contribution[for Schools]. (1) The fee for initial licensure as a school residing in and doing business in Kentucky shall be \$500[\$300 and shall accompany Form PE-15, Application for Resident School].

(2) The initial[one-time] contribution to the student protection fund for a school residing in and doing business in Kentucky shall be \$500[\$300, to be paid and shall accompany Form PE-15, Application for Resident School].

(3) The fee for initial licensure as a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250[\$900, and shall accompany Form PE-16, Application for Non-Resident School].

(4) The initial[one-time] contribution to the student protection fund for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250[\$900, to be paid and shall accompany Form PE-16, Application for Non-Resident School].

(5) At any time the balance in the student protection fund falls below \$500,000, each licensed school shall make an additional contribution to the fund. The amount of the additional contribution shall be determined by the commission pursuant to KRS 165A.450(2)(a) and (b). The commission shall calculate the amount due per school per Section 3(1) and (2) of this administrative regulation and shall use a percentage appropriate to replenish the fund. The additional contribution shall be paid on a quarterly basis until the fund is replenished[The initial licensure fee and student protection fund contribution shall not be prorated or refundable].

Section 3. Annual Renewal License Fee for Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500[\$300 for schools whose net tuition income does not exceed \$50,000, plus fifteen (15) dollars for each additional \$10,000 of net tuition income in excess of \$50,000, not to exceed \$2,000. The annual renewal license fee shall accompany Form PE-17, Application for License Renewal Resident School].

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250[\$900].

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue for Kentucky residents in excess of \$50,000, not to exceed \$3,000[The annual



renewal fee shall accompany Form PE-18, Application for License Renewal Non-Resident School].

(3) Late fees for a resident or nonresident school's annual renewal license shall be:

(a) Ten (10) percent of the total application fee if received after the due date, May 15, up to and including the fifth business day;

(b) Twenty (20) percent of the total application fee if received after the fifth business day up to and including the tenth business day;

(c) Thirty (30) percent of the total application fee if received after the tenth business day up to and including the fifteenth business day;

(d) Forty (40) percent of the total application fee if received after the fifteenth business day up to and including the twentieth business day;

(e) Fifty (50) percent of the total application fee if received after the twentieth business day up to and including the twenty-fifth business day;

(f) Seventy-five (75) percent of the total application fee if received after the twenty-fifth business day up to and including the thirtieth business day; and

(g) 100 percent of the total application fee if received after the thirtieth business day[The annual renewal license fees for both resident and nonresident schools shall not be prorated or refundable].

Section 4. Annual Permit Fees for Agents.[(4)] The annual permit fee for each agent working for a school licensed by the commission[board] shall be \$175[\$150 and shall accompany either Form PE-19, Application for Permit to Act as an Agent, or Form PE-20, Application for Renewal of Permit to Act as an Agent, whichever is applicable.

(2) The annual permit fee and the annual permit renewal fee for agents shall not be prorated or refundable].

Section 5. Transfer of Ownership of a School.[(4)] The fee for recording a transfer of ownership of a school licensed by the commission[board in accordance with 791 KAR 2:160] shall be \$500[, and shall accompany Form PE-21, Application to Transfer Ownership of a School.

(2) The fee for recording a transfer of ownership shall not be prorated or refundable].

Section 6. Change of Name of a School.[(4)] The fee for approval of a change of name of a school shall be \$150[\$100, and shall accompany Form PE-22, Application to Change the Name of a School.

(2) The fee for approval of a change of name of a school shall not be prorated or refundable].

Section 7. Change of location of a school.[(4)] The fee for approval of a change of location of a school shall be \$500[, and shall accompany Form PE-23, Application to Change the Location of a School.

(2) The fee for approval of a change of location of a school shall not be prorated or refundable].

Section 8. Application to Award an Associate Degree.[(1)(a)] The fee for an application to award an associate degree[in accordance with 791 KAR 1:020] shall be \$750[\$500] per degree[, and shall accompany Form PE-10, Application to Award an Associate Degree, referenced by 791 KAR 1:020.

(b) If a school simultaneously submits multiple applications for approval of associate degrees, the fee shall not exceed \$1,000 per school.

(2) The fee for application to award an associate degree shall not be prorated or refundable].

Section 9. New Program.[(4)] The fee to apply for[approval of] a new certificate or diploma program shall be \$200[\$150, and shall accompany Form PE-14, Application for a New Program.

(2) The fee for approval of a new certificate or diploma program shall not be prorated or refundable].

Section 10. Program Revisions; Certificate, Diploma, and Degree. (1) The fee to apply for approval to revise twenty-five (25) percent[(25)] or more of any existing program[, as established in 791 KAR 1:020, Section 5(2)] shall be \$200[\$150, and shall accompany Form PE-13, Application to Revise an Existing Program for 25% or More].

(2) The fee to apply for approval to revise less than twenty-five (25) percent of any program shall be \$100[The fee for approval to revise an existing program shall not be prorated or refundable].

Section 11. Transcript Requests from a Closed School. The fee for requesting a transcript from a closed school shall be five (5) dollars[Maximum Fee. A school with multiple locations simultaneously filing applications for commission approval for more than one transfer of ownership, change of name, change of location, addition of a new program, revision of an existing program or associate degree, shall not pay more than \$1,000].

Section 12. Cost of site visits. (1) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the school.

(2) The estimated cost of the site visit shall be paid by the school prior to the site visit.

(3) The final settlement regarding actual expenses incurred shall be paid by the school no later than thirty (30) days after receipt of the invoice.

(4) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 13. Proration or Refund of Fees and Contributions. A fee paid to the commission or contribution to the student protection fund shall not be prorated or refunded.

Section 14. Penalties. A school shall have a license suspended or revoked, be directed to take specific corrective actions, or submit to additional inspections, with and without notice for failure to pay fees or contribute to the student protection fund in accordance with this administrative regulation[Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for a New Program", Form PE-14, 2007 edition;

(b) "Application for Resident School", Form PE-15 2007 edition;

(c) "Application for Non-Resident School", Form PE-16, 2007 edition;

(d) "Application for License Renewal Resident School", Form PE-17, 2007 edition;

(e) "Application for License Renewal Non-Resident School", Form PE-18, 2007 edition;

(f) "Application for Permit to Act as an Agent", Form PE-19, 2007 edition;

(g) "Application for Renewal of Permit to Act as an Agent", Form PE-20, 2007 edition;

(h) "Application to Transfer Ownership of a School", Form PE-2, 2007 edition;

(i) "Application to Change the Name of a School", Form PE-22, 2007 edition; and

(j) "Application to Change the Location of a School", Form PE-23, 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals

interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees, contributions, fines, and penalties which proprietary education schools licensed by the Kentucky Commission on Proprietary Education (KCPE) may be called upon to pay.

(b) The necessity of this administrative regulation: The KCPE cannot function without revenue generated by fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute authorizes the KCPE to establish fees and to expend monies for salaries, rent, equipment, and other ordinary expenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This will allow the KCPE to continue to operate and perform its statutorily mandated duties.

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

(a) How the amendment will change this existing administrative regulation: This amendment will increase some existing fees and establish new fees, contributions, fines, and penalties to be paid by proprietary education schools licensed by the KCPE.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for KCPE to operate and perform its statutorily mandated duties. These statutorily mandated duties ensure the KCPE effectively addresses its three stake holders: students; taxpayers; and member schools, to ensure all receive and provide exceptional educational services. The newly organized KCPE's actions, and focus on quality education, is based on Auditor Crit Luallen's April 20, 2011, report detailed inter alia, "material weakness" in the prior Board for Proprietary Education's management, its lack of recordkeeping and its failure to properly address complaints against schools. In addition, this amendment is based on best practices employed in the states of Indiana, Ohio, and Florida, yet modified to represent the needs of the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the KCPE to establish fees and to expend monies for salaries, rent, equipment, and other ordinary expenses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the KCPE to operate and perform its duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All proprietary education schools licensed by the KCPE will be impacted by this administrative regulation. KCPE schools are those that are not regulated by the Council on Postsecondary Education. There currently are a total of 135 schools licensed by the KCPE (106 resident and twenty-nine (29) nonresident). Students who attended proprietary education schools that are closed, as well as commercial firms, may be

impacted by this administrative regulation if they request transcripts from the closed schools. Approximately 390 transcript requests are received per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are some new fees that may have to be paid. Otherwise, the schools have paid fees for licensure, etc. in the past and will continue to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will depend, in large part, on the number of students and whether the school is located within or without the state, as is required by statute. All proprietary schools have paid fees for licensure, etc. in the past and will continue to do so, however, there is an increase in those fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will enable the KCPE to meet the mandates set forth in statute to provide quality educational services to all citizens of the Commonwealth. This first fee increase in over ten (10) years will provide the schools, taxpayers, and students with: 1) annual onsite visits; 2) employment of two (2) professional staff members to review student complaints and evaluate member applications and quality of programs; and 3) enhanced online presence to communicate student rights along with provide annual reporting services to track program (school) quality.

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

(a) Initially: No additional costs above those currently incurred in licensing and regulating proprietary schools.

(b) On a continuing basis: No additional costs above those currently incurred on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by the fees paid by the proprietary schools.

(7) Provide an assessment of whether an 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 increases a number of fees charged by the KCPE in order to meet the statutory mandates in order to provide citizens of the Commonwealth an effectively regulated academic experience as governed by the KCPE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation establishes new fees as well as directly increases other fees. It aligns with fees administered by other states along with ensuring fiscal solvency of the KCPE to manage quality education programs.

(9) TIERING: Is tiering applied? Tiering is applied based on the gross revenue of a school and whether the school is a resident or a nonresident school.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None should be impacted other than KCPE.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340 and KRS 165A.400

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? It is

anticipated the amended fee structure will generate approximately \$250,000 for the first fiscal year for the operation of the KCPE.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is anticipated the amended fee structure will generate approximately \$250,000 for each fiscal year thereafter for the operation of the KCPE.

(c) How much will it cost to administer this program for the first full year? This program will not cost any additional dollars to administer for the first full year.

(d) How much will it cost to administer this program for subsequent years? This program will not cost any additional dollars to administer for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

## 791 KAR 1:030. Procedures for hearings.

RELATES TO: KRS Chapter 13B, 165A.350(4)(b), 165A.360(3)(b), 165A.370(2)-(4), 165A.390, 165A.990

STATUTORY AUTHORITY: KRS Chapter 13A, 165A.350(4)(b), 165A.360(3)(b), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6)(3) and 165A.400 authorize the commission[board] to promulgate administrative regulations. KRS 165A.350(4)(b), 165A.360(3)(b), and 165A.370(4) provide for hearings, but do not prescribe procedures. This administrative regulation establishes hearing procedures.

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

(2) "Charge" means a specific allegation contained in a formal pleading[complaint], as established in Section 5(3) of this administrative regulation, issued by the commission[board] alleging a violation of a specified provision of KRS Chapter 165A or the requirements established in 791[204] KAR Chapter 1[40].

(2)(3) "Complaint" means a written allegation of misconduct by an agent or school, or other allegation of a violation of KRS Chapter 165A, the requirements established in 791[204] KAR Chapter 1[40], or another state or federal statute or regulation applicable to an agent or school.

(3)(4) "Complaint committee" means the committee appointed pursuant to KRS 165A.340 and further defined in Section 2 of this administrative regulation.

(4)(5) "Formal pleading[complaint]" means a formal administrative statement[pleading] authorized by the commission[board] which sets forth charges against a licensed school or agent and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests a court to take action.

(5)(6) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6)(7) "Investigator" means an individual designated by the commission[board] to assist the commission[board] in the investigation of a complaint or an investigator employed by the Attorney General for the commission[board].

Section 2. Complaint Committee. The complaint committee shall:

- (1) Be appointed by the chair of the commission[board] to:
  - (a) Review complaints and investigative reports;
  - (b) Participate in an informal proceeding to resolve[formal]

complaints; and

(c) Make recommendations for disposition of complaints to the full commission including the dismissal of a complaint or the issuance of a formal pleading[board]; and

(2) Consist of three (3) persons who may be assisted by the commission[board] staff and counsel to the commission[board].

Section 3. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity.

(2)(a) A complaint shall be in writing and shall be filed on Form PE-24, Form to File a Complaint, accompanied, if applicable, by Form PE-25, Authorization for Release of Student Records[signed and certified as to its truth by the person offering the complaint].

(b) The Form PE-24 shall be signed and certified as to its truth by the person offering the complaint[The commission may file a complaint based on information in its possession.

(c) A complaint shall be filed with the commission on Form PE-24, Form to File a Complaint, accompanied, if applicable, by Form PE-25, Authorization for Release of Student Records].

(3)(2)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the agent or school named in the complaint along with a request for a written response to the complaint and the time and place of the complaint committee hearing, once established.

(b) The agent or school shall file a written response with the commission[board] within ten (10) days from the date of receipt.

(4)(3)(a) Upon receipt of the written response of the agent or school named in the complaint, a copy of the response shall be sent to the complainant and the time and place of the complaint committee hearing, once established.

(5)(b) The complainant shall have ten (10) days from the date of receipt to submit to the commission a written reply.

(4) Upon receipt of the agent or school's response[complainant's reply], the complaint committee may request an additional response from the complainant, agent or school if additional issues are raised or clarification is needed.

Section 4. Initial Review. (1)(a) After the receipt of a complaint or the expiration of the period for the response, the complaint committee shall consider the complaint, response, and complainant's reply to the response, and other relevant material available, and make a recommendation to the commission.

(b) ~~The commission shall determine whether there is enough evidence to warrant a formal investigation of the complaint.~~

(2)(a) The complaint committee may take steps to enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.

(b) An agreed order or settlement reached through this process shall be approved by the commission.

(c) The complaint committee may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.

(3) If the complaint committee determines a complaint warrants an investigation against either an agent or school, the complaint committee shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity[(2) If the commission determines that a complaint does not warrant a formal investigation against an agent or school, or the issuance of a formal complaint against an agent or school, then the commission shall dismiss the complaint and shall notify both the complainant and the agent or school of the commission's decision.

(3) ~~If the commission determines that a complaint warrants a formal investigation against either an agent or school, then the commission shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity].~~

Section 5. Results of Initial Review[Formal Investigation; Commission Decision on Hearing.]. (1) After a complete review of the complaint, and implementation of any actions available to the complaint committee as set forth in Section 4 of this administrative regulation, a recommendation shall be made by the complaint committee to the commission.

(2) If the commission determines a complaint does not warrant further action or the issuance of a formal pleading against an agent or school, then the commission shall dismiss the complaint and shall notify both the complainant and the agent or school of the commission's decision.

(3) If the commission determines a violation of a statute or administrative regulation may have occurred or has occurred, then the commission shall:

(a) Direct the complaint committee or commission staff to undertake further action as established in KRS Chapter 165A or Section 4 of this administrative regulation;

(b) Direct the issuance of a formal pleading against either an agent or school by commission staff; or

(c) Review the formal pleading and, if approved, it shall be signed by the chairman and served upon the agent or school as required by KRS 13B.050[Upon completion of a formal investigation, the complaint committee shall consider the facts regarding the complaint.

(a) The committee shall review an investigative report and supporting documents and make a recommendation to the commission.

(b) The commission shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and whether a formal complaint shall be filed.

(2)(a) If the commission determines that a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, then the complaint shall be dismissed or other appropriate action taken.

(b) The commission shall notify both the complainant and the agent or school of the outcome of the complaint.

(3)(a) If the commission determines that a complaint warrants the issuance of a formal complaint against an agent or school, then a formal complaint which states clearly the charge or charges to be considered at the hearing shall be prepared

(b). The formal complaint shall be reviewed by the commission and, if approved, signed by the chairman and served upon the agent or school as required by KRS 13B.050.

(4) If the commission determines that an individual or school may be operating without the appropriate permit or license, then the commission shall:

(a) Authorize the commission administrator to send a letter to the individual or school advising them that they may need a permit or license, and enclose the appropriate application package;

(b) Authorize commission counsel to issue a letter ordering that individual or school to cease and desist from operating the school;

(c) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or

(d) Initiate action in Franklin Circuit Court for injunctive relief].

Section 6. Operating without Appropriate License or Permit. If the commission receives a complaint that an individual or school may be operating without the appropriate permit or license, the commission shall:

(1) Authorize commission staff to send a letter to the individual or school advising them they may need a permit or license, and enclose the appropriate application package;

(2) Authorize commission staff to issue a letter ordering the individual or school to cease and desist from operating the school;

(3) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or

(4) Initiate action in Franklin Circuit Court for injunctive relief[Settlement by Informal Proceedings and Letter of Admonishment. (1) The commission, through counsel and the complaint committee, may enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.

(a) An agreed order or settlement reached through this process shall be approved by the commission and signed by the commission chairman and the agent or school which is the subject of the complaint, and the chairman.

(b) The commission may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.

(2)(a) The commission may issue a written admonishment to the agent or school if the commission determines that

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

2. The evidence presented to the commission after the investigation and appropriate opportunity for the agent or school to respond, provides a clear indication that the alleged violation did in fact occur.

(b) A copy of the admonishment shall be placed in the permanent file of the agent or school.

(c) Within thirty (30) days of receipt of an admonishment, the agent or school shall file:

1. A response to the admonishment which shall be placed in the agent's or school's permanent licensure file; or

2. A request for hearing with the commission. Upon receipt of this request, the commission shall set aside the written admonishment, file a formal complaint, and set the matter for hearing pursuant to the provisions of KRS Chapter 13B].

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

(a) "Form to File a Complaint", Form PE-24, 2013[(2007] edition[)]; and

(b) "Authorization for Release of Student Records", Form PE-25, 2013[(2007] edition[)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on[State Board for] Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower[911 Leewood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administration regulation establishes the procedures to be followed for the filing, review, and disposition of complaints against an agent or school under the jurisdiction of the Kentucky Commission on Proprietary Education (KCPE).

(b) The necessity of this administrative regulation: KRS 165A requires the KCPE to license for-profit schools that offer only below

the bachelor's degree level and their agents, and KRS 165A.340(12) requires the KCPE chairperson to appoint a complaint committee to review complaints.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Per KRS 165A.340(6) and KRS 165A.400, the KCPE shall have the authority to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administration regulation establishes the procedures to be followed for the filing, review, and disposition of complaints against an agent or school under the jurisdiction of the KCPE.

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

(a) How the amendment will change this existing administrative regulation: The amendments clarify the steps the complaint committee is to follow during its initial review of the complaint, including informal proceedings and the option to authorize an investigator to investigate the matter and report back to the committee. The amendments also specify the steps the complaint committee is to follow in order to issue a formal pleading and provides a definition of formal pleading. The amendments also set forth the procedures to be followed for a complaint an individual or school may be operating without the appropriate permit or license.

(b) The necessity of the amendment to this administrative regulation: The availability of the complaint process will help ensure KCPE is providing consumer protection to the citizens of the Commonwealth, and that Kentucky students are receiving quality instruction at any licensed school they attend, the schools and their agents are adhering to licensing standards including financial stability, approved advertising, and recruitment and enrollment procedures, and holding the agents and schools accountable where it is determined an agent or school has violated a licensing standard per 791 KAR 1:020, KRS 165A, or applicable administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with KRS 165A by providing accountability to help ensure schools provide a quality educational experience for Kentucky students, and providing a clear process individuals may follow to file a complaint with KCPE when they have a grievance against an agent or school.

(d) How the amendment will assist in the effective administration of the statutes: The amendment helps to better ensure quality education for Kentucky students and provides a complaint process better aligned with the statutory goals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 135 proprietary education schools affected by this regulation. Students of these schools also are impact by the 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: Schools will continue to respond to complaints within ten (10) days.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost for staff resources for the entities as the schools will continue to respond to complaints as they have under the existing regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools will have a clear understanding of what is expected of them, and what procedures will be followed by KCPE.

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

(a) Initially: No additional cost is anticipated to implement this regulation initially.

(b) On a continuing basis: No additional cost is anticipated to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by fees paid by the proprietary education schools.

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

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

(9) TIERING: Is tiering applied? No tiering is applied as the standards will be applied to all schools to be licensed by the KCPE.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Commission on Proprietary Education

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340 and KRS 165A.400.

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

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

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

(c) How much will it cost to administer this program for the first full year? No additional cost is anticipated to administer this regulation for the first full year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this regulation for subsequent years.

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

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

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

##### 791 KAR 1:035. Student protection fund.

RELATES TO: KRS 165A.450

STATUTORY AUTHORITY: KRS 13A.100, 165A.340(3), 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.450 requires each school licensed by the Kentucky Commission on~~[Board for]~~ Proprietary Education to contribute to a student protection fund in accordance with 791 KAR 1:025~~[an amount equal to its licensing fee]~~. The statute mandates that the fund shall be used to pay off debts incurred due to the closing of a school, discontinuance of a program, loss of license, or loss of accreditation, and this administrative regulation sets forth standards for distribution of the funds.

Section 1. Definitions. (1) "Commission"~~["Board"]~~ means the Kentucky Commission on~~[State Board for]~~ Proprietary Education.

(2) "Schools" means all schools, resident and nonresident,

licensed by the commission[board].

(3) "Sponsor" means the original source of funds, whether student or entity, used to pay student charges for tuition, books, and fees.

(4) "Student enrolled" means a student currently enrolled and attending classes on a regular basis.

Section 2. Student Protection Fund Notice. Schools shall include on the student enrollment agreement, in 14 point type font:

(1) A statement notifying students of the existence of the student protection fund; and

(2) The process for filing a claim against the fund.

Section 3. Standards for Fund Distribution. (1) The commission[board] is to manage the student protection fund ("the fund"). The fund shall be used to pay off debts, including refunds to students enrolled or on leave of absence by not being enrolled for one (1) academic year or less from the school at the time of closing, incurred due to the closing of a school, discontinuance of a program, loss of license, or loss of accreditation by a school or program[solely to provide restitution to each student enrolled who has suffered pecuniary loss, when:

(a) A school closes, either voluntarily or involuntarily;

(b) The student can no longer continue his education at the school; and

(c) No viable alternative for full restitution is available, as determined by the commission].

(2) Each fund distribution for restitution shall be made payable to the appropriate sponsor, as determined by the commission and shall be made upon the presentation of a signed Student Protection Fund Claim Form PE-38 and supporting documentation, verifying the student's enrollment and regular attendance at the time of the school or program closure. The supporting documentation may include canceled checks, loan documents, or other documentation that in the commission's discretion supports the student's entitlement to restitution[board].

(3) The amount to be refunded shall equal the actual amount of loans and cash that have been applied to tuition, books, and fees on behalf of the student's attendance at the school. If the claims resulting from a school closing exceed the balance in the fund, the commission[board] shall provide for a pro rata distribution of the fund balance.

(4)[(3)] Whenever restitution is paid by the fund, the fund shall be subrogated to the amount of the restitution.

(5) In order to be considered, a claim for restitution from the student protection fund shall be made within one (1) year of the date of the school or program closure.

(6) An applicant for payment from the student protection fund who is dissatisfied with the decision of the commission may ask for reconsideration of the commission's determination regarding eligibility for restitution from the student protection fund.

(7) The request for reconsideration shall be submitted by the applicant to the commission within thirty (30) calendar days of the mailing date of the commission's decision.

(8) The request for reconsideration shall be signed by the student and explain the reasons in support of a different decision.

(9) Within forty-five (45) days of receipt of the request for reconsideration, the commission shall make a final determination and provide notice to the applicant.

Section 4. Incorporation by Reference. (1) "Student Protection Fund Claim Form", Form PE-38, January 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards for distribution of the Student Protection Fund.

(b) The necessity of this administrative regulation: KRS 165A.450 requires schools to contribute to a student protection fund which shall be used to pay off student debts incurred due to the closing of a school, discontinuance of a program, loss of license, or loss of accreditation by a school or program. KRS 165A.450 requires the promulgation of administrative regulations to establish standards for distribution of the fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Per KRS 165A.450, the Kentucky Commission on Proprietary Education (KCPE) shall promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedures to be followed for students to be notified of the existence of the fund, and the standards and process to be followed by KCPE for distribution from the student protection fund.

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

(a) How the amendment will change this existing administrative regulation: The amendments clarify standards that must be met by licensed institutions and students with regard to the student protection fund that are requirements set forth in KRS 165A.450 to include: the process for licensed institutions to make all students aware of the student protection fund, the time period for making a claim against the fund, the documentation required to submit a claim, and the appeals process for students who disagree with a KCPE decision.

(b) The necessity of the amendment to this administrative regulation: KRS 165A.450 establishes certain standards required of the administrative regulation that pertains to the student protection fund, and the current regulation, without the proposed amendments, does not meet the standards set forth in KRS 165A.450.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments clarify standards that must be met by licensed institutions and students with regard to the student protection fund that are requirements set forth in KRS 165A.450 to include: the process for licensed institutions to make all students aware of the student protection fund, the time period for making a claim against the fund, the documentation required to submit a claim, and the appeals process for students who disagree with a KCPE decision.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment helps to ensure proper administration and distribution of the student protection fund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 135 proprietary education schools affected by this regulation. Students also are impacted by the 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: Schools shall include on the student enrollment agreement, in fourteen (14) point type font, a statement notifying students of the existence of the Student Protection Fund and the process for filing a claim against the fund.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost for schools to add the above minimal notice to their existing enrollment agreement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools will have a clear understanding of the notice required to be given by the schools to the students about the existence of the student protection fund, as well as the process that must be followed by students to make a claim against the fund.

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

(a) Initially: No additional cost is anticipated to implement this regulation initially.

(b) On a continuing basis: No additional cost is anticipated to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by fees paid by the proprietary education schools.

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

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

(9) TIERING: Is tiering applied? No tiering is applied as the standards will be applied to all schools to be licensed by the KCPE.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Commission on Proprietary Education

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.450

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

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

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

(c) How much will it cost to administer this program for the first full year? No additional cost is anticipated to administer this

regulation for the first full year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

#### 791 KAR 1:050. Application for license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.450, 165A.465, 165A.470, 165A.475, 165A.480(1)

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.460-165A.515

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460-165A.515 requires that the Kentucky Commission on [State Board for] Proprietary Education establish an application procedure for commercial driver license training schools. This administrative regulation establishes the application procedures for commercial driver license training schools.

Section 1. Application for Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school residing in Kentucky, the school owner shall:

(a) Complete and submit to the commission[board] Form PE 30, Application for Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable license fee for a commercial driver license training school residing in and doing business in Kentucky of \$500[initial licensure fee of \$400];

(d) Pay the nonrefundable contribution to the Student Protection Fund of \$500[\$300]; and

(e) Meet the requirements of Section 4[3] of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 2. Application for Non-Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky, the school's owner shall:

(a) Complete and submit to the commission[board] Form PE 31, Application for Non-Resident Commercial Driver License Training School with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable license fee for a commercial driver license training school not residing in and doing business in Kentucky of \$1,250[initial licensure fee of \$700];

(d) Pay the nonrefundable contribution to the Student Protection Fund of \$1,250[\$900]; and

(e) Meet the requirements of Section 4[3] of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 3. Annual Renewal License Fee for Commercial Driver License Training Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school

residing in and doing business in Kentucky shall be \$500.

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a commercial driver license training school residing in and doing business in Kentucky shall be \$500 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a commercial driver license training school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue for Kentucky residents in excess of \$50,000, not to exceed \$3,000.

Section 4. Evidence of Liability Insurance Coverage. Each application to operate a commercial driver license training school shall be accompanied by:

(1) Verification of liability insurance coverage for the commercial driver license training school from a Kentucky-licensed insurance carrier, as mandated by KRS 165A.475(1)(d);

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy complete listing of all equipment, serial numbers, vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission[~~board~~] in writing within thirty (30) days of the subsequent change.

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

(a) Form PE 30 "Application for Resident Commercial Driver License Training School", 2013[~~October 2014~~] edition; and

(b) Form PE 31 "Application for Non-resident Commercial Driver License Training School", 2013[~~October 2014~~] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on[~~State Board for~~] Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower[~~911 Leewood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application procedures for

commercial driver license training schools.

(b) The necessity of this administrative regulation: The Kentucky Commission on Proprietary Education (KCPE) is required by statute to establish an application process for licensing of commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is authorized by KRS 165A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation of proprietary schools is in large part controlled through the application and licensing process.

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

(a) How the amendment will change this existing administrative regulation: This regulation raises the license fees of commercial driver license training schools licensed to do business in Kentucky.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for KCPE to operate and perform its statutorily mandated duties. These statutory mandated duties ensure the KCPE effectively addresses its three stake holders: students; taxpayers; and member schools, to ensure that all receive and provide exceptional educational services.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the KCPE to establish application fees and procedures for licensing of member schools and to expend monies for salaries, rent, equipment, etc.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the KCPE to operate and perform its duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All commercial driver license schools will be affected by this regulation. The KCPE currently licenses seventeen (17) such schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: License fees will be raised for the affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): License fees for new commercial driver license training schools would increase from \$100 to \$500 for resident schools and from \$700 to \$1,250 for non-resident schools. Renewal fees for resident schools will increase from \$300 plus fifteen (15) dollars for each \$10,000 of net tuition income to a maximum of \$2,000 to \$500 plus \$25 for each \$10,000 of net tuition income to a maximum of \$3,000. Non-resident schools would increase from \$900 to \$1250 and twenty-five (25) dollars for each \$10,000 of net tuition income to a maximum of \$3,000. The contribution to the Student Protection Fund will increase from \$300 to \$500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will enable the KCPE to meet the mandates set forth in statute to provide quality educational services to all citizens of the Commonwealth. This first fee increase in at least ten (10) years will provide the schools, taxpayers, and students with 1) onsite visits; 2) employment of two (2) professional staff members to review student complaints and evaluate member applications and quality of programs; and (3) enhanced on-line presence to communicate student rights along with provide annual reporting services to track program and school performance.

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

(a) Initially: No additional costs above those currently incurred in licensing and regulating proprietary schools.

(b) On a continuing basis: No additional costs above those currently incurred on a continuing basis.

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



implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by the fees paid by the licensed commercial driver license training schools.

(7) Provide an assessment of whether an 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 increases licensing fees for commercial driver license training schools. This is necessary in order to meet the statutory mandates in order to provide citizens of the Commonwealth an effectively regulated academic experience as governed by the KCPE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation raises the fees for licensing of commercial driver license training schools doing business in Kentucky to ensure the solvency of the KCPE to manage quality education programs.

(9) TIERING: Is tiering applied? Yes. Non Resident commercial driver license training schools will pay a higher fee than resident schools.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340, 165A.460-165A.515

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For each new commercial driver license training school licensed by the Commission, an additional \$400 revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It will depend on the number of new schools.

(c) How much will it cost to administer this program for the first full year? No additional cost is anticipated to administer this program.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

##### 791 KAR 1:060. Application for renewal of license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.485, 165A.510, 49 C.F.R. 325

STATUTORY AUTHORITY: KRS 165A.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.485 requires that the Kentucky Commission on[State Board for] Proprietary Education establish an application for license renewal of commercial driver license training schools. This administrative regulation establishes the renewal procedures for commercial driver license training schools.

Section 1. Renewal Application for Kentucky Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed Kentucky resident commercial driver license training school shall:

(a) Complete and submit to the commission[board] Form PE 32, Renewal Application to Operate a Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee of:

1. ~~\$500~~[~~\$300~~] for licensed commercial driver license training schools for net tuition income up to and including \$50,000; and

2. An additional twenty-five (25)[~~fifteen (15)~~] dollars for each \$10,000 in net tuition thereafter, not to exceed a total renewal fee of ~~\$3,000~~[\$2,000]; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order payable to the "Kentucky State Treasurer".

Section 2. Renewal Application for Non-Kentucky Resident Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed non-Kentucky resident commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky shall:

(a) Complete and submit to the commission[board] Form PE 33, Renewal Application to Operate a Non-Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee of:

1. \$1,250 for licensed commercial driver license training schools for net tuition income up to and including \$50,000; and

2. An additional twenty-five (25) dollars for each \$10,000 in net tuition thereafter, not to exceed a total renewal fee of \$3,000[~~\$900~~]; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order made payable to the "Kentucky State Treasurer".

Section 3. Evidence of Liability Insurance Coverage. Each renewal application to operate a commercial driver license training school shall be accompanied by:

(1) Verification of liability insurance coverage for the commercial driver license training school from a Kentucky-Licensed insurance carrier, as mandated by KRS 165A.475(1)(d) or

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy a complete listing of all equipment, serial numbers, and vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission[board] in writing within thirty (30) days of the subsequent change.

Section 4. Denial of Renewal Application. (1) The commission[board] shall deny a renewal application to operate a commercial driver license training school for:

(a) Failure to comply with the requirements of KRS 165A.460-165A.515;

(b) Failure to comply with the administrative regulations governing the application and operation of a commercial driver license training school;

(c) Failure to comply with KRS 165A.475(1)(d) regarding persons connected in any capacity with commercial driver license training schools.

(d) Failure to maintain all training vehicles in a safe operating condition, pursuant to 49 C.F.R. 325, as enforced by the Kentucky State Police.

(2) The commission[board] may deny a renewal application to

operate a commercial driver license training school for lack of good moral character, as determined by KRS 165A.475(7).

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

(a) Form PE 32, "Renewal Application to Operate a Resident Commercial Driver License Training School", 2013[October-2014] edition; and

(b) Form PE 33, "Renewal Application to Operate a Non-Resident Commercial Driver License Training School", 2013[October-2014] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower[911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the renewal procedure and fees for licensing of commercial driver license training schools.

(b) The necessity of this administrative regulation: KRS 165A.485 requires that the Kentucky Commission on Proprietary Education (KCPE) establish an application for license renewal of commercial driver license schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is authorized by KRS 165A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation of proprietary schools is in large part controlled through the application and licensing process.

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

(a) How the amendment will change this existing administrative regulation: The regulation raises the license renewal fees for commercial driver license training schools.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for KCPE to operate and perform its statutorily mandated duties. These statutory mandated duties ensure the KCPE effectively addresses its three stake holders: students, taxpayers, and member schools, to ensure that all receive and provide exceptional educational services.

(c) How the amendment conforms to the content of the

authorizing statutes: The statutes authorize the KCPE to establish application fees and procedures for licensing of member schools and to expend monies for salaries, rent, equipment, etc.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the KCPE to operate and perform its duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All commercial driver license training schools will be affected by the amended regulation. The KCPE currently licenses seventeen (17) such schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: License renewal fees will be raised for the affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Renewal fees for resident schools will increase from \$300 plus fifteen (15) dollars for each \$10,000 of net tuition to a maximum of \$2,000 to \$500 plus \$25 for each \$10,000 of net income tuition to a maximum of \$3,000. Non-resident school fees would increase from \$900 to \$1,250 and twenty-five (25) dollars for each \$10,000 of net tuition income to a maximum of \$3,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will enable the KCPE to meet the mandates set forth in statute to provide quality educational services to all citizens of the Commonwealth. This first fee increase in at least ten (10) years will provide the schools with 1) on-site visits; 2) employment of two (2) professional staff members to review student complaints and evaluate member applications and quality of programs; and (3) enhanced on-line presence to communicate student rights along with provide annual reporting services to track program and school performance.

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

(a) Initially: No additional costs above those currently incurred in licensing and regulating proprietary schools.

(b) On a continuing basis: No additional costs above those currently incurred on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by the fees paid by the licensed commercial driver license training schools.

(7) Provide an assessment of whether an 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 increases renewal licensing fees for commercial driver license training schools. This is necessary in order to meet the statutory mandates in order to provide citizens of the Commonwealth an effectively regulated academic experience as governed by the KCPE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation raises the fees for renewal licensing of commercial driver license training schools doing business in Kentucky to ensure the solvency of the KCPE to manage quality education programs.

(9) TIERING: Is tiering applied? Yes. Non-resident commercial driver license training schools will pay higher renewal fees than resident schools.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Currently the fees generate \$5,300 annually. With the proposed fee increase that would increase to \$13,900. The number of licensed entities has remained steady at sixteen (16) or seventeen (17) schools.

(b) How 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 fee increase would increase the revenue to KCPE by approximately \$8,600 per year.

(c) How much will it cost to administer this program for the first full year? No additional cost is anticipated to administer this program.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Commission on Proprietary Education  
(Amendment)**

**791 KAR 1:070. Commercial driver license training school instructor and agent application and renewal procedures.**

RELATES TO: KRS 165A.310, 165A.330(1), 165A.350, 165A.370, 165A.380, 165A.460, 165A.465, 165A.470, 165A.475, 165A.480, 165A.485, 332.095

STATUTORY AUTHORITY: KRS 165A.340(3), (6), (10), 165A.400, 165A.465, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3), (6), and (10), 165A.400, 165A.465, and 165A.510 require [165A.460-515 requires that] the Kentucky Commission on [State Board for] Proprietary Education to administer and enforce the provisions of KRS Chapter 165A, promulgate administrative regulations, and establish standards for instructors and agents of commercial driver licensing schools including application and renewal procedures. This administrative regulation establishes the standards for instructors and agents including application and renewal procedures regarding commercial driver license training schools.

Section 1. Definitions. (1) "Classroom instructor" means a commercial driver license school instructor whom the school owner has qualified to perform classroom instruction only for the classroom sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

(2) "Skills Instructor" means a commercial drivers license school instructor who instructs the Range and Street sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools [June 2010 edition] and has met the licensing requirements of Section 2 of this administrative regulation.

Section 2. An applicant for a Commercial Driver License Training School Skills Instructor [or Agent] license shall:

(1) [(a)] Complete and submit Form PE 34, Application for [a] Commercial Driver License Training School [Skills] Instructor; [or

(b) Complete and submit Form PE 36, Application for Licensure as a Commercial Driver License Training School Agent;]

(2) Submit two (2) recent passport-size photographs [no larger

than 2 in. x 2 in.];

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6);

(4) Pay the nonrefundable initial licensure fee of \$200 established in KRS 165A.475(2)[\$150];

(5) Provide a copy of the applicant's valid Class A CDL license;

(6) Provide proof of at least two (2) years of verifiable [verifiable] commercial over the road driving experience; and

(7) Provide proof of receiving a passing score on the written examination and skills examination administered by the Kentucky State Police as required by 502 KAR 10:030 and 10:035.

~~Section 3.[State and National Criminal History Background Checks. An applicant for a commercial driver license instructor or agent shall undergo a state and national criminal history background check upon application and shall submit to being fingerprinted by the Kentucky State Police as required by KRS 165A.465.~~

~~Section 4.] Application for Renewal of Commercial Driver License Training School Instructor [or Agent]. On or before May 15 of each year, a licensed commercial driver license training school instructor [or agent], or a licensed commercial driver license training school on behalf of the skills instructor [or agent], shall:~~

~~(1) [(a)] Complete and submit Form PE 35 Renewal Application for [a] Commercial Driver License Training School [Skills] Instructor; [or~~

~~(b) complete and submit Form PE 37 Renewal Application for a Commercial Driver License Training School Agent;]~~

~~(2) Submit two (2) recent passport-size photographs;~~

~~(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6); and~~

~~(4) Pay the nonrefundable renewal fee of \$200 established in KRS 165A.475(2)[\$150].~~

~~Section 4.[5.] Classroom Instructors. The CDL school shall submit a Form PE 11, Form for Instructional Staff and Key Administrative Personnel to the commission [board] upon qualifying an individual as a classroom instructor.~~

~~Section 5.[6.] Temporary License for CDL [School Agent or] Skills Instructor. (1) The commission [board] shall issue to an applicant[,] who has completed the requirements of Sections 2 and 3 of this administrative regulation[,] a temporary permit, by way of letter, for the performance of skills instructor [or agency] duties while the license application is being processed.~~

~~(2) The commission [board] shall provide the applicant and the licensed school a letter stating the applicant's application is in order and is being processed for applicant licensing.~~

~~(a) The commission [board] shall provide this letter within ten (10) [three (3)] business days of receipt of a properly completed application.~~

~~(b) This letter shall serve as the applicant's temporary license until a regular license is issued.~~

~~(c) A copy of the commission's [board's] letter shall be maintained by the applicant and be available for review upon request by the commission's [board's] inspector or the Kentucky State Police.~~

~~(d) If the applicant is denied a license, the commission [board] shall issue a notice to the applicant and the applicant's school rescinding the applicant's temporary license for a skills instructor [or agent].~~

~~Section 6.[7.] All fees required by this administrative regulation shall be submitted by certified check or money order payable to the "Kentucky State Treasurer."~~

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

~~(a) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools," 2014 edition;~~

~~(b) Form PE 34, "Application for Commercial Driver License Training School Instructor", October 2013 [2010] edition; and~~

(c)[(b)] Form PE 35, "Renewal Application for Commercial Driver License Training School Instructor", October 2013[2014] edition;

(c) Form PE 36, "Application for Commercial Driver License Training School Agent", October 2010; and

(d) Form PE 37, "Renewal Application for Commercial Driver License Training School Agent", October 2010 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on [State Board for] Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower[911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  
Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and renewal procedures for commercial driver license (CDL) training school instructors.

(b) The necessity of this administrative regulation: This regulation is necessary so CDL schools and instructors know what the process is for obtaining licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 165A mandates KCPE promulgate administrative regulations to establish accountability procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is necessary to establish the process and fee for approving CDL instructors.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the fee to license a CDL instructor and deletes licensing of agents from this regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update contact information and to authorize an increase in the certain CDL fees.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 165A establishes the duties and responsibilities of the KCPE. One of those duties is the regulation of CDL schools and their instructors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help the KCPE comply with their mandate of regulating CDL schools and their instructors.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: There are currently sixteen (16) CDL schools and thirty-six (36) CDL instructors licensed by the KCPE.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will have to be taken.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a fifty (50) dollar increase in fee for the CDL instructor.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated this amended regulation, as well as other proposed amended regulations, will generate sufficient revenue for the KCPE to fully function as a regulatory agency thereby assuring all schools including CDL schools operate in the best interest of their students and the public.

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

(a) Initially: No additional cost is anticipated to implement this regulation initially.

(b) On a continuing basis: No additional cost in anticipated to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by the fees paid by the proprietary schools, including CDLs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The regulation increases two (2) fees for CDL instructors. No additional funding will be required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation increases a fee for CDL instructors.

(9) TIERING: Is tiering applied? No, all CDL instructors must go through the same application process and the amount of the fee is the same for all schools regardless of their size or location.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340 and KRS 165A.400

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? It is anticipated there will be an increase in revenue of \$1,800 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? It is anticipated there will be an increase in revenue of \$1,800 per year for subsequent years.

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

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

**ENERGY AND ENVIRONMENT CABINET  
Public Service Commission  
(Amendment)**

**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 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) "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) "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 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined to a commission proceeding.

(11) "Person" is defined by KRS 278.010(2).

~~(12) ["Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).]~~

~~(13)]~~ "Signature" means a manual, facsimile, conformed, or electronic signatures.

~~(13)]~~ [(44)] "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

~~(14)]~~ [(45)] "Utility" is defined by KRS 278.010(3).

~~(15)]~~ [(46)] "Water district" means a special district formed pursuant to KRS 65.810 and Chapter 74.

~~(16)]~~ [(47)] "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. (1) Upon request, the executive director shall:

- (a) Advise as to the form of a paper 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. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

(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 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 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 a 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 attorney, 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; or  
2. ~~Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or~~

3. Sending a copy 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 and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

~~(c) If good cause exists to excuse the party from receiving a copy by electronic means, service of papers on the party shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.~~

(d) 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 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 containing personal information, the party shall encrypt or redact the paper so that personal information cannot be read. Personal information includes an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements: 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 a[the] Social Security number or taxpayer identification number;

2. The month and date[day] of an individual's birth; ~~and]~~

3. The digits of an[the financial] account number, credit card number, or debit card number that, in combination with any

required security code, access code, or password, would permit access to an account;

4. A driver's license number, state identification card number, or other individual identification number issued by any agency;

5. A passport number or other identification number issued by the United States government; or

6. Individually identifiable health information as defined in 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g.

(b) To redact the paper, 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) Each party shall~~The executive director shall not~~ be required to review a paper[papers] for compliance with this section. The responsibility to redact a paper[document] shall rest with the party that files the paper[document].

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case 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. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(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 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 that the party submits in the case after the order granting intervention, but is not required to provide any papers 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 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 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 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 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 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 proof.

(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.

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 is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper 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.

(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 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 shall be filed with the commission by uploading an electronic version 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 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 scanned material, scanned at a resolution of 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; and
3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material 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.

(6)(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a 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 uploading

sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and

(c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.

(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.

(b) Upon a party's 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.

(9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, it 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 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:

(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 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 from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address[in accordance with Section 4(8) of this administrative regulation].

(12)(a) A paper 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 order of the commission; and

2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.

(b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming 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:

(a) 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; or

(b) A request for hearing has been made.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon those persons or by publishing notice of the filing. The applicant shall bear the expense of providing the notice. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(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 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. 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 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 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 reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director 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) 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 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 twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. 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:

(a) Amount and kinds of stock authorized;

(b) Amount and kinds of stock issued and outstanding;

(c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(d) 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) 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) 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) 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) 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) 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 confidential treatment of material shall be made by 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 do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) 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.

(c) 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.

(d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.

(e) 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, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) 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) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion 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 determination by letter.

(d) 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 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 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) 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.

(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 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.

(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.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation.

2. A party's response to 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 access to the material on the grounds that it is essential to the party's meaningful participation in the proceeding.

1. The motion 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 within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant 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.

(a) A person who 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

1. If the confidential status of the material has been determined previously, a written notice identifying the person who 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

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.

(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 from the hearing room during testimony 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 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 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 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 the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, 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 the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state whether it is authorized to transact business in Kentucky.

(4) 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:

1. The information required pursuant to Section 14 of this administrative regulation;
2. The name of the governmental agency offering the franchise;
3. The type of franchise offered; and
4. A statement showing the need and demand for service.

(b) If an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.

(2) New construction or extension. Upon application 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 application:

(a) The facts relied upon to show that the proposed 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 construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner in which same will be constructed, and the names of all public utilities, corporations, or persons with whom the proposed 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 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;

(e) The manner in detail in which the applicant proposes to finance the proposed construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service.

(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. 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 of Existing Rates. (1) Each application requesting a general adjustment of 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. 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. 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. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:
  - a. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or
  - b. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and
5. A statement that notice has been given in compliance with Section 17 of this administrative regulation 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 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](mailto: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) 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 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 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 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) 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) 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) 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 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 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, 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:

- Based on current and reliable data from a single time period; and
- Using generally recognized fully allocated, embedded, or incremental cost principles.

(8) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:

- 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;
- 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;
- 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;
- A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;
- 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;
- 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;
- Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;
- A computation of the gross revenue conversion factor for the forecasted period;
- 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;
- 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;
- Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;
- A narrative description and explanation of all proposed tariff changes;
- A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and
- A typical bill comparison under present and proposed rates for all customer classes.

(9) 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.

(10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

- 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;
- 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.

(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 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 at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application 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 securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof 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) The amount and kinds of stock, if any, which the applicant 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 desires to issue, with terms, rate of interest, and if and how to be secured;

(d) 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) 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;

(f) 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 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 written notification to the state local debt officer regarding the proposed issuance.

(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. 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. 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 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;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, 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.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its 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 to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity 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 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 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.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint 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 constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, it may so state in the answer and place the denial upon that ground.

Section 21. 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. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23. 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", June 2014[July 2012];

(d) "PSC Form-T (telephone)", August 2005;

(e) "Form 8-K", January 2012;

(f) "Form 10-K", January 2012;

(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: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 22, 2014, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, July 15, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Stephanie Bell, Deputy Executive Director

Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email [Stephanie.Bell@ky.gov](mailto:Stephanie.Bell@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules of procedures for the hearings and formal proceedings before the Public Service Commission.

(b) The necessity of this administrative regulation: This administrative regulation is needed to provide the structural framework for hearings and formal proceedings that the Public Service Commission conducts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that utilities and the commission must follow.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment codifies Commission practices for delivering its orders by means of electronic transmission rather than by mail, eliminates the requirement that sewage utilities mail customer notices, eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body, expands information that must be redacted when filing applications.

(b) The necessity of the amendment to this administrative regulation: This amendment incorporates Commission practices that have not been codified in the Commission's regulations. This amendment reflects changes in the method of the delivery of the commission's orders by electronic transmission mandated by the recent revision of KRS 278.380, and complies with SB 123, HB 5, and HB 192 which became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the



authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more guidance to utilities in regards to proceedings before the Commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all utilities regulated by the Public Service Commission and all persons who make an appearance or otherwise participate in Commission proceedings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The utilities will be responsible for providing the Commission with their electronic mail address or will need to provide good cause for mail delivery. Additionally, the utilities will need to redact personal information before filing documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to comply with this amendment, and will indeed lessen certain costs. The proposed amendment eliminates several filing requirements. It clarifies several uncertainties in the existing regulation and will likely lessen the number of actions that parties to a Commission proceeding must take to ensure compliance with the Commission's procedural rules.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides clarity regarding proceedings before the Commission. It harmonizes the Commission's rules regarding delivery of its orders with the existing capabilities of the Commission's filing system. Sewage utilities are no longer required to mail customer notices. Sewage utilities may publish notice in the same manner as other utilities. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that all hearings and

investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendments for any governmental agency. The proposed amendments do not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for subsequent years. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amendment)

##### 807 KAR 5:011. Tariffs.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.170, 278.180,[278.185,] 278.190

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires the commission to promulgate an administrative regulation to establish requirements for each utility to file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.

(3) "Electronic signature" is defined by KRS 369.102(8).

(4) "Nonrecurring charge" means a charge or fee assessed to a customer to recover the specific cost of an activity, which:

(a) Is due to a specific request for a service activity for which, once the activity is completed, additional charges are not incurred; and

(b) Is limited to recovery of an amount no greater than the cost of the specific service.

(5) "Person" is defined by KRS 278.010(2).

(6) "Rate" is defined by KRS 278.010(12).

(7) [~~"Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).~~]

(8)] "Signature" means any manual, facsimile, conformed, or electronic signatures.

(8)](9)] "Statutory notice" means notice made in accordance with KRS 278.180.

(9)](40)] "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(10)](44)] "Tariff filing" means the revised or new tariff sheets and all supporting documents that a utility submits to revise its rate schedules.

(11)](42)] "Utility" is defined by KRS 278.010(3).

(12)](43)] "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.

(13)](44)] "Water district" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

(14)](45)] "Web site" means an identifiable site on the internet, including social media, which is accessible by the public.

Section 2. General. (1) Each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at [https://psc.ky.gov/psc\\_portal](https://psc.ky.gov/psc_portal).

(2) Each utility shall maintain a complete tariff with the commission.

(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.

(4) A utility shall make available a paper or electronic copy of the utility's current tariff for public inspection in the utility's office or place of business.

(5) A utility that maintains a Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of the utility's current tariff for each type of service that it provides; or

(b) Place on that Web site a hyperlink to the location on the commission's Web site where the tariff has been posted.

Section 3. Format. (1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:

(a) Printed or typewritten;

(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and

(c) In type no smaller than nine (9) point font, except headers and footers, which shall be in type no smaller than eight (8) point font.

(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1, shall be used as the tariff's cover page, and shall contain:

(a) The utility's name, mailing address, street address of the utility's principal office if different from the mailing address, and Web site if applicable;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) A statement of the type of service offered;

(d) A statement of the area served;

(e) The date of issue and date on which the tariff is to become effective;

(f) The signature of the representative of the utility authorized to issue tariffs; and

(g) The signatory's title or position.

(3) Tariff Form-2. With the exception of the first sheet of the tariff, which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 and shall contain:

(a) The utility's name and territory served;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);

(d) The date of issue and date on which the tariff is to become effective;

(e) The signature of the utility representative authorized to issue tariffs;

(f) The signatory's title or position; and

(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_\_\_".

(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix the commission's stamp.

Section 4. Contents of Schedules. (1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village, or district in which rates are applicable.

(a) If a schedule is applicable in a large number of communities, the schedule shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) If a utility indicates the applicability of a schedule by reference to the index sheet, the utility shall use language indicating "Applicable within the corporate limits of the City of \_\_\_\_\_," or "see Tariff Sheet No. \_\_\_\_\_ for applicability."

(2) The following information shall be shown in each rate schedule, if applicable, under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classification of customers affected;

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the minimum charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount or reference the tariff section containing the amount;

(f) Term: if a tariff provision or a contract will be effective for a limited period, state the term; and

(g) Special rules: list special rules or requirements that are in effect covering this tariff.

(3) Each rate schedule shall state the type or classification of service available pursuant to the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. \_\_\_\_"; or

(b) A group of letters, with a designation indicating the type or classification of service for which the rate schedule is available. (Example: Tariff R.S. for residential service rates.)

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements. (1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) With the exception of supporting documents, which may be submitted in an Excel spreadsheet in .xls format, each document shall be submitted in portable document format ("PDF") capable of being viewed with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements established in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) A tariff,

tariff sheet, or tariff provision shall not be changed, cancelled, or withdrawn except as established by this section and Section 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect by:

(a) Order of the commission; or

(b) Issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public in accordance with Section 8 of this administrative regulation and statutory notice to the commission.

(3) The following symbols shall be placed in the margin to indicate a change:

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff establishing:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notice. A utility shall provide notice if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service. (1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the tariff filing is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the tariff filing 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 tariff filing is available.

(c) The information required in subsection (1)(a) and (b) of this section shall not be removed until the tariff filing has become effective or the commission issues a final decision on the tariff filing.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers~~[or is a sewage utility]~~, it shall mail a written notice to each customer no later than the date the tariff filing 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 tariff filing is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the tariff filing is submitted to the commission;

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 tariff filing is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the tariff filing is submitted to the commission.

(c) A utility that provides service in more than one (1) county~~[and is not a sewage utility]~~ may use a combination of the notice methods established in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the tariff filing was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this tariff filing at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this tariff filing 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 this tariff filing may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of the initial publication or mailing of the notice, the commission may take final action on the tariff filing.

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer.

(6) Periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is performed in accordance with provisions of an effective rate schedule, special contract, or administrative regulation does not require notice in accordance with this section.

Section 9. Statutory Notice to the Commission. (1) The proposed rates on a new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:

(a) Proper notice was provided to the public in accordance with Section 8 of this administrative regulation;

(b) Statutory notice was provided; and

(c) The commission does not suspend the proposed rates pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission at the time of the filing of the proposed rate. If a substantial omission occurs, which is prejudicial to full consideration by the commission or to the public, the statutory notice period to the commission shall not commence until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. A utility may revise a nonrecurring charge pursuant to this section and Sections 6 and 9

of this administrative regulation. (1) Each request to revise a current nonrecurring charge or to implement a new nonrecurring charge shall be accompanied by:

(a) A specific cost justification for the proposed nonrecurring charge, including all supporting documentation necessary to determine the reasonableness of the proposed non-recurring charge;

(b) A copy of the public notice of each requested nonrecurring charge and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed revisions were not included in the utility's most recent general rate case and why current conditions prevent deferring the proposed revisions until the next general rate case;

(d) A statement identifying each classification of potential or existing customers affected by the rate revision; and

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an authorized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission[; and

~~(f) If the applicant is a water district and proposes to increase any of its nonrecurring charges or implement a new nonrecurring charge, a statement from an authorized official of the district indicating the date the proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers reside and the date it presented testimony, or is scheduled to present testimony, to that governing body].~~

(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3)(a) If the revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent period of twelve (12) consecutive calendar months ending within ninety (90) days of submitting the tariff filing, the utility shall, in addition to the information established in subsection (1) of this section, file an absorption test.

(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation method) to a level greater than that allowed in the most recent general rate case.

(c) As part of the absorption test, a general rate increase received during the twelve (12) month period shall be annualized.

(4) Upon a utility submitting the tariff filing to the commission, the utility shall transmit by electronic mail a copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice. (1) A utility shall file an adoption notice on Tariff Form-3 if:

(a) A change of ownership or control of a utility occurs;

(b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;

(c) A utility's name is changed; or

(d) A receiver or trustee assumes possession and operation of a utility.

(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make as its own the predecessor's rates, classifications, and requirements on file with the commission and effective at the time of the change of ownership or control.

(3) An adoption notice may be filed and made effective without previous notice.

(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.

(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to place into

effect in lieu thereof, in the form established in Sections 2 through 4 of this administrative regulation with proper identifying designation.

(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:

(a) A complete reissue of its existing tariff that establishes the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or

2. The utility proposes to place into effect for the customers served by the predecessor utility; or

(b) New or revised tariff sheets that establish the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or

2. The utility proposes to place into effect for the customers served by the predecessor utility.

(7)(a) If a new tariff or a revised sheet of an existing tariff states the rates and requirements of the predecessor utility without change, the successor utility shall not be required to provide notice of the filing.

(b) If a new tariff or a revised sheet of an existing tariff changes or amends the rates or requirements of the predecessor utility, the successor utility shall provide notice pursuant to KRS 278.180 and Section 8 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations, and Statutes. (1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.

(2) Each utility shall provide a suitable table or desk in its office or place of business on which it shall make available for public viewing:

(a) A copy of all effective tariffs and supplements establishing its rates, classifications, charges, rules, and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;

(b) A copy of all proposed tariff revisions that the utility has filed and are pending before the commission and all documents filed in a commission proceeding initiated to review the proposed tariff revisions;

(c) A copy of KRS Chapter 278; and

(d) A copy of 807 KAR Chapter 5.

(3) The information required in subsection (2) of this section shall be made available in an electronic or nonelectronic format.

Section 13. Special Contracts. Each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation. Requests for confidential treatment shall be made and reviewed in accordance with 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

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

(a) "Tariff Form-1", July 2013;

(b) "Tariff Form-2", July 2013; and

(c) "Tariff Form-3", Adoption Notice, July 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: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Tuesday, July 22, 2014, at 9:00 am, Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, July 15, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for a utility to file its tariff or to file revisions to its existing tariff.

(b) The necessity of this administrative regulation: This regulation is necessary to provide utilities with the rules and guidelines they must follow when filing their tariffs or revisions to their existing tariffs with the Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.160 provides that the commission shall prescribe rules under which a utility shall file schedules showing all rates and conditions of service it has established and that it collects or enforces.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides utilities with the rules and guidelines they must follow when submitting required documents to the Public Service Commission.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that sewage utilities mail customer notices. The sewage utility may now provide customer notice in the same manner as other utilities. The amendment also eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with SB 123 and HB 192 which became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. The proposed amendment revises how a sewage utility must publish notice and the actions a water district must take when seeking a fee increase.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit both utilities and the Public Service Commission by eliminating the requirement that sewage utilities mail customer notices and eliminating the requirement that water districts seeking a fee increase present or schedule to present testimony to its governing body.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all jurisdictional utilities that are required to file tariffs with the Public Service Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require additional actions by the utilities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sewage utilities are no longer required to mail customer notices. Sewage utilities may publish notice in the same manner as other utilities. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing new tariffs or revisions to existing tariffs is expected to result from the adoption of the proposed amendment. The Public

Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing new tariffs or revisions to existing tariffs is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET  
Public Service Commission  
(Amendment)**

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

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation prescribes the requirements under which a water district or a water association may implement a purchased water adjustment to recover the cost of water purchased.

Section 1. Definitions. (1) "Application" means:

(a) A completed Purchased Water Adjustment Form 1;

(b) A schedule listing current and proposed rates;

(c) A copy of the supplier's notice showing a change in supplier's base rate;

(d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation; and

(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates[; and

~~(f) If the applicant is a water district and proposes to increase any of its rates for service, a statement from an authorized official of the district indicating the date its proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers reside and the date it presented testimony, or is scheduled to present testimony, to that governing body].~~

(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Person" is defined by KRS 278.010(2).

(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of water service; or

(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) The purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(2) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(3) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total utility water purchases and total water utility sales.

Section 4. Submitting the Purchased Water Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the supplier's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its purchased water costs due to the supplier's changed rate.

Section 5. Notice. Upon filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site

where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate; or

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing; or

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the date of the notice's publication.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner prescribed in Section 5(2) of this administrative regulation.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor.

(a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor upon calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 1", Purchased Water Adjustment for Water Districts and Associations, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 22, 2014, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday July 15, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email [Stephanie.Bell@ky.gov](mailto:Stephanie.Bell@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for

water districts and water associations to pass its purchased water costs through to its customers.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a timely and simplified method for a water district or water association to adjust its rates in accordance with a rate adjustment from its wholesale water supplier.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a cost effective and timely method for a water district or water association to pass through changes in costs of the water it purchases.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with HB 192 which was became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. This amendment eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(d) How the amendment will assist in the effective administration of the statutes: The amendment benefits water districts by eliminating the requirement to present testimony or be scheduled to present testimony to its governing body when requesting fee increases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will affect water districts that purchase water from a wholesale provider.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required. This amendment eliminates a requirement for the water district when requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Water Districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division; water districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing purchased water adjustment applications is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing purchased water adjustment applications is expected to result from the adoption of the proposed amendment. The Public Service commission will be performing the same level of review and require the same number of employees to conduct its review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amendment)

**807 KAR 5:069. Filing requirements and procedures for federally funded construction project of a water association, a water 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 the commission to adopt 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 that the commission 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 the commission to prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water utility and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273 shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

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 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:

(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 stating approval of the project and including all terms and conditions of the agreement, including all amendments;

(3) A copy of the letter of concurrence in contract award;

(4) A copy of the preliminary and final engineering reports and bid tabulations;

(5) 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 in the engineering reports; and

(d) The dates upon which construction will begin and end;

(7) If applicable, a statement that notice meeting the requirements of Section 3 of this administrative regulation has been given, together with a copy of the notice; and

(8) If applicable, a motion requesting approval to deviate from a minimum construction standard or operating condition required

by subsection (6)(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 filing for a change in rates as a result of a construction project, a water utility shall provide notice as established in this section. (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 at the offices of (water utility name) located at (water utility address);

(f) A statement that a person may examine this application 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 4. Additional Construction Activity. If surplus project funds remain after the approved construction project has been completed, the water utility may construct additional facilities 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. 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: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 22, 2014, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, July 15, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email [Stephanie.Bell@ky.gov](mailto:Stephanie.Bell@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the contents of applications for certificates of public convenience and necessity, authorization

for issuance of evidences of indebtedness or securities, and approval of rate adjustments that are related to construction projects that are undertaken by a water district or water association and financed under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development.

(b) The necessity of this administrative regulation: This administrative regulation establishes the contents of applications for certificates of public convenience and necessity, authorization for issuance of evidences of indebtedness or securities, and approval of rate adjustments that are related to construction projects that are undertaken by a water district or water association and financed under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.023 provides that the Public Service Commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the Public Service Commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water association, a water district, or a combined water, gas, or sewer district and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It resolves the confusion that earlier Public Service Commission decisions created regarding the application of KRS 278.023 to wastewater projects that were financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that sewage utilities mail customer notices. The sewage utility may now provide customer notice in the same manner as other utilities. The amendment also eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with SB 123 and HB 192 which became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.023 provides that the Public Service Commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the Public Service Commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water association, water district, or a combined water, gas, or sewer district and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. This administrative regulation establishes filing requirements and procedures a water association, a water district, or a combined water, gas, or sewer district 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.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit both utilities and the Public Service Commission by eliminating the requirement that sewage utilities mail customer notices and eliminating the requirement that water districts seeking a fee increase present or schedule to present testimony to its governing body

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect jurisdictional water associations, combined water, gas, or sewer districts, and water districts that finance projects 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..

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require additional actions by the utilities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sewage utilities are no longer required to mail customer notices. Sewage utilities may publish notice in the same manner as other utilities. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is expected.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; jurisdictional water associations; combined water, gas, or sewer districts; and water districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.023 provides that the Public Service Commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the Public Service Commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement between a water association, a water district, or a combined water, gas, or sewer district and the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing applications pursuant to KRS 278.023 is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulating small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amendment)

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

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015, 278.030, 278.040

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation establishes the requirements under which a water district or a water association may implement a treated sewage adjustment to recover the costs of treated sewage.

Section 1. Definitions. (1) "Application" means:

(a) A completed Treated Sewage Adjustment Form 1;

(b) A schedule listing current and proposed rates;

(c) A copy of the provider's notice showing a change in provider's base rate;

(d) The calculation and all supporting documents used to determine the change in treated sewage costs sufficient to determine the accuracy of the calculation; and

(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and

(f) If the applicant is a water district and proposes to increase any of its rates for service, a statement from an authorized official of the district indicating the date its proposed rate adjustment was

reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body].

(2) "Changed rate" means the rate of a utility's provider after the most recent increase or decrease in the provider's base rate.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Person" is defined by KRS 278.010(2).

(5) "Provider's base rate" means the rate of a utility's provider in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of sewage service; or

(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

$$\text{TSA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Treated Sewage}) - (\text{Base Rate} \times \text{Total Treated Sewage})}{\text{Total Utility Water Sales}}$$

(2) The treated sewage adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customer bills.

(3) Total treated sewage shall be determined based upon the level of treated sewage for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total treated sewage and total utility water sales.

Section 4. Submitting the Treated Sewage Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the provider's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its treated sewage costs due to the provider's changed rate.

Section 5. Notice. Upon filing an application for a treated sewage adjustment resulting from a provider's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

Section 2. Change in Provider's Base Rate. (1) Upon an increase in its provider's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased treated sewage costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the provider's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased treated sewage costs on a per unit basis regardless of customer classification.

Section 3. Treated Sewage Adjustment Factor. (1) The treated sewage adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

(2) Customer Notice. (a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate;

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection[A utility shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate].

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing; or

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the date of the notice's publication.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard,

Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner established in Section 5(2) of this administrative regulation.

Section 7. Refund from a Provider. (1) A utility that receives a refund from its provider for previously paid for treated sewage due to a reduction in the provider's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

- (a) A description of the circumstances surrounding the refund;
- (b) A schedule showing the calculation of the refund factor;
- (c) A copy of the provider's notice of the refund; and
- (d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor.

(a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customer bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor when calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Treated Sewage Adjustment Form 1", Treated Sewage Adjustment for Water Districts and Associations, July 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 22, 2014, at 9:00 a.m., Eastern Daylight Time, at the

Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, July 15, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email [Stephanie.Bell@ky.gov](mailto:Stephanie.Bell@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for water districts and water associations that provide sewage service to pass through to its customers the cost it pays another entity to treat its customer's sewage.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a timely and simplified method for water districts and water associations that provide sewage service to adjust its rates to pass through to its customers the cost it pays another entity to treat its customer's sewage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a cost effective and timely method for a water district and water association that provides sewage service to adjust its rates to pass through to its customers changes in costs it pays another entity to treat its customer's sewage.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that sewage utilities mail customer notices. The amendment also eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with SB 123 and HB 192 which became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030(1) provides that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This amendment prescribes the requirements under which a water district or a water association may implement a treated sewage adjustment designed to recover the actual costs of treated sewage.

(d) How the amendment will assist in the effective administration of the statutes: The amendment benefits sewage utilities by eliminating the requirement that it mail customer notices. Water districts no longer have to present testimony or be scheduled to present testimony to its governing body when requesting fee increases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect water districts and water associations providing sewage service that pay another entity to treat its customer's sewage.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation does not require any additional action by the regulated entities identified in question 3.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sewage utilities are no longer required to mail customer notices. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: The amendment will not involve additional costs

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing treated sewage adjustment applications is expected to result from the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing treated sewage adjustment applications is expected to result from the adoption of this administrative regulation. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amendment)

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

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180[, 278.185], 278.190, 278.310, 278.380

STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180[, 278.185(4)]

NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions. (1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.

(2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either:

(a) The calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission; or

(b) The most recent calendar year period that 807 KAR 5:006, Section 4(1), requires the applicant to have on file with the commission as of the date of the filing of its application for rate adjustment.

(3) "Applicant" means a utility that is applying for an adjustment of rates using the procedure established in this administrative regulation.

(4) "Gross annual revenue" means:

(a) The total revenue that a utility derived during a calendar year; or

(b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.

(5) "Rate" is defined by KRS 278.010(12).

(6) [~~"Sewage utility"~~] means a utility that meets the requirements of KRS 278.010(3)(f).

(~~7~~) "Utility" is defined by KRS 278.010(3).

(~~7~~)(~~8~~) "Water district" means a special district or special purpose governmental entity created pursuant to KRS Chapter 74.

(~~8~~)(~~9~~) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:

(1) Had gross annual revenue in the immediate past calendar year of \$5,000,000 or less;

(2) Maintained adequate financial records fully separated from a commonly-owned enterprise; and

(3) Filed with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the utility has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:

(1) Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the utility has been in existence that long;

- (2) The application required by Section 4 of this administrative regulation;
- (3) Information supplied by the parties in response to requests for information;
- (4) Written reports submitted by commission staff;
- (5) Stipulations and agreements between the parties and commission staff;
- (6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in a written report that commission staff submitted; and
- (7) If a hearing is held, the record of that hearing.

Section 4. Application. (1) An application for alternative rate adjustment shall consist of:

- (a) A completed ARF Form-1 that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters established in the application;
- (b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;
- (c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;
- (d) A depreciation schedule of all utility plant in service;
- (e) A copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;
- (f) A detailed analysis of the applicant's customers' bills showing revenues from the present and proposed rates for each customer class;
- (g) A copy of the notice of the proposed rate change that is provided to customers of the applicant; and
- (h) A completed ARF Form-3 for each member of the utility's board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility's chief executive officer; and
- ~~(i) If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body].~~

(2) Except as provided in 807 KAR 5:001, Section 8 for electronic filings, the applicant shall:

- (a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and
- (b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at [rateintervention@ag.ky.gov](mailto:rateintervention@ag.ky.gov).

(3) Each party filing documents with the commission shall be responsible for reviewing and redacting any personal identifying information in compliance with the rules and procedures set forth in 807 KAR 5:001, Section 4(10)]~~(a) If the application contains an individual's Social Security number, taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:~~

- ~~1. The digits of the Social Security number or taxpayer identification number;~~
- ~~2. The month and day of an individual's birth; and~~
- ~~3. The digits of the financial account number.~~

~~(b) To redact the document, the applicant shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read].~~

(4) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) A utility may make written request to the executive director for commission staff assistance in preparing the application.

Section 5. Notice. Upon filing an application for an alternative rate adjustment, a utility shall provide notice as established in this

section. (1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

- 1. A copy of the public notice; and
- 2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers~~[or is a sewage utility]~~, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers~~[and is not a sewage utility]~~, it shall provide notice by:

- 1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;
- 2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;
- 3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or
- 4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county~~[and is not a sewage utility]~~ may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

- (a) The date the proposed rates are expected to be filed with the commission;
- (b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;
- (c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;
- (d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application 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 the commission's 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.

Section 6. Except as provided in 807 KAR 5:001, Section 8(2), an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure established in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place the proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.

(2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.

(3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 8. Amendment of Proposed Rates. (1) Except when responding to the findings set forth in a commission staff report filed in accordance with Section 11 of this administrative regulation, an applicant shall not amend the proposed rates set forth in its application unless the applicant:

(a) Files written notice of the proposed amendment with the commission; and

(b) Publishes notice of the amended proposed rates in the manner provided in Section 5 of this administrative regulation.

(2) An applicant shall not place amended proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of the written notice of proposed amendment, whichever occurs first.

(3) If the commission has not issued an order within six (6) months from the date of filing of the notice of amended proposed rates, the applicant may place the amended proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect but shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 9. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's annual report for the immediate past year.

Section 10. Discovery. (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.

(a) A party in the proceeding may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.

(b) Upon serving requests upon the applicant, the party shall file a copy of the party's requests with the commission and serve a copy upon all other parties.

(c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.

(2) The commission may establish different arrangements for

discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.

Section 11. Commission Staff Report. (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties if commission staff will prepare a report on the application.

(2) If a commission staff report is prepared, the:

(a) Commission staff shall:

1. File the report with the commission; and

2. Serve a copy of the report on all parties of record; and

(b) Report shall contain the commission staff's findings and recommendations regarding the proposed rates.

(3)(a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.

(b) This written response shall contain:

1. All objections to and other comments on the findings and recommendations of commission staff;

2. A request for hearing or informal conference, if applicable;

3. The reasons why a hearing or informal conference is necessary; and

4. If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the filing party's position on if the commission should authorize the assessment of the higher rate or the recommended additional rate or charge.

(c) If a party's written response fails to contain an objection to a finding or recommendation contained in the commission staff report, it shall be deemed to have waived all objections to that finding or recommendation. A party's failure to request a hearing or informal conference in the party's written response shall be deemed a waiver of all rights to a hearing on the application and a request that the case stand submitted for decision.

(d) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived all objections to the findings and recommendations contained in the report and all rights to a hearing on the application.

(e) Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations established in the commission staff report.

(f) If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or commission staff recommends the assessment of an additional rate or charge not proposed in the application and commission staff's proposed rates produce a total increase in revenues that exceeds 110 percent of the total increase in revenues that the applicant's proposed rates will produce and the applicant amends its application to request commission staff's proposed rates, the commission shall order the applicant to provide notice of the finding or recommendation to its customers.

Section 12. Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to the applicant's customers notice of the hearing.

(2) The notice shall state the purpose, time, place, and date of the hearing.

(3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing.

(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.

Section 13. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may, on behalf of an applicant that is a water district, corporation, partnership, or



limited liability company, file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) An applicant that is a water district, corporation, partnership, or limited liability company shall, at a hearing conducted on the application, be represented by an attorney who is authorized to practice law in Kentucky.

Section 14. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in 807 KAR 5:001, Section 8, are used, if a document in paper medium is filed with the commission, five (5) additional copies in paper medium shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Except for ARF Form-1 and ARF Form-3, each filing shall be in type no smaller than twelve (12) point, except footnotes, which shall be in type no smaller than ten (10) point.

(d) Binding. A side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in 807 KAR 5:001, Section 8, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A document submitted by facsimile transmission shall not be accepted.

Section 15. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. Upon an applicant's election of the use of electronic filing procedures within the time limits established in 807 KAR 5:001, Section 8(2), the procedures established in 807 KAR 5:001, Section 8, shall be used in lieu of other filing procedures established in this administrative regulation.

Section 16. The provisions of 807 KAR 5:001, Sections 1 through 6, 8 through 11, and 13, shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 17. Upon a showing of good cause, the commission may permit deviations from this administrative regulation. Requests for deviation should be submitted in writing by letter to the commission.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Rate Adjustment before the Public Service Commission", ARF Form 1, November 2013; and

(b) "Statement of Disclosure of Related Party Transactions", ARF Form 3, November 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 22, 2014, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, July 15, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public

hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email [Stephanie.Bell@ky.gov](mailto:Stephanie.Bell@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a simplified and less expensive procedure by which small utilities may apply to the commission for rate increases. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001 or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission's authority to regulate the rates of small utilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 - .192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that sewage utilities mail customer notices. The sewage utility may now provide customer notice in the same manner as other utilities. The amendment also eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body. Further, the amendment establishes that the filing party is responsible for redacting personal information.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with SB 123, HB 5, and HB 192 which became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 - .192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a

simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit both utilities and the Public Service Commission by eliminating the requirement that sewage utilities mail customer notices and eliminating the requirement that water districts seeking a fee increase present or schedule to present testimony to its governing body. The amendment notifies the utility that it is responsible for redacting personal information prior to filing documents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect jurisdictional utilities filing an alternative rate application. .

(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 proposed amendment will require utilities to redact personal information..

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sewage utilities are no longer required to mail customer notices. Sewage utilities may publish notice in the same manner as other utilities. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

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

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

(9) TIERING: Is tiering applied? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than \$5 million, tiering has been applied. The Public Service Commission believes that tiering is appropriate because the operations of smaller utilities are less complex, their recordkeeping practices are simpler, and the amount of documentary evidence to verify their financial operations is less than that of larger utilities. Moreover, given the smaller number of customers over which small utilities must spread rate case expense, the use of the same procedures as used for larger utilities will result in larger rate increases for smaller utilities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); jurisdictional utilities using the alternative rate filing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate

the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 - .192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Kentucky State Board on Electric Generation and Transmission Siting (Amendment)

#### 807 KAR 5:110. Board proceedings.

RELATES TO: KRS 61.870-61.844, 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716

STATUTORY AUTHORITY: KRS 278.702(3), 278.706(2)(c), 278.712(2)

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702(3) authorizes the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes

procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Written communication shall be addressed to Kentucky State Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615.

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.

(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct a carbon dioxide transmission pipeline, merchant electricity generating plant, or nonregulated electric transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of the Notice of Intent to File Application, the Notice shall automatically expire without further notice to the applicant.

(2) A Notice of Intent to File Application shall include:

(a) The name, address, ~~and~~ telephone number, and electronic mail address of the person who intends to file the application;

(b) A brief description of the proposed construction that will be the subject of the application;

(c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;

2. The street address and latitude and longitude of the site of the construction to be proposed; and

3. If the proposed construction will be within the boundaries of a city;

(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to if a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings. (1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602.

(2) A paper copy of an application shall:

(a) Be in a bound volume with each document tabbed; and

(b) Contain a table of contents that lists, for each document enclosed,

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine if the application is administratively complete and shall inform the applicant of its determination by letter.

(4) The secretary shall reject for filing any document that does not comply with an administrative regulation in 807 KAR Chapter 5.

Section 4. Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown:

(a) That he has a special interest in the proceeding; or

(b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

Section 5. Confidential Material. (1) Material on file with the board shall be available for examination by the public unless the material is determined to be confidential.

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the executive director. The petition shall:

1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, establish each basis upon which the petitioner believes the material should be classified as confidential; and

2. Attach one (1) copy of the material that identifies, by underscoring, highlighting with transparent ink, or other comparable method, only the portion alleged to be confidential. A text page or portion thereof that does not contain confidential material shall not be included in the identification.

(b) The petition, one (1) copy of the material identified by underscoring or highlighting, and ten (10) copies of the material with the portion for which confidentiality is sought obscured, shall be filed with the board.

(c) The petition and a copy of the material, with only the portion for which confidentiality is sought obscured, shall be served on each party. The petition shall contain a certificate of service on each party.

(d) The burden of proof to show that the material is exempt from the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884, shall be upon the person requesting confidential treatment.

(e) A person may respond to the petition for confidential treatment. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board.

(3) Pending action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to petition the board directly or to seek other remedy afforded by law.

(5) Procedure for requesting access to confidential material filed in a proceeding.

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or another party to the proceeding. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, the party shall follow the procedure for determining confidentiality established in subsection (2) of this section. A party's response to a discovery request shall be served upon each party, with only the portion for which confidentiality treatment is sought obscured.

(b) If confidential protection is granted and if each party has not entered into a protective agreement, then a party may petition the board requesting access to the material on the basis that it is essential to a meaningful participation in the proceeding. The petition shall include a description of any effort made to enter into a protective agreement. Unwillingness to enter into a protective agreement shall be fully explained. A party may respond to the petition. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board. The board shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Request for access to records pursuant to KRS 61.870-61.884. A time period prescribed in this section shall not limit the right of a person to request access to a board record pursuant to

KRS 61.870-61.884. Upon a request filed pursuant to KRS 61.870-61.884, the board shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for requesting access to confidential material. A person denied access to a record requested pursuant to KRS 61.870-61.884 or to material deemed confidential by the board in accordance with the procedure established in this section, shall obtain the information only pursuant to KRS 61.870-61.884, and other applicable law.

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing. If confidential material is considered during a formal hearing, it shall be considered as established in the following procedure:

(a) The person seeking to address the confidential material shall advise the board prior to the use of the material.

(b) Except for members of the board or its staff, a person not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(9) Material granted confidentiality that later becomes publicly available or otherwise shall no longer warrant confidential treatment.

(a) The petitioner who sought confidential protection shall inform the executive director in writing if material granted confidentiality becomes publicly available.

(b)1. If the executive director becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, he shall by letter so advise the petitioner who sought confidential protection, giving the petitioner ten (10) days to respond.

2. If the executive director becomes aware that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or board order, the information shall not be deemed to be publicly available and shall not be placed in the public record.

(c) 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 any remedy afforded by law.

Section 6. Evidentiary Hearings. (1) Upon its own motion or on written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board shall schedule an evidentiary hearing.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of evidence before the board, the objecting party shall state briefly the basis for objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

Section 7. Filing of Briefs. If applicable, a party of record shall file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 8. Local Public Hearings and Local Public Information Meetings. (1) A local public hearing or local public information meeting may be conducted before the board or before a person

designated by the board to conduct a specific hearing;

(2) A request for a local public hearing or local public information meeting shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least fourteen (14) days before the hearing date, give notice of the hearing or local public information meeting to:

(a) All parties to the proceeding;

(b) The judge or executive of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.

(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing or local public information meeting.

(5) Within seven (7) calendar days after the local public hearing or local public information meeting, administrative staff for the board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing or local public information meeting that:

(a) Identifies each person who made oral comments; and

(b) Summarizes the comments received.

Section 9. Notice Requirements. (1) Notice of an evidentiary hearing. At least three (3) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission line is proposed to be located.

(2) Notice of a local public hearing or local public information meeting. At least three (3) days before the hearing date or local public information meeting date, the applicant shall submit to the board proof that the general public has been provided notice of the hearing or local public information meeting in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the notice the following information:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene;

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and

(c) A request for a local public hearing or local public information meeting shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the pipeline, plant, or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 22, 2014, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, July 15, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may

submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to applications, filings, notice requirements, and hearings before the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board).

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedural rules for the Siting Board to administer KRS 278.700-278.716.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.702(3), which authorizes the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that merchant electric generators and the Siting Board must follow.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will add the requirement of including an electronic mailing address to the notice of intent.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment allows the regulation to conform to changes in 807 KAR 5:001 as well as recent revisions to KRS 278.380, which changed the method of delivery of the Public Service Commission's orders from United States mail to electronic transmission. The Siting Board is attached to the Public Service Commission for administrative purposes pursuant to KRS 278.702(3).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.702(3), which authorizes the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more guidance to merchant electric generators in regards to proceedings before the Siting Board and conforms the regulation to recent changes in KRS 278.380 and 807 KAR 5:001.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect merchant electric generators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In filing its notice of intent, a merchant electric generator will be responsible for providing the Siting Board with its electronic mail address.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides clarity regarding proceedings before the Siting Board.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Kentucky State Board on Electric Generation and Transmission Siting; Office of Attorney General (Utility Rate and Intervention Division).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 278.040(3) authorizes the commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.702(3), which authorizes the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendments for any governmental agency. The proposed amendments do not provide for the Public Service Commission or the Kentucky State Board on Electric Generation and Transmission Siting to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission or the Kentucky State Board on Electric Generation and Transmission Siting to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? There should be no increase in the Public Service Commission's or the Kentucky State Board on Electric Generation and Transmission Siting's cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission and the Kentucky State Board on Electric Generation and Transmission Siting will continue performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? There should be no increase in the Public Service Commission's or the Kentucky State Board on Electric Generation and Transmission Siting's cost of operations related to the revision of the administrative regulation for subsequent years. The Public Service Commission and the Kentucky State Board on Electric Generation and Transmission Siting will continue

performing the same level of review and require the same number of employees to conduct its review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET  
Public Service Commission  
(Amendment)**

**807 KAR 5:120. Applications for certificate of public convenience and necessity for certain electric transmission lines.**

RELATES TO: KRS 278.020(2), (8)

STATUTORY AUTHORITY: KRS 278.040(3)

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 278.020(2) provides that a certificate of public convenience and necessity must be obtained prior to construction of an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length. KRS 278.020(8) includes "a person over whose property the proposed transmission line will cross" among those persons who are an "interested party" who may move to intervene in the proceeding. This administrative regulation establishes procedures and minimum filing requirements for an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

Section 1. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length, an applicant shall file with the commission a notice of intent to file application. If an applicant fails to file an application within six (6) months of the filing of such a notice, the notice shall automatically expire without further notice to the applicant.

(2) A notice of intent to file application shall include:

(a) The name, address, ~~and~~ telephone number, and electronic mail address of the utility that intends to file the application;

(b) A description of the proposed construction that will be the subject of the application; and

(c) The name of the county or counties in which the construction will be proposed.

Section 2. Application. To apply for a certificate of public convenience and necessity to construct an electric transmission line of 138 kilovolts or more and more than 5,280 feet, a utility shall file with the commission the following:

(1) All documents and information required by:

(a) 807 KAR 5:001, Section 14, except that the applicant shall file the original and six (6) copies of the application; and

(b) 807 KAR 5:001, Section 15(2)(a) through (c) and (e) through ~~(f)~~~~(g)~~;

(2) Three (3) maps of suitable scale, but no less than one (1) inch equals 1,000 feet for the project proposed. The map detail shall show the location of the proposed transmission line centerline and right of way, and boundaries of each property crossed by the transmission line right of way as indicated on the property valuation administrator's maps, modified as required. Sketches of proposed typical transmission line support structures shall also be provided. A separate map of the same scale shall show any alternative routes that were considered;

(3) A verified statement that, according to county property valuation administrator records, each property owner over whose property the transmission line right-of-way is proposed to cross has been sent by first-class mail, addressed to the property owner at the owner's address as indicated by the county property valuation

administrator records, or hand delivered:

(a) Notice of the proposed construction;

(b) The commission docket number under which the application will be processed and a map showing the proposed route of the line;

(c) The address and telephone number of the executive director of the commission;

(d) A description of his or her rights to request a local public hearing and to request to intervene in the case; and

(e) A description of the project;

(4) A sample copy of each notice provided to a property owner, pursuant to the preceding paragraph, and a list of the names and addresses of the property owners to whom the notice has been sent.

(5) A statement that a notice of the intent to construct the proposed transmission line has been published in a newspaper of general circulation in the county or counties in which the construction is proposed, which notice included:

(a) A map showing the proposed route;

(b) A statement of the right to request a local public hearing; and

(c) A statement that interested persons have the right to request to intervene;

(6) A copy of the newspaper notice described in subsection 5 of this section; and

(7) A statement as to whether the project involves sufficient capital outlay to materially affect the existing financial condition of the utility involved.

Section 3. Local Public Hearing. (1) Any interested person under KRS 278.020(8) may request that a local public hearing be held by sending a written request complying with subsections (2) and (3) of this section to the Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. This hearing shall be requested no later than thirty (30) days after filing of an application for a certificate of public convenience and necessity.

(2) A request for a local public hearing shall contain:

(a) The docket number of the case to which the request refers;

(b) The name, address, and telephone number of the person requesting the hearing; and

(c) A statement as to whether the person requesting the hearing wishes to participate in an evidentiary hearing or to make unsworn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing as well, that person shall also apply to intervene in the commission proceeding on the application pursuant to 807 KAR 5:001, Section 4(11).

(4) At least five (5) days before the date established by the commission for a local public hearing, the applicant shall submit to the commission proof that it has given the general public notice of the hearing in a newspaper of general circulation in the county or counties in which the construction is proposed.

Section 4. Deviation from Rules. The provisions of 807 KAR 5:001, Section 22[24] apply to applications filed under this administrative regulation, except that the commission shall not permit a deviation from the requirements of this administrative regulation unless the commission finds that failure to permit the deviation will adversely affect utility rates or service.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 22, 2014, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, July 15, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public.

Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to applications, filings, notice requirements, and hearings before the Public Service Commission.

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedural rules and minimum filing requirements for an application to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.020(2) and 278.020(8).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that utilities and the Public Service Commission must follow.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will add the requirement of including an electronic mailing address to the notice of intent and will delete a requirement to what should be included in an application for a certificate of public convenience and necessity to construct an electric transmission line.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment allows the regulation to conform to changes in 807 KAR 5:001 as well as recent revisions to KRS 278.380, which changed the method of delivery of the commission's orders from United States mail to electronic transmission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.020(2) provides that a certificate of public convenience and necessity must be obtained prior to construction of an electric transmission line that is 138 kilovolts or more and more than 5,280 feet in length. KRS 278.020(8) includes a person whose property the proposed electric transmission line will cross among those persons who are an interested party who may move to intervene in the proceeding.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more guidance to utilities in regards to proceedings before the Commission and conforms the regulation to recent changes in KRS 278.380 and 807 KAR 5:001.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all electric utilities who intend to construct an electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In filing its notice of intent, an electric utility will be responsible for providing the Commission with its electronic mail address.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides clarity regarding proceedings before the Commission.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.020(2) provides that a certificate of public convenience and necessity must be obtained prior to construction of an electric transmission line that is 138 kilovolts or more and more than 5,280 feet in length. KRS 278.020(8) includes a person whose property the proposed electric transmission line will cross among those persons who are an interested party who may move to intervene in the proceeding.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendments for any governmental agency. The proposed amendments do not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? There should be no increase in the Public

Service Commission's cost of operations related to the revision of the administrative regulation for subsequent years. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(Amendment)**

**815 KAR 20:040. Vehicle[Truck] identification.**

RELATES TO: KRS 318.170

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The office is directed by] KRS 318.170 authorizes agents of the department to enforce the provisions of the state plumbing laws and code. This administrative regulation establishes the identification requirements for all vehicles used in the operation of a plumbing business. [It is difficult to maintain adequate surveillance for persons who are installing or constructing plumbing systems without their trucks being properly identified. Identification as set forth in this administrative regulation would greatly assist the department in carrying out this function. This amendment is necessary to bring the administrative regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made].~~

Section 1. Vehicle[Truck] Identification. (1) All vehicles[trucks] used in the operation of a plumbing business shall be properly identified.

(2) Each vehicle[The equipment] shall bear the name of the company and the master plumber's Kentucky license number.

(3) All the identification required by this administrative regulation shall be in letters not smaller than three (3) inches high and shall be kept legible at all times.

JACK COLEMAN, Deputy Commissioner  
For AMBROSE WILSON IV, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel,  
Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the identification requirements for all vehicles used in the operation of a plumbing business.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect plumbing activity in the Commonwealth and identify licensed individuals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.170 empowers the department's agents and inspectors to make all reasonable inspections, interrogations and demands for production of evidence necessary to enforce the provisions of Kentucky plumbing law, and KRS 318.130 permits the department to adopt any other reasonable rule or regulation to administer the provisions of Chapter 318.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing inspectors in identifying plumbing activity that may necessitate inspection, and in identifying the individuals responsible for the conduct of that activity.

(2) If 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 merely replaces all references to "trucks" with "vehicles," in order to clarify that the regulation was not intended to be limited to trucks or to imply that plumbers may only utilize trucks in the operation of a plumbing business.

(b) The necessity of the amendment to this administrative regulation: To clarify the intended scope of this regulation and avoid potential confusion regarding same.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.170 empowers the department's agents and inspectors to make all reasonable inspections, interrogations and demands for production of evidence necessary to enforce the provisions of Kentucky plumbing law, and KRS 318.130 permits the department to adopt any other reasonable rule or regulation to administer the provisions of Chapter 318.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will enhance clarity regarding vehicle identification requirements and help ensure that all plumbing operation vehicles are correctly marked and identifiable by Division of Plumbing inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing trade within the Commonwealth.

(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 comply with this administrative regulation or amendment: The identified entities must ensure that all vehicles used in the operation of their plumbing business are marked with the name of the company and its master plumber's license number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities are not anticipated to incur any substantial new expenses, as this amendment primarily clarifies the scope of an existing requirement with which they are already required to comply. Moreover, increased expenses associated related to compliance with vehicle stenciling or similar identification are anticipated to be nominal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include increased clarity of existing standards.

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



(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all plumbing operations will be subject to the amended requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130 and 318.170.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not anticipated to generate additional revenues for the agency.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

#### 815 KAR 20:050. Installation permits.

RELATES TO: KRS 318.030, 318.134, 318.160[~~EO 2009-535~~]

STATUTORY AUTHORITY: KRS 318.130, 318.134(3)[~~EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.134(3) requires the department[office] to establish a

reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. KRS 318.130 authorizes the department to promulgate a reasonable rule or administrative regulation to administer the provisions of KRS Chapter 318[~~EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department~~]. This administrative regulation establishes the requirements, fees, and charges for plumbing installation permits and inspections in Kentucky.

Section 1. Issuance of Permits. (1) Permits to construct, install, or alter plumbing, sewerage, or drainage shall be issued only to licensed master plumbers except as established in[~~provided by~~] subsection (3) of this section.

(2) A journeyman plumber[~~plumbers~~] shall not construct, install, or alter plumbing, sewerage, or drainage unless the work is performed under the supervision of a licensed master plumber.

(3) A permit[~~Permits~~] to construct, install, or alter plumbing, sewerage, or drainage shall be issued to a homeowner desiring to install plumbing in a home occupied by the homeowner or constructed by the homeowner for the homeowner's[~~homeowners who desire to install plumbing in homes actually occupied by them or in a home to be constructed by them for their~~] own personal residential use, if[~~all the following requirements are met~~]:

(a) Application is made for the permit prior to the beginning of the work;

(b) The homeowner files with the application an affidavit stating that the homeowner shall abide by the terms of this section;

(c) All work shall be performed in compliance with the state plumbing code;

(d) All the work shall be personally performed by the homeowner; and

(e) The homeowner shall not have obtained another homeowner permit for construction of a new home issued within the last five (5) years.

(4) A permit shall not be required for:

(a) The repairing of the following:

1. Leaks;

2. Cocks; or

3. Valves; or

(b) Cleaning out waste or sewer pipes.

Section 2. Conditions Under which a Permit Shall be[~~When a Permit is~~] Required. A plumbing installation permit shall be required for[~~the following~~]:

(1) A new plumbing installation[~~installations~~];

(2) An existing plumbing installation[~~installations~~] if a fixture, soil, or waste opening or conductor is to be moved or relocated;

(3) Each individual unit of a multistory building if there is more than one (1) unit;

(4) A building that is[~~Buildings which are~~] considered separate if:

(a) The connection between the building and another building[~~them~~] is not a necessary part of the structure of either building; or

(b) The building's roof is not part of the roof of another building[~~They are not under a continuous roof~~];

(5) A new house sewer or a house sewer that is to be replaced;

(6) A new water service or a water service that is to be replaced;

(7) The addition of a backflow prevention device to an existing water service;

(8) A new water heater installation or a water heater installation that is to be replaced; or

(9) Taking over a plumbing installation originally permitted to another master plumber or assuming responsibility to correct and test an installation made by someone else.

Section 3. Plumbing Installation Permit Fees. (1) The base fee

for each plumbing installation permit for residential, one (1) and two (2) family units, shall be forty-five (45) dollars plus seven (7) dollars for each:

(a) ~~[Seven (7) dollars for each]~~ Plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) ~~[Seven (7) dollars for each]~~ Domestic water heater; and

(c) ~~[Seven (7) dollars for each]~~ Separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be forty-five (45) dollars plus ten (10) dollars for each[:];

(a) ~~[Ten (10) dollars for each]~~ Plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) ~~[Ten (10) dollars for each]~~ Domestic water heater;

(c) ~~[Ten (10) dollars for each]~~ Conductor opening; and

(d) ~~[Ten (10) dollars for each]~~ Separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3)(a) If only one (1) new domestic water heater is installed or replaced within a single building, the only fee for the plumbing installation permit shall be forty-five (45) dollars.

(b) ~~[Alternatively,]~~ If more than one (1) water heater is replaced within a building, a permit shall be required pursuant to ~~[issued under]~~ Sections 1 or 2 of this administrative regulation.

(4) If the application for permit does not include any new installation but is to make corrections to or to provide testing for an installation made by someone else, the permit fee shall be limited to the base fee of forty-five (45) dollars only.

Section 4. Inspection Fees. (1) A person with a plumbing permit ~~[All persons securing plumbing permits]~~ shall be entitled to five (5) plumbing inspections at no additional cost.

(2) Each ~~[All]~~ plumbing inspection ~~[inspections]~~ in excess of five (5) shall be charged at the rate of fifty (50) dollars per inspection and shall be paid prior to the final inspection.

(3) Inspection fees shall not apply if the cost of the permit exceeds \$200.

Section 5. Expiration of Permits. (1) Except as established ~~[provided]~~ in subsection (2) of this section, all plumbing installations permits issued pursuant to ~~[under]~~ this administrative regulation shall expire one (1) year after the date of issuance.

(2)(a) Except as established in paragraph (b) of this subsection, if construction is begun within one (1) year after the date the permit is issued, the permit shall remain effective ~~[not expire]~~ until completion of the planned plumbing inspection.

(b) The permit shall expire and become void if the plumbing work ceases on the project for a period exceeding twelve (12) months.

Section 6. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation, or alteration of plumbing in public buildings shall be the same as established ~~[specified]~~ in Section 4 of this administrative regulation.

JACK COLEMAN, Deputy Commissioner

For AMBROSE WILSON IV, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, fees and charges for plumbing installation permits and inspections in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's duty to administer and enforce uniform standards for the permitting and inspection of plumbing work.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform guidelines for the permitting and inspection fees to be charged in performing its oversight role over plumbing work in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the expiration of a plumbing permit in the event that plumbing work begun on the project ceases for a period of over one (1) year.

(b) The necessity of the amendment to this administrative regulation: To clarify that the existing one (1) year expiration period for permits also applies to projects where no ongoing work is being performed for over a year.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 permits the department to adopt any reasonable rule or regulation to administer the provisions of Chapter 318.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will enhance clarity regarding the intended scope of the existing permit expiration provisions and establish the intent that a permit only remains active for a project for which ongoing work continues to be performed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity within the Commonwealth for which a permit is required.

(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 comply with this administrative regulation or amendment: This amendment requires no additional affirmative actions by the affected parties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities are not anticipated to incur any substantial new expenses as a result of this amendment, which merely clarifies the expiration of the permit for an inactive project.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include increased clarity regarding the permitting of inactive projects.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all permitted plumbing operations will be subject to the amended requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is required by KRS 318.134(3).

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

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

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

#### 815 KAR 20:060. Quality and weight of materials.

RELATES TO: KRS 318.130, 318.150, 42 U.S.C. 300g-6(d)(2)  
STATUTORY AUTHORITY: KRS 198B.040(10), 318.130[=EQ

2008-507]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the ~~department[office]~~, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the quality and weight of material. This administrative regulation ~~establishes[identifies and publishes]~~ the manufacturer's specification number for the quality and weight of material that shall be used in the installation of plumbing systems and establishes minimum specifications for the intended use.

Section 1. Definition of Terms. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2)[~~"ASSE" means American Society of Sanitary Engineers and copies of specifications identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.~~]

(3)[~~"ASTM" means American Society for Testing and Materials and copies of specifications identified in this administrative regulation can[may] be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~]

(3)[(4)] "CISPI" means the Cast Iron Soil Pipe Institute and copies of specifications identified in this administrative regulation ~~can[may]~~ be obtained by writing the Cast Iron Soil Pipe Institute, 5959 Shallowford Road, Suite 419, Chattanooga, TN 37421.

(4)[(5)] "~~DWV pipe" means drain, waste and vent piping, including aluminum, as used in common plumbing practice.~~"

(6)[~~"Lead" means solders and flux containing more than two-tenths (0.2) percent lead and the wetted surfaces of pipes,[and] pipe fittings, plumbing fittings, and fixtures containing more than a weighted average of one quarter (0.25)[eight (8.0)] percent lead as calculated according to the formula established in 42 U.S.C. 300g-6(d)(2).~~]

(5)[(7)] "PVC" means polyvinyl chloride.[(8) "~~Waste pipe" means a pipe which conveys only waste.~~]

Section 2. Quality of Materials. The material used in a drainage or plumbing system or part of a system shall be free of defects.

Section 3. Label, Cast, or Stamped. Each length of pipe, fitting, trap, fixture, or device used in a plumbing or drainage system shall be stamped or indelibly marked with the:

(1) [~~The~~]Weight or quality; and

(2) [~~The~~]Maker's mark or name (manufacturer's specification number).

Section 4. Vitrified clay pipe, concrete pipe, truss pipe, and extra heavy SDR 35 sewer piping shall be produced,~~[and] labeled,~~ and used only as established in subsections (1) through (4) of this subsection.~~[follows:]~~

(1) Vitrified clay pipe ~~shall be as established in[.]~~ ASTM C-700.

(2) Concrete pipe ~~shall be as established in[.]~~ ASTM C-14.

(3) Truss pipe ~~shall be as established in[.]~~ ASTM D-2680. Solid wall truss pipe ~~shall be as established in[.]~~ ASTM D2751.

(4) Extra heavy SDR 35 sewer piping ~~shall be as established in[.]~~ ASTM D-3033-74 and D-3034-74.

Section 5. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall be produced and labeled as ASTM A74.

(2) Service-weight. Service-weight cast-iron pipe and fittings shall be produced and labeled as ASTM A74 and C1563.

(3) No-hub cast-iron and fittings shall be produced and labeled ASTM 888 or CISPI 301.

(4) No-hub couplings shall be produced and labeled as ASTM C1277, C564, C1563, or CISPI 310.

(5) Coating. Cast-iron pipe and fittings for underground use shall be coated with:

(a) Asphaltum;

(b) Coal tar pitch; or

(c) A coating produced and labeled as ASTM A743.

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Section 6. Wrought-iron Pipe. All wrought-iron pipe shall be produced and labeled with the latest ASTM "specifications for welded wrought iron pipe".

Section 7. Mild-steel Pipe. Steel pipe shall be produced and labeled with the latest ASTM "specifications for welded and seamless steel pipe".

Section 8. Brass Pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe, and brass tubing shall be produced and labeled with the latest specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes".

Section 9. Borosilicate Pipe, Plastic Pipe, Stainless Steel Tubing, Polyethylene Pipe, and Polypropylene Pipe. (1) Borosilicate pipe. Borosilicate pipe shall be produced and labeled with the latest ASTM specifications.

(2) Plastic pipe. All plastic piping used in a drainage, waste and vent system shall be:

(a) Schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride produced and labeled as ASTM D1784;

(b) Cellular core PVC produced and labeled ASTM F-891;

(c) Schedule 40 or 80 acrylonitrile-butadiene-styrene produced and labeled as ASTM D2661; or

(d) Cellular core ABS produced and labeled as ASTM F-628.

(3) Pipe and fittings shall be produced and labeled in accordance with the provisions of ASTM-D-2665, as amended, for PVC and ASTM-D-2661 for ABS, and both shall bear the National Sanitation Foundation seal of approval.

(4) Copies of National Sanitation Foundation specifications for the manufacture[manufacturer] of products identified in this administrative regulation may be obtained by writing the National Sanitation Foundation (NSF), 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106.

(5) All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification, and the size.

(6) The use of plastic pipe and fittings (PVC or ABS) shall be restricted to buildings if the soil or waste and vent stack do not exceed forty-five (45) feet in height, beginning at the floor or slab in which the soil or waste and vent stack first penetrates the floor or slab and through the vertical distance to its terminus through the roof of the building.

(7) Stainless steel tubing.

(a) Stainless steel tubing for hot and cold water piping shall be Grade H produced and labeled as ASTM A268/268M.

(b) Stainless steel tubing for the soil, waste and vent system shall be either Grade G or H produced and labeled as ASTM A268/268M.

(8) Polyethylene pipe. Polyethylene pipe used in acid waste systems shall be produced and labeled as ASTM D-1204.

(9) Polypropylene pipe. Polypropylene pipe used in acid waste systems shall be produced and labeled as ASTM D-4101 or ASTM F-1412.

Section 10. Lead Pipe, Diameter, Weights. (1) Lead soil, waste and vent pipe shall be produced and labeled as Federal Specifications WW-P-325[,] and shall not be lighter than the [following] weights established in the following table:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"	Wall Thickness Inches	Weight Pounds	Per Foot Ounces
1 1/2	D XL	0.138	3	8
2	D XL	0.142	4	12
3	D XL	0.125	6	0
4	D XL	0.125	8	0

(2) Lead bends and lead traps. All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness.

Section 11. Integral Flashing. If a roofing system requires

integral flashing, a flashing material, which is part of the manufactured roofing system and required by the roofing manufacturer to guarantee or warranty the roofing system, shall be used.

Section 12. Sheet Lead. Sheet lead for a shower pan shall not weigh less than four (4) pounds per square foot and shall not weigh less than two and one-half (2 1/2) pounds per square foot for vent pipe flashings.

Section 13. Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except local and interior ventilating pipe shall not be lighter than No. 26 B. & S. gauge.

Section 14. Threaded Fittings. (1) A plain screw fitting shall be either cast-iron, malleable iron, or brass of standard weight and dimension.

(2) A drainage fitting shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) A cast-iron fitting used in a water supply distribution shall be galvanized.

(4) A malleable iron fitting shall be galvanized.

Section 15. Caulking Ferrules. A caulking ferrule shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb. 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 16. Soldering Nipples. A soldering nipple shall be recessed red cast brass, iron pipe size. If cast, they shall be full bore and of minimum weight.

Section 17. Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. (1) A floor flange shall either be:

(a) Hard lead;

(b) Brass;

(c) Cast iron;

(d) Galvanized malleable iron;

(e) ABS; or

(f) PVC.

(2) A hard lead or brass flange shall not be less than one-eighth (1/8) inch thick.

(3) Cast iron or galvanized malleable iron shall:

(a) Not be less than one-fourth (1/4) inch thick; and

(b) Have a two (2) inch caulking depth.

Section 18. Use of Lead. (1) Lead shall not be used in the installation or repair of a public or private water system providing potable water for human consumption.

(2) This section shall not apply to:

(a) Pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses in which the water is not anticipated to be used for human consumption; or

(b) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are two (2) inches in diameter or larger.

Section 19. New Materials. (1) Materials other than those established[specified] in this administrative regulation shall be prohibited unless the material is specifically approved by the State Plumbing Code Committee and the Office of Housing, Buildings, and Construction as being equal to or better than the material specified in the State Plumbing Code.

(2) It shall be the responsibility of any person or company

seeking the approval of a material not included in this code to prove to the satisfaction of these agencies that the material is equal to or better than the material which it is intended to replace.

(3) Procedural requirements for approval of new parts and materials are established[set forth] in 815 KAR 20:020.

JACK COLEMAN, Deputy Commissioner

For AMBROSE WILSON IV, Chairman

LARRY BOND, ACTING SECRETARY

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the type, quality and manufacturing specifications of materials that may be used in plumbing systems in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the construction and quality of materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the quality and construction of materials used in all regulated plumbing systems.

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

(a) How the amendment will change this existing administrative regulation: This amendment lowers the maximum permissible lead content for certain materials used in plumbing systems delivering water anticipated to be used for human consumption.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with recently amended federal lead-free standards enacted under the Safe Drinking Water Act, 42 U.S.C. §§300f-j-26.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the permissible quality and content of materials that may be used in potable water plumbing systems.

(d) How the amendment will assist in the effective

administration of the statutes: This amendment will ensure conformity and uniformity with federally-mandated lead-free standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity related to public or private potable water systems within the Commonwealth.

(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 comply with this administrative regulation or amendment: The affected parties will be required to use only approved lead-free materials in connection with the installation or repair of potable water systems as set forth in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities are not anticipated to incur substantially increased expenses as a result of this amendment, as the new lead-free materials requirements only apply to certain components, and the prices of those products will normalize during the course of national compliance. Moreover, any increased expenses associated related to compliance with new lead-free compliant materials are subject to offset or pass through.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include compliance with federal law and uniformity in standards.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant potable water plumbing work will be subject to the amended requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is required by KRS 318.130. This amendment is required in order to comply with the revised lead-free standards mandated by the federal Safe Drinking Water Act, 42 U.S.C. §300g-6(d).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not anticipated to generate additional revenues for the agency.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(Amendment)**

**815 KAR 20:070. Plumbing fixtures.**

RELATES TO: KRS 318.010, 318.015, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the kind, type, and quality of plumbing fixtures to be used in the construction of plumbing systems. This administrative regulation establishes the requirements for plumbing fixtures allowed in Kentucky.

Section 1. Materials. Receptacles used as water closets, urinals, or for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as established~~[indicated]~~ in Section 4 of this administrative regulation.

Section 2. Installation. Plumbing fixtures shall be installed to allow access for cleaning.

(1) All pipes from fixtures shall be run to the wall.

(2) A trap or pipe shall not extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. (1) A water closet bowl shall be of one (1) piece construction and hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces.

(2) A water closet bowl~~[, and it]~~ shall be provided with an integral flushing rim to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. (1) A plastic water closet bowl and tank shall be constructed with a polypropylene lining inside the one (1) piece bowl and tank.

(2) The outer surface of the bowl shall be constructed of PVC material.

(3) The filler material between the lining and outer surface shall be made of polyurethane foam.

(4) The bowl shall have:

(a) A three (3) inch water seal; and

(b) A two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. (1) A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy.

(2) The room shall be tightly enclosed and accessible from the outside only.

(3) The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside.

(4) The building shall have a nonabsorbent floor.

(5) A frost-proof water closet shall have a four (4) inch vent.

Section 6. ~~Floor and Shower Drains.~~ (1) ~~[Floor drains and Shower Drains.]~~ A floor drain or a shower drain shall be considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction.

(a) A shower pan shall be constructed without a seam and shall extend to a minimum height of six (6) inches on all vertical walls.

(b) A shower pan shall not be required on a concrete floor before the outside grade level.

(c) A shower drain pan shall be constructed ~~off~~~~[as follows]~~:

1. ~~[Of]~~Sheet lead weighing not less than four (4) pounds per square foot;

2. ~~[Of]~~Nonplasticized chlorinated polyethylene produced and labeled as ASTM D-412 and D-1204, which~~[and they]~~ shall be not less than 0.040 inches thick;

3. ~~[Of]~~Nonplasticized polyvinyl chloride (PVC) sheet material produced and labeled as ASTM D-1004, D-412, 06A, and D-1790, which~~[and they]~~ shall be not less than 0.040 inches thick; or

4. ~~[Of]~~Other approved material as established~~[provided]~~ in 815 KAR 20:020, Section 5. Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Fiberglass bathtubs, showers, tub enclosures, and shower stalls.

(a)~~[4.]~~ Fiberglass bathtubs and tub enclosures shall be produced and labeled as ANSI Z 124.1.

(b) Acrylic-faced bathtubs shall be produced and labeled as ASTM E8408A or E 162.

(c) Fiberglass shower stalls and shower receptors shall be produced and labeled as ANSI Z 124.2.

(4) Metamorphosed carbonate aggregate polyester resinous matrix-marbleoid bathtubs, lavatories, and shower stalls.

(a)1. Metamorphosed carbonate aggregate polyester resinous matrix-marbleoid bathtubs shall be produced and labeled as ANSI Z 124-1.

2. Lavatories shall be produced and labeled as ANSI Z 124-3.

3. Shower stalls shall be produced and labeled as ANSI Z 124-2.

(b) Copies of ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 7. Fixture Strainers. (1) A fixture, other than a water closet or a pedestal urinal, shall be provided with a strainer.

(2) The outlet area of the strainer shall not be less than the interior area of the trap.

Section 8. Fixture Overflow. The overflow from a fixture shall be optional, but if used, the overflow shall be connected to the inlet side of a trap and accessible for cleaning.

Section 9. Fixture Additions. A fixture added to a plumbing system shall be installed to comply with all applicable sections of the State Plumbing Code.

Section 10. Defective Fixtures. If a newly installed fixture is found to be defective or if an old fixture is found to be in an unusable condition, it shall be repaired, replaced, or removed within thirty (30) days upon written notice from the office.

Section 11. Water Heaters. (1) A water heater shall be properly connected to the hot and cold water supply.

(2) A water heater designed for use as an appliance for

supplying potable hot water for domestic or commercial purposes may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit.

(3) Every water heater shall be accessible for inspection, repair, and replacement.

(4)(a) If a water heater is installed in a crawl space after September 1, 2006, it shall have adequate access with a travel path no less than five (5) feet of vertical distance and be installed on at least a two (2) inch thick noncorrosive material adequate to support the heater.

(b) The replacement of a water heater that was originally installed in a crawl space prior to September 1, 2006 shall not require compliance with the vertical distance requirement of this subsection.

(5) If a water heater is located in an attic of a residence, a water tight pan of corrosion resistant material shall be installed beneath the water heater and shall be equipped with at least a three-quarter (3/4) inch drain to be piped similarly to a pressure and temperature relief valve discharge line.

(6) A fuel-fired water heater shall be connected to a flue or chimney of a size that shall be~~[which is]~~ at least as large as the size required by the water heater manufacturer's instructions.

(7) A fuel-fired water heater vent~~[Fuel-fired water heater vents]~~ shall not be connected to a flue serving a coal-burning apparatus.

(8) The flue or chimney shall extend two (2) feet above the roof and shall be properly flashed and shall not terminate within six (6) feet of a door or window.

(9) A fuel-fired water heater, with the exception of those having direct-vent or through the wall vent systems, shall not be placed in any bathroom, toilet room, or a room used for sleeping.

(10) If a fuel-fired water heater is placed in a closed room or closet, the door shall be a louver door or shall be properly ventilated to provide combustion air and circulation in accordance with the Fuel Gas Code incorporated by reference in Chapter 35 of the Kentucky Building Code filed in 815 KAR 7:120.

(11) Direct venting system location.

(a) A residential gas-fired direct vent and through the wall type water heater~~[heaters]~~ shall be vented in accordance with the manufacturer's recommendations and shall be installed in accordance with the Fuel Gas Code incorporated by reference in the Kentucky Building Code filed in 815 KAR 7:120.

(b)1. The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building.

2.~~[, and]~~ An appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance.

(c) The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade.

(12) An instantaneous water heater~~[instantaneous water heaters]~~ not listed in 815 KAR 20:020 shall:

(a) 1. Be certified to ANSI Z21.10.1 for units including but not exceeding 75,000 BTUs; or

2. Be certified to ANSI Z21.10.3 for units exceeding 75,000 BTUs;

(b) Have a minimum of 3/4 inch inlet and outlet;

(c) Be installed with a properly sized [temperature and] pressure relief valve not exceeding 150 pounds per square inch~~[installed within the heater or within the first six (6) inches of the outlet immersed in the flow of the water];~~ and

(d) If required by the manufacturer to be periodically flushed, be installed to flush without altering the installation.

(13) Temperature and pressure relief valves shall be installed in accordance to manufacturer's requirements.

Section 12. Conservation of Water. (1) Conservation of hot water.

(a) Showers. A shower used for other than safety reasons shall be equipped with an approved flow control device, which shall limit the total flow to a maximum of two and one-half (2.5) gallons per minute per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped

with an outlet device, which shall limit the flow of domestic hot water to a maximum of 0.75 gallons per minute.

2. Lavatory faucets (other than those in restrooms of public facilities) shall be equipped with a flow control device, which shall limit the flow of domestic hot water to a maximum of two (2.0) gallons per minute.

3. Sink faucets shall be equipped with a flow control device, which shall limit the flow of domestic hot water to a maximum of two and one-half (2.5) gallons per minute.

(2) Conservation of cold water.

(a) Showers. A shower used for other than safety reasons shall be equipped with an approved control device to limit the total flow to a maximum of two and one-half (2.5) gallons per minute per shower head.

(b) Lavatory and sink faucets.

1. Lavatory faucets. Lavatory faucets shall be equipped with a flow control device, which shall limit the flow of the domestic cold water to a maximum of two (2.0) gallons per minute.

2. Sink faucets. Sink faucets shall be equipped with a flow control device, which shall limit the flow of domestic cold water to a maximum of two and one-half (2.5) gallons per minute.

(c) Water closets. A water closet shall not be installed in a facility or building unless it is of a type designed and manufactured to limit the gallons per flush as required by this subsection.

1. Residential (private use) installations. A water closet for private use in a single family dwelling, duplex, or townhouse, condominium or apartment unit shall not exceed one and six-tenths (1.6) gallons per flush.

2. Commercial (public use) installations. A water closet for public use, including a commercial building, shall not exceed three and one-half (3.5) gallons per flush.

(d) Urinals. A urinal shall not exceed one (1.0) gallon per flush.

(3)(a) The provisions of this section shall apply to new construction, renovation, or replacement in an existing structure.

(b) Upon compliance with the requirements of this section, the Division of Plumbing shall permit the installation of a tank type water closet equipped with devices found by the inspector to meet applicable specifications in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters).

(c) The Division of Plumbing shall allow the use of a standard flush water closet and a urinal that~~[which]~~ does not meet the specific specifications ~~if, in the opinion of the division,~~ the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if the owner requests the use of antique fixtures that would~~[which may]~~ not be equipped for reduced flow.

JACK COLEMAN, Deputy Commissioner

For AMBROSE WILSON IV, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero

Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for plumbing fixtures allowed in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, including the methods and materials to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the kind, type and quality of plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the quality and construction of fixtures used in all regulated plumbing systems.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that the vertical distance requirement for water heaters installed in crawlspaces does not apply to the replacement of crawlspace heaters that were originally installed before the vertical distance requirement first became effective on September 1, 2006. In addition, this amendment requires instantaneous water heaters that are not on Kentucky's approved parts and materials list (815 KAR 20:020) to be installed with a pressure relief valve not exceeding 150 pounds per square inch.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to resolve confusion that has arisen in the enforcement of post-2006 crawlspace water heater installation inspections where the vertical distance requirement cannot be met because the condition does not exist as originally constructed and intended, and in order to ensure that certain instantaneous water heaters that have not been specifically approved for use are installed with minimum safety features.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the permissible quality and type of fixtures that may be used in plumbing systems.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure conformity and uniformity with construction, installation and safety standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity within the Commonwealth.

(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 comply with this administrative regulation or amendment: The affected parties will be required to install a compliant pressure relief valve if they choose to install an instantaneous water heater that is not pre-approved by 815 KAR 20:020.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities are not anticipated to incur substantially increased expenses as a result of this amendment, as

the cost of including a pressure relief valve in the subject water heaters is expected to be negligible. Moreover, any increased expenses associated related to compliance with new lead-free compliant materials are subject to offset or pass through.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include greater flexibility in the replacement of existing crawlspace water heaters, and enhanced uniform safety standards regarding instantaneous water heaters.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant plumbing work will be subject to the amended requirements.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not anticipated to generate additional revenues for the agency.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.



**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(Amendment)**

**815 KAR 20:090. Soil, waste, and vent systems.**

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200[~~EO-2009-535~~]

STATUTORY AUTHORITY: KRS 318.130[~~EO-2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for soil, waste, and vent systems.[~~EO-2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes[~~identifies and publishes~~] the manufacturer's specification number of the material accepted in the installation and design of soil, waste, and vent systems in each type of plumbing system.

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot[,] and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) A stack shall be supported at its base, and each pipe shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at:

- (a) Intervals not to exceed four (4) feet;
- (b) ~~At~~The base of each vertical stack; and
- (c) ~~At~~Each trap branch as close to the trap as possible.

(5) Polyethylene pipe and fittings shall be continuously supported with a V channel.

(6) A stack shall be rigidly supported at its base and at the floor level.

Section 2. Change in Direction. (1) Except as provided in subsections (2), (3), or (4) of this section, a change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend.

(2) A single sanitary tee may be used in a vertical stack.

(3) A sanitary tee may be turned on its back or side. If turned on its back or side, a sanitary tee shall not be placed at an angle of ~~not~~more than forty-five (45) degrees.

(4) A double sanitary tee may be used on a vertical soil, waste, and vent line.

Section 3. Prohibited Fittings. The following shall be prohibited:

- (1) A double hub bend and double hub tee or inverted hub on a sewer, soil, or waste line;
- (2) The drilling and tapping of a house sewer or house drain, soil, waste, or vent pipe;
- (3) The use of a saddle hub; and
- (4) Pipe installed with a hub or restriction that reduces the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, a dead end shall not be used.

Section 5. Protection of Material. (1) A pipe passing under or through a wall shall be protected from breakage.

(2) A pipe passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste, and vent pipes and fittings within or underneath a building shall be:

- (a) Hub and spigot extra heavy or service weight cast iron;
  - (b) No-hub service weight cast iron;
  - (c) Galvanized steel;
  - (d) Galvanized wrought iron;
  - (e) Lead;
  - (f) Brass;
  - (g) Types K, L, M, and DWV copper;
  - (h) Standard high-frequency welded tubing produced and labeled with the latest ASTM specifications;
  - (i) Types R-K, R-L, R-DWV brass tubing;
  - (j) DWV brass tubing produced and labeled as ASTM B587;
  - (k) Seamless stainless steel tubing;
  - (l) Grade G or H produced and labeled as ASTM A-312;
  - (m) Polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D2665, D1784, and F-891;
  - (n) Coextruded composite PVC pipe produced and labeled ASTM F-1488;
  - (o) Acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D2661, F-1488, or F-628; or
  - (p) Silicon iron or borosilicate.
- (2) A main or branch soil waste and vent pipe and fittings underground shall either be:
- (a) Hub and spigot extra heavy or service weight cast iron;
  - (b) No-hub service weight cast iron;
  - (c) Type K or L copper pipe;
  - (d) Type R-K, R-L brass tubing;
  - (e) Lead; or
  - (f) Silicon iron or borosilicate pipe and fittings or plastics DWV established[~~identified~~] in this section.

(3) Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter and shall extend no less than twelve (12) inches above the concrete slab.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. (1) The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4	unlimited	172
5	unlimited	342
6	unlimited	576
8	unlimited	1600
10	unlimited	2900
12	unlimited	4600

(2) A water closet shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

Section 8. Soil and Vent Stacks. (1) A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof.

(2) A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns.

(3) The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that more than three (3) water closets shall not discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste, and vent piping and shall comply with this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. (1) A soil and waste stack or branch shall have correctly faced inlets for fixture connections.

(2) Each fixture shall be independently connected to the soil or waste system.

(3) A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be:

- (a) Cast iron;
- (b) Lead;
- (c) Brass;
- (d) Copper; or
- (e) Plastic closet bend.

(4) A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. ~~In an existing building~~ If the soil, waste, and vent piping in an existing building is not extended undiminished through the roof, or if there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. (1) A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture.

(2) A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste, and Vent Pipe Protected. (1) Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost.

(2) The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. (1) A roof extension of soil and waste stacks shall run full size at least one (1) foot above the roof.

(2) If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof.

(3) A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof.

(4) If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face, or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. (1) Soil, waste, or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing.

(2) If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten

(10) feet of an existing vent stack on the lower building.

Section 18. Protected Traps and Vents. (1) A fixture trap shall be protected against siphonage and backpressure.

(2) Air circulation shall be assured by means of an individual vent.

(3) A crown vent shall not be permitted.

Section 19. Distance of Trap from Vent. (1)(a) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening.

(b) The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed.

(c) A fixture trap shall have a vent located with a developed length not greater than that ~~set forth~~ in the following table ~~below~~:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than four (4) feet six (6) inches.

Section 20. Main Vents to Connect at Base. (1) All main vents or vent stacks shall:

(a) Connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch; and

(b) Extend undiminished in size through the roof or be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture.

(2)(a) Except as ~~established~~ ~~provided~~ in paragraph (b) of this subsection, if it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base.

(b) If the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS		
Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. (1) A vent or branch vent pipe shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity.

(2) If a vent pipe connects to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe shall rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. Vents Not Required; Backwater Traps, Subsoil Catch Basin, and Basement Floor Drains. (1) A vent shall not be required on a backwater trap, subsoil catch basin trap, or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet.

(2) A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. Conditions Under Which~~When~~ Common Vent Permissible. If two (2) water closets, two (2) lavatories, or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the ~~prescribed~~ distance established~~as set forth~~ in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with this administrative regulation.

Section 26. Floor Drain Individual Vent Not Required. (1) A manufacturer's floor drain shall not require an individual vent if placed on a waste line for a floor drain within the ~~prescribed~~ distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack.

(2) An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. Floor Drain. A floor drain or service sink installed on the operational floor level of a sewage and water treatment plant facility ~~that~~which discharges into an open sump and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. A house drain shall be:

- (1) Extra heavy cast iron;
- (2) Service weight cast iron;
- (3) Brass;
- (4) Type (K) or (L) copper;
- (5) Lead;
- (6) ABS or PVC plastic; or
- (7) Duriron.

Section 29. Indirect Waste Connections. (1) Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor shall connect indirectly with the house drain, soil or waste pipe.

(2) The drain shall be vented to the outside air.

(3) The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation.

(4) The connection shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. (1)(a) A bar and soda fountain waste, sink, or receptacle shall have a one and one-half (1 1/2) inch P trap and branches.

(b) The main shall not be less than two (2) inches.

(c) The fresh air pipe shall not be less than one and one-half (1 1/2) inches.

(d) The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building.

(2) A floor receptor or floor sink may be installed flush with the finished floor if it has a full grate with an attached funnel to receive indirect waste.

(3) A floor receptor or floor sink installed specifically for the indirect wastes from a tilting braising pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if it discharges into a septic system.

Section 32. Refrigerator and Condensate Wastes. (1) A refrigerator or condensate discharge waste pipe shall not be less than:

(a) One and one-half (1 1/2) inches for one (1) to three (3) openings; and

(b) Two (2) inches for four (4) to eight (8) openings.

(2) Each opening shall be trapped.

(3) The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. (1) Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe.

(2) The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. (1) A corrosive liquid shall not be permitted to discharge into the soil, waste, or sewer system unless otherwise permitted by this administrative regulation.

(2) The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with this administrative regulation and each fixture shall be individually trapped.

(2) A continuous waste and vent pipe system may be used[,] if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if the pit has a ventilated cover.

(3) If a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) A fixture branch exceeding more than the distance established~~specified~~ in the table in Section 19 of this administrative regulation from the main shall be revented, and the distance shall be measured from the center of the main to the center of the vertical riser.

(6)(a) A fixture connection shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink.

(b) Two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. (1) Underground piping for acid wastes shall be:

(a) Extra heavy salt glazed vitrified pipe;

(b) Silicon iron;

- (c) Lead;
  - (d) Polyethylene pipe and fittings produced and labeled as ASTM D204;
  - (e) Polypropylene pipe produced and labeled as ASTM D4101;
  - (f) Polypropylene pipe and fittings produced and labeled as ASTM F-1412; or
  - (g) Chlorinated Poly Vinyl Chloride (CPVC) Chemical Waste Drainage Systems meeting ASTM F-2618; or
  - (h) Other materials approved in 815 KAR 20:020, Section 5.
- (2) Piping for acid wastes and vents above ground shall be:
- (a) Silicon iron;
  - (b) Lead;
  - (c) Borosilicate;
  - (d) Polyethylene pipe produced and labeled as ASTM D-1204-62T;
  - (e) Polypropylene pipe produced and labeled as ASTM D-4101-85; or
  - (f) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread); or
  - (g) Chlorinated Poly Vinyl Chloride (CPVC) Chemical Waste Drainage Systems meeting ASTM F-2618.

Section 37. Special Vents. A flat vent may be allowed if the design of the building prohibits the type of venting required by this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. (1) Except for a basement floor drain exempted pursuant to subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as established in this administrative regulation.

(2)(a) A basement floor drain in a single family dwelling shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system.

(b) If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap, and venting provisions of the State Plumbing Code.

JACK COLEMAN, Deputy Commissioner

For AMBROSE WILSON IV, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation established the requirements and approved materials for the installation and design of soil, waste and vent systems in each type of plumbing system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the construction and quality of materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the quality and construction of materials used in all regulated plumbing systems.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds an additional approved standard to allow the use of American Society for Testing and Materials (ASTM) F-1488 cellular core acrylonitrile butadiene styrene (ABS) piping in the construction of soil, waste and vent systems.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the list of approved materials to allow use of this new and improved ABS product now available on the market.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the permissible quality and content of materials that may be used in soil, waste and vent systems.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will permit the use of improved and higher quality materials in the installation of soil, waste and vent systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity related to soil, waste and vent systems within the Commonwealth.

(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 comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties; rather, it merely provides them an additional option in the choice of approved materials in connection with the installation of soil, waste and vent systems as set forth in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no new or increased costs associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include increased options in choice of materials and the opportunity to utilize new and improved ABS products.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant soil, waste and vent systems work will be subject to the amended approved options.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not anticipated to generate additional revenues for the agency.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

#### 815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 310.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for the construction of house sewers and storm water piping. This administrative regulation establishes[identifies] the materials and

methods of installation that may be used in the construction of house sewers or storm water piping.

Section 1. Independent System. (1) The drainage and plumbing system of new building and of a new work installed in an existing building shall be separate and independent of other buildings except as otherwise established[provided] in this administrative regulation.

(2) A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exceptions[Exception]. (1)(a) If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard, or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer.

(b)[(2)] The exception established in this subsection [(1) of this section] shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building that[which] abuts a street or alley.

(2) A building sewer may serve additional buildings and still be considered as one (1) sewer if the additional buildings are:

(a) Used in conjunction with the primary building;

(b) Contained within the same deed as the primary building; and

(c) Restricted within the deed from being sold separately from the primary building.

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. An excavation made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested, and approved.

Section 5. Depth of Sewer at the Property Line. (1) The sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2)(a) A house sewer shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot.

(b) A sewer shall have at least an eighteen (18) inch cover.

(c) Sewer piping installed under property subject to vehicular traffic (such as[e.g.,] a driveway, parking lot, or similar location) shall have at least a twenty-four (24) inch cover unless constructed of cast iron piping. If less than a twenty-four (24) inch cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on each side and the top.

(d) A sewer shall be backfilled by hand and tamped six (6) inches above the piping[.] or filled with six (6) inches grillage above the piping.

(e) Each joint in cast iron and vitrified clay pipe shall be constructed to comply with 815 KAR 20:060, Sections 4 and 5.

Section 6. New House Sewer Connections. A house sewer installed where a private sewerage system has been discarded may connect to the house drain[.] if the existing plumbing system meets the State Plumbing Code.

Section 7. Materials for House Sewers. A house sewer or combined sewer shall be made of[the following]:

(1) Extra heavy cast iron pipe;

(2) Service weight cast iron;

(3) Vitrified clay;

(4) Concrete;

(5) Coextruded composite PVC pipe produced and labeled ASTM F-1488;

(6) PVC or ABS plastic pipe schedules 40 and 80;

(7) Cellular core PVC produced and labeled as ASTM F-891;

(8) Cellular core ABS produced and labeled as ASTM 628 or ASTM F-1488;

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- (9) Truss pipe;
- (10) Extra heavy SDR 35 pipe;
- (11) Type PS 46, PVC in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F789;
- (12) PVC ribbed pipe produced and labeled as ASTM F794; or
- (13) Polyethylene pipe produced and labeled as ASTM F-714.

Section 8. Material for Storm Sewers Inside Buildings. (1) A storm sewer inside of a building extending to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be made of the following:

- (a) Cast iron pipe;
- (b) Aluminum; or
- (c) Schedule 40 ABS or PVC DWV pipe or PVC pipe produced and labeled as ASTM F-1488.

(2) A storm sewer in a size of ten (10) inches or larger shall be made of the following:

- (a) Cast iron;
- (b) Aluminum;
- (c) Schedule 40 ABS or PVC DWV pipe;
- (d) SDR 35;
- (e) Vitrified clay or concrete conforming to appropriate commercial specifications with approved joints; or
- (f) Polyethylene pipe produced and labeled as ASTM F-714.

(3) Primary and secondary roof drains shall comply with the requirements established in this subsection.

(a) 1. Roof drains shall have strainers extending not less than four (4) inches above the surface of the roof immediately adjacent to the roof drain.

2. Strainers shall have an available area not less than one and one-half (1 1/2) times the area of the conductor or leader to which the drain is connected.

(b) Roof drain strainers for use on sun decks, parking decks, and similar areas that are normally services and maintained may be of the flat surface type, installed level with the deck, with an available inlet area not less than two (2) times the area of the conductor or leader to which the drain is connected.

(c) Secondary (emergency) roof drains or scuppers shall be provided where the roof perimeter construction allows ponding if the primary roof drains become blocked.

(d) Separate systems required.

1. Secondary roof drain systems shall have piping and point of discharge separate from the primary system.

2. Discharge shall be above grade in a location that which would normally be observed by the building occupants or maintenance personnel.

(e) Primary and secondary drains shall be sized in accordance with Section 11 of this administrative regulation.

Section 9. Change of Direction. A change in direction of a sewer shall be made only with:

- (1) Long curves;

- (2) Forty-five (45) degree wyes;
- (3) Half wyes;
- (4) Quarter, sixth, eighth or sixteenth bends; or
- (5) Sanitary tees installed on their back or on their sides. If installed, sanitary tees shall be at an angle of not more than forty-five (45) degrees.

Section 10. Size of House Sewers and Horizontal Branches.

(1) The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain.

(2) A house sewer receiving a branch shall be sized in the same manner as a house drain.

(3) The house drains shall be installed in accordance with 815 KAR 20:090.

Section 11. Size of Storm Systems. (1) The required size of a storm sewer shall be determined on the basis of the total drained area in horizontal projection in accordance with the table in subsection (4) of this section.

(2) A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall.

(3) The storm sewer shall be laid at a sufficient depth to protect it from freezing.

(4)

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3	N/A	1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

\*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. (1) If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area, and the total fixture units, adding the product to the drained area and applying the sum from the table for storm water sewers in Section 11 of this administrative regulation.

(2) A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

(3)	CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM							
	Number of Fixture Units on Sanitary System							
Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2

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18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0
(4) Number of Fixture Units on Sanitary System								
Drained roof area in square feet	325 to 486	487 to 732	733 to 1098	1,099 to 1644	1,645 to 2466	2,467 to 3702	3,703 to 5556	Over 5556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 - 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 - 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 - 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 - 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 - 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 - 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 - 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 - 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 - 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 - 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 - 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

(5) For a building constructed after August 1, 1996, each plumbing fixture or opening connecting to a combination sanitary and storm sewer system shall either:

(a) Be installed above the elevation of the cover of the nearest manhole serving the main; or

(b) Discharge through a sewage ejector to the combined sewer system at an elevation high enough to prevent flooding of the building.

Section 13. House Sewer in Undisturbed or Filled Ground. (1) A house sewer laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand, or other approved grillage as defined in 815 KAR 20:010, Section 1(94).

(2) A house sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other equivalent support that shall be approved by the department[office].

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

(4) A house sewer constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top, and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled Ground. (1) A storm sewer laid in undisturbed ground shall not require grillage.

(2) A storm sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the office.

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In a public building in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by a device that complies with Sections 17 and 18 of this administrative regulation and discharged into the building sewer.

Section 16. Drainage Below Sewer Level (Residential). (1) In a home in which[where] the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump appropriate for that installation.

(2) The sump pit shall:

(a) Be gas and air tight; and

(b) Be constructed of:

1. Poured or precast concrete;
2. Approved fiberglass; or
3. Polyethylene material.

(3) The sump pit shall be provided with a two (2) inch vent, which may also act as a waste and vent for a laundry tray.

(4) The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade.

(5) The sump pit shall be provided with a tight-fitting concrete cover.

(6)(a) On the outside of the building, this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee, which shall connect into a four (4) inch P trap and then into the sanitary sewer.

(b) The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. (1) A subsoil drain shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity.

(2) The sewage shall be lifted and discharged into the house sewer by a pump or ejector.

(3) Sewage sumps shall be a minimum twenty four (24) inches in diameter and no less than twenty four (24) inches in depth.

(4) A system that relies[Systems which rely] solely on a pump shall be equipped with both an audible and visual alarm to be placed within the occupied space.

(5) The sump shall automatically discharge.

Section 18. Ejectors, Vented. (1) A sewage ejector serving a residential installation shall be vented with a two (2) inch vent.

(2)(a) Except as established[provided] in paragraph (b) of this subsection, an ejector serving a commercial or industrial installation shall be vented with a three (3) inch vent.

(b)1. If a three (3) inch vent stack is serving a fixture that empties into the ejector pit and is located within twenty-five (25) feet of the pit, the ejector may be revented with a two (2) inch vent back to the three (3) inch vent stack.

2. The ejector vent shall not be smaller than that recommended by the manufacturer of the pump.

(3) A portion of the building drainage system that is above the cover of the manhole serving the main that can flow by gravity to a sewer shall be installed for gravity flow to the combined sanitary and storm sewer, except for a system designed otherwise by a

licensed professional engineer.

Section 19. Ejector Power: Motors, Compressors, and Air Tanks. (1) A motor, air compressor, or air tank shall be located so that it shall be~~where it is~~ open for inspection and repair at all times.

(2) An air tank shall be proportioned to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating.

(3) The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. (1) If a subsoil catch basin is installed below the sewer level, an ~~approved~~ automatic ejector shall be used.

(2) The ejector or a device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas, Roofs, and Traps. (1) A roof, paved area, court, or courtyard shall be drained into~~one of the following~~:

(a) A storm water system;

(b) A combined sewerage system; or

(c) A surface drainage area unless prohibited by the local health department or sewer district.

(2) A yard, roof, paved area, court, or courtyard shall not be drained into a sewer intended for sewage only.

(3) Traps.

(a) If a drain is connected to a combined sewerage system, it shall be trapped.

(b) If a roof leader, conductor, or gutter opening is located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required.

(c) A trap shall be set below the frost line or on the inside of the building.

(d) If a drain is not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall not be less size than as established in the following table:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. (1) If a conductor or roof leader is placed within the walls of a building, or in an interior court or ventilating pipe shaft, it shall be constructed of:

(a) Cast iron pipe;

(b) Galvanized wrought iron;

(c) Galvanized steel;

(d) Copper;

(e) Schedule 40 ABS/PVC DMV pipe; or

(f) Reinforced thermosetting resin pipe produced and labeled as ASTM F1113 (red and silver thread).

(2)(a) The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to the penetration through the roof.

(b) Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. (1) If an outside sheet metal conductor or downspout is connected to a house drain, it shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line.

(2) If the downspout runs along a public driveway without a sidewalk, it shall be placed in a niche in the walk, protected by

wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one that~~which~~ conforms to this administrative regulation.

Section 26. Vent Connections with Conductors Prohibited. (1) A conductor pipe shall not be used as a soil, waste or vent pipe.

(2) A soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. An overflow pipe from a cistern, supply tank, expansion tank, or drip pan shall connect indirectly with a house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. A subsoil drain shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building it serves.

Section 29. Approvals of New Sewer Connections to Existing Buildings. If the local health department or sanitary sewage system board, plant, district, or treatment plant owner prohibits the discharge of a basement floor drain or other apparatus into the sanitary sewer system, an existing basement floor drain or sump pump apparatus shall comply with the ~~new~~ construction requirements of this administrative regulation and be inspected prior to the approval of a connection for a new sewer line.

JACK COLEMAN

For AMBROSE WILSON IV, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used.

(c) How this administrative regulation conforms to the content



of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the construction of house sewers and storm water piping.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the quality and construction of materials used in all regulated house sewers and storm water piping.

(2) If 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 permits certain related structures to be included within the single sewer tap of the primary building rather than require the installation of a separate sewer tap. In addition, this amendment adds an additional approved standard to allow the use of American Society for Testing and Materials (ASTM) F-1488 cellular core acrylonitrile butadiene styrene (ABS) piping in the construction of house sewers or combined sewers.

(b) The necessity of the amendment to this administrative regulation: The amendment permitting combined sewer tap access will result in a significant cost decrease to property owners wishing to provide sewer service to certain ancillary additional buildings reflected on the same deed as the primary building, including certain attached garages. The added approval of ASTM F-1488 ABS piping is necessary to update the list of approved materials to allow use of this new and improved ABS product now available on the market.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the standards of permissible construction, quality and content of materials that may be used in house sewers and storm water piping.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will permit the use of improved and higher quality materials in the installation of house sewers and storm water piping.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity related to house sewers and storm water piping within the Commonwealth.

(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 comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties; rather, it merely reduces certain sewer tap requirements and provides them an additional option in the choice of approved materials in connection with the installation of house sewers and storm water piping as set forth in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no new or increased costs associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include decreased costs in the installation of certain sewer connections and increased options in choice of materials and the opportunity to utilize new and improved ABS products.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting

associated with this amendment will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant house sewer and storm water piping work will be subject to the amended approved options.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not anticipated to generate additional revenues for the agency.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

#### 815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS 58.200, 318.160

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[office], after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. KRS 58.200(2) requires newly-constructed public buildings to be equipped with twice the number of restroom facilities for use by women as is provided for use by men. This administrative regulation establishes the minimum plumbing fixture requirements for buildings in Kentucky.

Section 1. Definitions. (1) "Developed travel distance" means the length of a pathway measured along the center line of the path.

(2) "Modular" means a structure or component that is wholly or in substantial part fabricated in an off-site manufacturing facility for installation at the building site.

Section 2. General Requirements. (1) In a building accommodating males and females, it shall be presumed that the occupants will be equally divided between males and females, unless otherwise denoted.

(2) The occupancy load factor used to determine the total number of plumbing fixtures required in a building shall be the load denoted in the Kentucky Building Code, incorporated by reference in 815 KAR 7:120.

(3) All types of buildings shall be provided with toilet rooms on each level or floor, unless ~~the department determines that~~:

(a) Separate facilities on each level or floor are unnecessary; and

(b) Toilet rooms on every other level or floor shall be sufficient.

(4) Unisex Facilities in Historic Buildings. A building or structure that is listed in the National Register of Historic Places or designated as historic under Kentucky statute may provide the required number of plumbing fixtures in unisex facilities if the overall occupant load is 100 persons or less, except as required in Sections 7, 8, 9, 12, 13, 15, 16, and 17 of this administrative regulation.

(5) Unisex facilities in historic buildings permitted by this section shall not be required to provide the urinals.

(6) Toilet rooms for males, ~~and~~ females, and unisex shall be clearly marked.

Section 3. Toilet Floor Construction Requirements. (1) Floors in toilet rooms shall be constructed of nonabsorbent materials.

(2) If a wood floor is used, the wood floor shall be covered by other nonabsorbent materials.

(3) If two (2) or more fixtures that receive human waste are installed, the toilet room shall have at least:

(a) One (1) floor drain; and

(b) One (1) accessible hose bibb.

Section 4. Facilities for Stages. (1) A separate water closet and lavatory shall be provided for males and females in the stage area.

(2) A drinking fountain shall be provided in the stage and auditorium area.

Section 5. Theaters, Assembly Halls, and Similar Occupancies. Separate toilet rooms for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation. (1) Water closets and urinals for males.

(a) Water closets for males shall be installed with at least ~~in the following proportions~~:

1. One (1) water closet for each 100 males;

2. Two (2) water closets for 101 to 200 males;

3. Three (3) water closets for 201 to 400 males; and

4. If over 400 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof.

(b) Urinals for males shall be installed with at least ~~in the following proportions~~:

1. One (1) urinal for eleven (11) to 100 males;

2. Two (2) urinals for 101 to 300 males;

3. Three (3) urinals for 301 to 600 males; and

4. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.

(2) Water closets for females. Water closets for females shall be installed with at least ~~in the following proportions~~:

(a) One (1) water closet for each fifty (50) females;

(b) Two (2) water closets for fifty-one (51) to 100 females;

(c) Three (3) water closets for 101 to 150 females;

(d) Four (4) water closets for 151 to 200 females; and

(e) If over 200 females, four (4) water closets plus one (1) additional water closet for each additional 150 females or fraction thereof.

(3) Lavatories for Males or Females. Lavatories shall be installed with at least ~~in the following proportions~~:

(a) One (1) lavatory for up to 100 persons;

(b) Two (2) lavatories for 101 to 200 persons;

(c) Three (3) lavatories for 201 to 400 persons;

(d) Four (4) lavatories for 401 to 750 persons; and

(e) If over 750 persons, four (4) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof.

(4) Sinks. There shall be at least one (1) service sink or slop sink on each floor.

(5) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.

(6) Drinking fountain. At least one (1) ~~[A]~~ drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.

(7) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. Libraries, Museums, and Art Galleries. Separate toilet facilities for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation:

(1) There shall be at least one (1) water closet and one (1) lavatory for each 100 females or fraction thereof.

(2) Except as established in subsection (7) of this section, there shall be at least one (1) water closet and one (1) lavatory for each 200 males or fraction thereof.

(3) There shall be at least:

(a) One (1) urinal for eleven (11) to 200 males;

(b) Two (2) urinals for 201 to 400 males;

(c) Three (3) urinals for 401 to 600 males; and

(d) If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.

(4) There shall be at least one (1) service sink or slop sink on each floor.

(5) At least one (1) ~~[A]~~ drinking fountain shall be provided for each 500 persons or fraction thereof.

(6) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity of fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person for each fifteen (15) square feet of area.

(7) Urinals may be substituted for water closets for males if:

(a) The substituted urinals do not exceed one-third (1/3) of the required total number of water closets; and

(b) The minimum number of urinals is installed.

(8) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 7. School Buildings Not Including Higher-Education Facilities. A school building shall be in compliance with the requirements established in 702 KAR 4:170 and this section. (1) Drinking fountains.

(a) At least one (1) ~~[A]~~ drinking fountain shall be provided on each floor and wing of a building.

(b) At least one (1) additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof.

(c) The drinking fountains shall be equipped with:

1. A protective cowl; and

2. The orifice, which shall be one (1) inch above the overflow rim of the fountain.

(2) Elementary through secondary level school buildings shall be provided with the following:

(a) Water closets for males shall be installed with at least ~~in the following proportions~~:

1. One (1) water closet for up to twenty-five (25) pupils;

2. Two (2) water closets for twenty-six (26) to 100 pupils; and

3. If over 100 pupils, two (2) water closets plus one (1) additional water closet for each additional 100 pupils or fraction thereof;

(b) Urinals for males shall be installed with at least ~~in the following proportions~~:

1. One (1) urinal for up to twenty-five (25) pupils;

2. Two (2) urinals for twenty-six (26) to fifty (50) pupils;

3. Four (4) urinals for fifty-one (51) to 100 pupils;
4. Six (6) urinals for 101 to 200 pupils;
5. Eight (8) urinals for 201 to 300 pupils;
6. Ten (10) urinals for 301 to 400 pupils;
7. Twelve (12) urinals for 401 to 500 pupils; and
8. If over 500 pupils, twelve (12) urinals plus one (1) additional urinal for each additional fifty (50) pupils or fraction thereof in excess of 500;

(c) Water closets for females shall be installed with at least ~~in the following proportions~~:

1. Two (2) water closets for up to twenty-five (25) pupils;
2. Three (3) water closets for twenty-six (26) to fifty (50) pupils;
3. Six (6) water closets for fifty-one (51) to 100 pupils;
4. Eight (8) water closets for 101 to 200 pupils;
5. Ten (10) water closets for 201 to 300 pupils;
6. Twelve (12) water closets for 301 to 400 pupils;
7. Fourteen (14) water closets for 401 to 500 pupils; and
8. If over 500 pupils, fourteen (14) water closets plus one (1) additional water closet for each additional forty (40) pupils or fraction thereof; and

(d)1. Lavatories for male and female pupils shall be installed with at least ~~in the following proportions~~:

- a. One (1) lavatory for each twenty-five (25) pupils or fraction thereof; and
- b. If over fifty (50) pupils, two (2) lavatories plus one (1) additional lavatory for each additional fifty (50) pupils or fraction thereof; and
2. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin, if provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.

(3) At least one (1) service sink or slop sink shall be installed on each floor of a building.

(4) If detached modular classrooms are used, sanitary facilities shall not be required, if:

(a) The entrance of the modular classroom for elementary grades through the fifth grade is within a developed travel distance not to exceed 100 feet from the accessible entrance to the main structure or an approved central modular restroom;

(b) The entrance of the modular classroom for sixth grade and above is within a developed travel distance not to exceed 200 feet, from the accessible entrance to the main structure or an approved central modular restroom;

(c) The travel path meets the accessibility requirements established in the Kentucky ~~Uniform~~ Building Code, 815 KAR 7:120; and

(d) There are sufficient fixtures in the main structure to serve the entire capacity of the school, including the modular classrooms.

(5) Water closets in a school building shall be of the elongated bowl type with a split open front seat.

Section 8. Schools of Higher Education and Similar Educational Facilities. (1)(a) Except as established in paragraph (b) of this subsection, in a school of higher education or a similar education facility, there shall be installed at least:

1. One (1) water closet for each fifty (50) males and one (1) water closet for each twenty-five (25) females or fraction thereof;
2. One (1) lavatory for each fifty (50) persons or fraction thereof;
3. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof; and
4. One (1) urinal for each fifty (50) males or fraction thereof; ~~and~~

(b) One (1) water closet less than the number specified in paragraph (a) of this subsection may be provided for each urinal installed except that the number of water closets in those cases shall not be reduced to less than two-thirds (2/3) of the minimum specified.

(2) Water closets in a school of higher education or a similar education facility shall be of the elongated bowl type with a split open front seat.

Section 9. Public Garages and Service Stations. (1) Separate toilet rooms for males and females shall be provided with at least:

- (a) A water closet and lavatory for females; and
- (b) A water closet, lavatory, and urinal for males.

(2) Water closets shall be of the elongated bowl type with a split open front seat.

Section 10. Churches. (1) Sanitary facilities shall be provided in a church with at least ~~as follows~~:

- (a) One (1) drinking fountain for each 400 persons or fraction thereof;
  - (b) One (1) water closet for each 150 females or fraction thereof;
  - (c) One (1) water closet for each 300 males or fraction thereof;
  - (d) One (1) urinal for fifty (50) to 150 males or fraction thereof;
  - (e) One (1) additional urinal for each additional 150 males or fraction thereof; and
  - (f) One (1) lavatory for each 150 persons or fraction thereof.
- (2) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 11. Transient Lodging Facilities. A transient lodging facility shall be in compliance with the requirements established in 902 KAR 10:010 and this section. (1) A hotel or motel with private rooms shall have at least one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(2) In the public and service areas, there shall be at least:

- (a) One (1) water closet for each twenty-five (25) males or fraction thereof;
- (b) One (1) water closet for each fifteen (15) females or fraction thereof;
- (c) One (1) lavatory for each twenty-five (25) persons or fraction thereof;
- (d) One (1) urinal for eleven (11) to 100 males plus one (1) additional urinal for each additional fifty (50) males or fraction thereof;
- (e) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof on each floor; and
- (f) One (1) service sink or slop sink on each floor.

(3) In residential-type buildings, there shall be at least one (1) water closet, one (1) lavatory, and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.

(4) In rooming houses with private baths, there shall be at least one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(5) In rooming houses without private baths, there shall be at least:

- (a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) males or fraction thereof;
- (b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) females or fraction thereof;
- (c) One (1) urinal for eleven (11) to 100 males and one (1) for each additional fifty (50) males or fraction thereof;
- (d) One (1) lavatory for each ten (10) persons or fraction thereof; and
- (e) One (1) bathtub or shower for each ten (10) persons or fraction thereof.

Section 12. Dormitories: School, Labor, or Institutional. (1) Water closets. There shall be at least:

- (a) One (1) water closet for up to ten (10) males plus one (1) additional water closet for each additional twenty-five (25) males or fraction thereof; and
- (b) One (1) water closet for up to eight (8) females plus one (1) additional water closet for each additional twenty (20) females or fraction thereof.

(2) Urinals.

(a) There shall be at least:

1. One (1) urinal for each twenty-five (25) males or fraction thereof up to 150 males; and
2. If there are over 150 males, one (1) additional urinal for each additional fifty (50) males or fraction thereof.

(b) If urinals are provided, a urinal may be substituted for a water closet, not to exceed one-third (1/3) of the required total number of water closets.

(c) Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.

(3) Lavatories. There shall be at least one (1) lavatory for one (1) to twelve (12) persons, with an additional one (1) lavatory for each additional twenty (20) males and fifteen (15) females or fraction thereof.

(4) Additional fixtures. There shall be at least:

(a)1. One (1) bathtub or shower for each eight (8) persons or fraction thereof, up to 150 persons; and

2. If there are over 150 persons, ~~[there shall be]~~ one (1) additional bathtub or shower for each twenty (20) persons;

(b) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof;

(c) One (1) laundry tray or clothes washer for each fifty (50) persons or fraction thereof; and

(d) One (1) service sink or slop sink for each 100 persons or fraction thereof.

(5) If the dormitory is located in a youth camp, the requirements of 902 KAR 10:040 shall apply in addition to the requirements established in this section.

Section 13. Hospitals, Nursing Homes, and Institutions. A hospital, nursing home, or institution shall comply with the requirements established in 902 KAR 20:031, 20:046, 20:056, and 9:010. Sanitary facilities shall be provided on each floor level and shall conform to this section. (1) Hospitals.

(a) Wards. There shall be at least:

1. One (1) water closet for each ten (10) patients or fraction thereof;

2. One (1) lavatory for each ten (10) patients or fraction thereof;

3. One (1) tub or shower for each fifteen (15) patients or fraction thereof; and

4. One (1) drinking fountain for each 100 patients or fraction thereof.

(b) Individual rooms. There shall be at least one (1) water closet, one (1) lavatory, and one (1) tub or shower.

(c) Waiting rooms. There shall be at least one (1) water closet and one (1) lavatory.

(2) Nursing homes and institutions (other than penal). There shall be at least:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof;

(b) One (1) water closet for each twenty (20) females or fraction thereof;

(c) One (1) lavatory for each ten (10) persons or fraction thereof;

(d) One (1) urinal for each fifty (50) males or fraction thereof;

(e) One (1) tub or shower for each fifteen (15) persons or fraction thereof;

(f) One (1) drinking fountain on each floor; and

(g) One (1) service sink or slop sink on each floor.

(3) Institutions, penal.

(a) Cell. There shall be at least:

1. One (1) prison-type water closet; and

2. One (1) prison-type lavatory.

(b) Day rooms and dormitories.

1. There shall be at least:

a. One (1) water closet for each eight (8) female inmates or fraction thereof and one (1) water closet for each twelve (12) male inmates or fraction thereof;

b. One (1) lavatory for each twelve (12) inmates or fraction thereof;

c. One (1) shower for each fifteen (15) inmates or fraction thereof;

d. One (1) drinking fountain per floor; and

e. One (1) service sink or slop sink per floor.

2. For males, one (1) urinal may be substituted for each water closet if the number of water closets is not reduced to less than one-half (1/2) the number required.

(c) Toilet facilities for employees shall be located in separate rooms from those in which fixtures for the use of inmates or patients are located.

(d) There shall be at least one (1) drinking fountain on each floor.

(e) There shall be at least one (1) service sink or slop sink per floor.

Section 14. Workshops, Factories, Mercantile, and Office Buildings. Separate toilet facilities shall be provided for males and females on each floor unless otherwise denoted. (1) Workshops and factories: Sanitary facilities shall conform to the following:

(a) There shall be at least:

1. One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100;

2. One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100;

3. One (1) urinal for eleven (11) to fifty (50) employees;

4. Two (2) urinals for fifty-one (51) to 100 employees;

5. One (1) lavatory for each twenty-five (25) females or fraction thereof up to 100; and

6. One (1) water closet for each fifteen (15) females or fraction thereof up to 100;

(b) If in excess of 100 persons, there shall be at least:

1. One (1) additional water closet for each additional thirty (30) males and each additional thirty (30) females or fraction thereof;

2. One (1) additional lavatory for each additional fifty (50) males and females or fraction thereof; and

3. One (1) additional urinal for each additional 100 males or fraction thereof;

(c) There shall be at least:

1. One (1) shower for each fifteen (15) persons or fraction thereof, exposed to skin contamination from irritating, infectious, or poisonous materials;

2.a. One (1) drinking fountain on each floor for each fifty (50) employees or fraction thereof, up to 100 employees; and

b. If there are more than 100 employees, there shall be an additional drinking fountain on each floor for each additional seventy-five (75) employees or fraction thereof; and

3. One (1) service sink or slop sink per floor; and

(d)1. Individual sinks or wash troughs may be used in lieu of lavatories.

2. Twenty-four (24) inches of sink or trough, if provided with water, or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.

(2) Mercantile.

(a) Employees.

1. Except as provided in subparagraph 2 of this paragraph, sanitary facilities within each store shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.

2. For a store containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or accessible areas having a travel distance of not more than 500 feet within the building in which the store is located.

(b) Customers.

1. Sanitary facilities shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed in individual stores or in a central toilet room area or areas, if:

a. The distance from the main entrance of a store does not exceed 500 feet; and

b. The toilet room area is accessible to physically disabled persons.

(c) Sanitary facilities shall be provided as stated in this section and there shall be at least:

1. One (1) water closet for one (1) to 150 males;

2. Two (2) water closets for 151 to 300 males;

3. Three (3) water closets for 301 to 450 males;

4. If over 500 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof;

5. One (1) urinal for fifty (50) to 200 males;

6. Two (2) urinals for 201 to 400 males;

7. Three (3) urinals for 401 to 600 males;
  8. If over 300 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof;
  9. One (1) water closet for one (1) to 100 females;
  10. Two (2) water closets for 101 to 200 females;
  11. Three (3) water closets for 201 to 400 females;
  12. If over 400 females, three (3) water closets plus one (1) additional water closet for each additional 300 females or fraction thereof;
  13. One (1) lavatory for one (1) to 200 persons;
  14. Two (2) lavatories for 201 to 400 persons;
  15. Three (3) lavatories for 401 to 700 persons;
  16. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof; Three (3) lavatories plus one (1) lavatory for each 500 persons, or fraction thereof, in excess of 700;
  17. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and
  18. One (1) service sink or slop sink per floor.
- (3) Office buildings.
- (a) Employees.
1. Except as established in subparagraph 2 of this paragraph, sanitary facilities within office buildings shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.
  2. For an office building or space containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or areas having a travel distance of not more than 500 feet within the same building.
- (b) Customers.
1. Sanitary facilities shall be provided for customers if the office building or space contains 5,000 square feet or more.
  2. In an office building, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed within the individual offices, or in a central toilet room area or areas if:
    - a. The distance from the main entrance of an office space does not exceed 500 feet; and
    - b. The toilet room area is accessible to physically disabled persons.
  - (c) Separate sanitary facilities for each gender shall be provided as stated in this section.
    1. For males and females there shall be at least:
      - a. One (1) water closet for one (1) to fifteen (15) persons;
      - b. Two (2) water closets for sixteen (16) to thirty-five (35) persons;
      - c. Three (3) water closets for thirty-six (36) to fifty-five (55) persons;
      - d. Four (4) water closets for fifty-six (56) to eighty (80) persons;
      - e. Five (5) water closets for eighty-one (81) to 110 persons;
      - f. Six (6) water closets for 111 to 150 persons;
      - g. If over 150 persons, six (6) water closets plus one (1) additional water closet for each additional forty (40) persons or fraction thereof;
      - h. One (1) lavatory for one (1) to fifteen (15) persons;
      - i. Two (2) lavatories for sixteen (16) to thirty-five (35) persons;
      - j. Three (3) lavatories for thirty-six (36) to sixty (60) persons;
      - k. Four (4) lavatories for sixty-one (61) to ninety (90) persons;
      - l. Five (5) lavatories for ninety-one (91) to 125 persons;
      - m. If over 125 persons, five (5) lavatories plus one (1) additional lavatory for each additional seventy-five (75) persons or fraction thereof; and
      - n. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.
    2. For males, if urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed if the number of water closets is not reduced to less than seventy (70) percent of the minimum specified.

Section 15. Swimming Pool Bathhouses. A swimming pool bathhouse shall comply with the requirements established in 902 KAR 10:120 and this section. (1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a tight

partition, with one (1) part designated for "Males" or "Men" and the other part designated for "Females" or "Women."

(2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather load, as defined in 902 KAR 10:120, and shall conform to the following:

(a) For swimming pools in which the total bather capacity is 200 persons or less, there shall be at least:

1. One (1) water closet for each seventy-five (75) males or fraction thereof;
2. One (1) water closet for each fifty (50) females or fraction thereof;
3. One (1) urinal for each seventy-five (75) males or fraction thereof;
4. One (1) lavatory for each 100 persons or fraction thereof;
5. One (1) shower per each fifty (50) persons or fraction thereof; and
6. One (1) drinking fountain per each 200 persons or fraction thereof;

(b) For swimming pools in which the total bather capacity exceeds 200 persons, there shall be at least:

1. Five (5) water closets for 201 to 400 females, with one (1) additional water closet for each additional 250 females or fraction thereof;
2. Three (3) water closets for 201 to 400 males, with one (1) additional water closet for each additional 500 males or fraction thereof;
3. Three (3) urinals for 201 to 400 males, with one (1) additional urinal for each additional 500 males or fraction thereof;
4. One (1) lavatory for up to 150 persons;
5. Two (2) lavatories for 151 to 400 persons;
6. Three (3) lavatories for 401 to 750 persons;
7. If over 750 persons, three (3) lavatories plus one (1) additional lavatory for each additional 750 persons or fraction thereof;
8. One (1) shower per each fifty (50) persons or fraction thereof up to 150;
9. If over 150 persons, three (3) showers plus one (1) additional shower for each additional 500 persons or fraction thereof; and
10. One (1) drinking fountain per each 500 persons or fraction thereof.

(3) Fixture schedules shall be increased for pools at schools or similar locations where bather loads may reach peaks due to schedules of use. Pools used by groups or classes on regular time schedules of:

(a) One (1) hour or less shall have at least one (1) shower for each six (6) swimmers; and

(b) One (1) to two (2) hours shall have at least one (1) shower for each ten (10) swimmers.

(4) ~~Satisfactorily designed and located~~ Shower facilities, including warm water and soap, shall be provided for each sex.

(a) Showers shall be supplied with water at a temperature of not less than ninety (90) degrees Fahrenheit and at a flow rate of at least three (3) gallons per minute.

(b) Thermostatic, tempering, or mixing valves shall be installed to prevent scalding of the bathers.

(5) The requirement relating to bathhouse toilet room and shower facilities may be waived if the facilities are available to pool patrons within 150 feet from the pool.

Section 16. Park Service Buildings or Bathhouses. A park service building or bathhouse shall comply with the requirements established in 902 KAR 15:020, Section 8, and this section. (1) Except for a self-contained recreational vehicle community, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures established~~specified~~ in this section.

(2) Except for a self-contained recreational vehicle community, sanitary facilities shall be provided as follows:

(a) If there are one (1) to fifteen (15) vehicle spaces, there shall be for:

1. Males: At least one (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and

2. Females: At least one (1) water closet, one (1) lavatory, and one (1) shower;

(b) If there are sixteen (16) to thirty (30) vehicle spaces, there shall be for:

1. Males: At least one (1) water closet, one (1) urinal, two (2) lavatories, and two (2) showers; and

2. Females: At least two (2) water closets, two (2) lavatories, and two (2) showers;

(c) If there are thirty-one (31) to forty-five (45) vehicle spaces, there shall be for:

1. Males: At least two (2) water closets, one (1) urinal, three (3) lavatories, and three (3) showers; and

2. Females: At least two (2) water closets, three (3) lavatories, and three (3) showers;

(d) If there are forty-six (46) to sixty (60) vehicle spaces, there shall be for:

1. Males: At least two (2) water closets, two (2) urinals, three (3) lavatories, and three (3) showers; and

2. Females: At least three (3) water closets, three (3) lavatories, and three (3) showers;

(e) If there are sixty-one (61) to eighty (80) vehicle spaces, there shall be for:

1. Males: At least three (3) water closets, two (2) urinals, four (4) lavatories, and four (4) showers; and

2. Females: At least four (4) water closets, four (4) lavatories, and four (4) showers;

(f) If there are eighty-one (81) to 100 vehicle spaces, there shall be for:

1. Males: At least four (4) water closets, two (2) urinals, five (5) lavatories, and five (5) showers; and

2. Females: At least five (5) water closets, five (5) lavatories, and five (5) showers; and

(g) If over 100 vehicle spaces are provided, there shall be provided at least:

1. One (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof;

2. One (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and

3. One (1) additional urinal for males per additional 100 vehicle spaces or fraction thereof.

Section 17. Residential and Day Camp Sites. A residential or day camp site shall comply with the requirements established in 902 KAR 10:040 and this section. (1)(a) Each residential camp site shall be provided with sanitary facilities for each sex as established[specified] in this section.

(b) A day camp shall:

1. Not be required to provide shower facilities; and

2. Provide all other sanitary facilities for each sex as established[specified] in this section.

(2) Sanitary facilities shall be provided as follows:

(a) If there are one (1) to eighteen (18) persons served, there shall be for:

1. Males: At least one (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and

2. Females: At least two (2) water closets, one (1) lavatory, and one (1) shower;

(b) If there are nineteen (19) to thirty-three (33) persons served, there shall be for:

1. Males: At least two (2) water closets, one (1) urinal, two (2) lavatories, and two (2) showers; and

2. Females: At least two (2) water closets, two lavatories, and two showers;

(c) If there are thirty-four (34) to forty-eight (48) persons served, there shall be for:

1. Males: At least two (2) water closets, two (2) urinals, two (2) lavatories, and three (3) showers; and

2. Females: At least three (3) water closets, two (2) lavatories, and three (3) showers;

(d) If there are forty-nine (49) to sixty-three (63) persons served, there shall be for:

1. Males: At least three (3) water closets, two (2) urinals, three

(3) lavatories, and four (4) showers; and

2. Females: At least four (4) water closets, three (3) lavatories, and four (4) showers;

(e) If there are sixty-four (64) to seventy-nine (79) persons served, there shall be for:

1. Males: At least three (3) water closets, three (3) urinals, three (3) lavatories, and five (5) showers; and

2. Females: At least five (5) water closets, three (3) lavatories, and five (5) showers;

(f) If there are eighty (80) to ninety-five (95) persons served, there shall be for:

1. Males: At least four (4) water closets, three (3) urinals, four (4) lavatories, and six (6) showers; and

2. Females: At least six (6) water closets, four (4) lavatories, and six (6) showers; and

(g) If over ninety-five (95) persons are served, there shall be provided at least:

1. One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served;

2. One (1) additional shower for each twenty (20) persons or fraction thereof served; and

3. One (1) additional urinal per fifty (50) additional males or fraction thereof.

(3) Coed day camps with equal number of males and females shall meet the fixture requirements of Section 6(2) of this administrative regulation, relating to elementary through secondary level school buildings.

(4) Water closets may be substituted for urinals if facilities are to be used by both sexes.

Section 18. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. A retail food store or restaurant shall comply with the requirements established in 902 KAR 10:020, 45:005, and this section. (1) Food stores.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities shall be provided for the employees.

(b)1. Separate sanitary facilities for each sex shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities shall be:

a. Based on one (1) person per fifty (50) square feet; and

b. Installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a store does not exceed 500 feet.

(c) There shall be at least:

1. One (1) water closet for one (1) to 100 persons;

2. Two (2) water closets for 101 to 200 persons;

3. Three (3) water closets for 201 to 400 persons;

4. If over 400 persons, three (3) water closets plus one (1) additional water closet for each additional 500 males or 300 females or fraction thereof;

5. One (1) urinal for eleven (11) to 200 males;

6. Two (2) urinals for 201 to 400 males;

7. Three (3) urinals for 401 to 600 males;

8. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof;

9. One (1) lavatory for one (1) to 200 persons;

10. Two (2) lavatories for 201 to 400 persons;

11. Three (3) lavatories for 401 to 700 persons;

12. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof;

13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and

14. One (1) service sink, utility sink, or curbed mop basin per floor as required by the Cabinet for Health and Family Services.

(2) Restaurants.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities for each sex shall be provided for the employees.

(b)1. Except as provided in subparagraph 3 of this paragraph, in a new establishment or an establishment that is extensively altered or changed from another type occupancy to a restaurant,

toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees.

2. Carryout-type food service operations shall be exempt from providing toilet facilities for the use of their patrons.

3. A restaurant with a business occupancy of one (1) to fifteen (15) persons shall:

a. Comply with the requirements in paragraphs (c) and (e) of this subsection; or

b. Provide at least one (1) unisex facility consisting of one (1) water closet and one (1) lavatory.

(c) There shall be at least:

1. Two (2) water closets for one (1) to 100 persons;

2. Three (3) water closets for 101 to 200 persons;

3. Four (4) water closets for 201 to 300 persons; and

4. If over 300 persons, four (4) water closets plus one (1) additional water closet for each additional 200 persons or fraction thereof.

(d) There shall be at least:

1. One (1) urinal for fifty (50) to 200 males; and

2. If over 200 males, one (1) urinal plus one (1) additional urinal for each additional 150 males or fraction thereof.

(e) There shall be at least:

1. One (1) lavatory for one (1) to 200 persons;

2. Two (2) lavatories for 201 to 400 persons;

3. Three (3) lavatories for 401 to 600 persons; and

4. If over 600 persons, three (3) lavatories plus one (1) additional lavatory for each additional 200 persons or fraction thereof.

(f) There shall be at least:

1. One (1) drinking fountain for one (1) to 100 persons; and

2. If over 100 persons, two (2) drinking fountains plus one (1) additional water fountain for each additional 400 persons or fraction thereof.

(g) If food is consumed indoors on the premises, water stations may be substituted for drinking fountains.

(h) There shall be one (1) service sink, utility sink, or curbed mop basin on each floor as required by the Cabinet for Health and Family Services.

(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees.

(3) Licensed food establishments. In all food establishments licensed by the Cabinet for Health and Family Services, Department for Public Health, the requirements in this subsection shall be met.

(a) Hand-washing sinks.

1. All hand-washing sinks shall have a minimum hot water temperature of 100 degrees Fahrenheit and a maximum of 120 degrees Fahrenheit.

2. Self-closing faucets shall provide a flow of water for no less than fifteen (15) seconds from activation.

3. Placement of hand-washing sinks shall be approved by the Cabinet for Health and Family Services, Department for Public Health pursuant to 902 KAR 45:005.

(b) A three (3) compartment sink used for washing utensils shall be required and shall drain by a direct connection with a minimum of a two (2) inch drain.

(c) Dishwashing or ware washing machines shall discharge indirectly through a three (3) inch open receptacle.

(d) Residential type dishwashing machines shall discharge:

1. Through an air gap device; or

2. Indirectly through a three (3) inch open receptacle.

(e) Sinks solely used for food preparation shall discharge by an indirect connection to a minimum three (3) inch trap.

(f) All hub drains, open receptacles, floor sinks, or other waste receptacles shall extend one (1) inch above the floor plane unless a full grate/strainer is installed flush with the floor.

(g) Occupied mobile food units not located within an existing permitted food establishment shall:

1. Meet the requirements of the Kentucky Plumbing Code, KRS Chapter and 815 KAR Chapter 20;

2. Have a waste tank no less than fifty (50) percent larger than the freshwater tank;

3. Have a National Sanitary Foundation (NSF) approved

freshwater tank for potable water; and

4. Have a minimum of a three (3) compartment sink and one (1) hand sink.

JACK COLEMAN, Deputy Commissioner

For AMBROSE WILSON IV, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2014 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum plumbing fixture requirements for buildings in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, including the number and type of fixtures to be used in connection with different types of occupancy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the kind, type and quality of plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the number and type of fixtures to be installed in various types of buildings in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment permits registered historic buildings to meet existing fixture requirements by using unisex facilities rather than requiring the construction of separate facilities for males and females, and exempts such buildings from certain urinal requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to minimize the impact of current plumbing standards and requirements on historic buildings in order to help preserve their historic character.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the permissible quality and type of plumbing fixtures that must be used in Kentucky buildings.

(d) How the amendment will assist in the effective

administration of the statutes: This amendment will promote harmony between plumbing requirements and the statutory or local intent of preserving the historic nature and character of registered historic buildings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity within the Commonwealth, as well as all owners and operators of buildings in which plumbing systems are required or otherwise installed.

(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 comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties; rather, it merely reduces certain urinal requirements and provides an additional option for providing facilities that satisfy existing fixture requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities are not anticipated to increased expenses as a result of this amendment, as this amendment reduces existing requirements for certain facilities and provides an optional alternative to complying with existing fixture requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include greater flexibility in complying with current plumbing fixture requirements while achieving greater preservation of an historic building's original character.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant plumbing work will be subject to the amended requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not anticipated to generate additional revenues for the agency.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

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

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

RELATES TO: KRS 216B.015[216B.130, 216B.455, 216B.990(2)]

STATUTORY AUTHORITY: KRS[194A.050(4), 216B.040(3)(a), 216B.130]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. Price Index. (1) The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index for the twelve (12) month period ending December 31, 2013[2012], represents a 3.43[2.44] percent increase.

Section 2. Expenditure Minimums Based on 2013 Change in Price Indexes. (1) The capital expenditure minimum established in KRS 216B.015(8) shall be \$2,913,541[\$2,846,924].

(2) The major medical equipment minimum established in KRS 216B.015(17) shall be \$2,913,541[\$2,846,924].

Section 3. Annual Adjustments. (1) Beginning July 1, 2015, the cabinet shall annually adjust the expenditure minimums on July 1 based on the change in the price index referenced in Section 1(1) of this administrative regulation for the previous twelve (12) month period ending December 31.

(2) The annual adjustments of the expenditure minimums shall be available by July 1 for the previous twelve (12) month period on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date,



the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 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 40621, phone 502-564-7905, fax 502-564-7573, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(b) The necessity of this administrative regulation: KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation adjusts the capital expenditure minimums for capital expenditures and major medical equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the regulation is in compliance with KRS 216B.130 and will assist applicants by providing the capital expenditure minimums.

(2) If 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 for the adjustment of expenditure minimums for capital expenditures and major medical equipment. The amendment adjusts the expenditure minimums based on the relevant price index growth for 2013. Also, beginning July 1, 2015, the Cabinet shall annually adjust the expenditure minimums on July 1 based on the change in the price index for the previous twelve (12) month period ending December 31. The annual adjustments of the expenditure minimums shall be available by July 1 for the previous twelve (12) month period on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.130 which requires that capital minimums be adjusted.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most current capital and major medical equipment expenditure amounts for use in processing Certificate of Need Applications.

(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 about 160 entities that file a certificate of need application each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will impact any Certificate of Need applicant with a capital expenditure or major

medical expenditure that exceeds the minimum, unless the application proposed non-clinically related expenditures.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The facilities will have access to the most current information regarding capital expenditure and major medical expenditure minimums when completing their applications for Certificate of Need.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program.

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

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

RELATES TO: KRS ~~216B.015~~[216B.010, 216B.020(2)(a), 216B.040]

STATUTORY AUTHORITY: KRS [194A.030, 194A.050,] 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for~~registration of Magnetic Resonance Imaging units and the requirements for~~ submission of annual survey data to the cabinet for publication off that are used to produce annual reports necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Days" means calendar days, unless otherwise specified.

(3)~~["Exempt practitioners" means physicians, dentists, and other practitioners of the healing arts that meet the exemption established in KRS 216B.020(2)(a) and that operate a Magnetic Resonance Imaging unit.~~

(4) "Long term care facility" means any entity with licensed long term care beds including nursing facility, nursing home, intermediate care, Alzheimer's, intermediate care facility for individuals with and intellectual disability, or personal care.

(4)~~(5)~~ "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(5)~~(6)~~ "Owner" means a person as defined in KRS 216B.015(22) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(6)~~(7)~~ "Year" means a calendar year from January 1 through December 31.

Section 2. Entities Completing Surveys. The following entities shall submit annual surveys:

- (1) Licensed ambulatory surgery centers;
- (2) Licensed hospitals performing ambulatory surgery services;
- (3) Licensed home health agencies;
- (4) Licensed hospice agencies;
- (5) Licensed hospitals;
- (6) Licensed private duty nursing agencies;
- (7) Facilities with licensed long term care beds;
- (8) Entities that hold a certificate of need for MRI equipment;
- (9) Facilities with megavoltage radiation equipment;
- (10) Licensed psychiatric residential treatment facilities; and
- (11) Facilities with positron emission tomography equipment.

Section 3.~~Entities Completing Surveys on a Voluntary Basis. Exempt practitioners that have MRI equipment may submit surveys on a voluntary basis.~~

Section 4.~~Annual Survey Submission~~[Including Entities Completing Surveys on a Voluntary Basis]. An annual survey shall be completed for the previous year and transmitted electronically by accessing the Office of Health Policy's Web site at <https://prd.chfs.ky.gov/OHPSurvey/>.

Section 4.~~5~~. Surveys shall be submitted annually as follows:

- (1) Kentucky Health Survey Registry[2013] Ambulatory Surgery II;
- (2) Kentucky Health Survey Registry[2013] Home Health II;
- (3) Kentucky Health Survey Registry[2013] Hospice;
- (4) Kentucky Health Survey Registry[2013] Hospital;

(5) Kentucky Health Survey Registry[2013] Private Duty Nursing;

(6) Kentucky Health Survey Registry[2013] Long Term Care;

(7) Kentucky Health Survey Registry[2013] Magnetic Resonance Imaging;

(8) Kentucky Health Survey Registry[2013] Megavoltage Radiation (Linear Accelerator);

(9) Kentucky Health Survey Registry [2013] Psychiatric Residential Treatment Facility; and

(10) Kentucky Health Survey Registry [2013] Positron Emission Tomography.

Section 5.~~6~~. Annual surveys shall be completed and submitted no later than March 15th of each year. If the 15th falls on a weekend or holiday, the submission due date shall be the next working day.

Section 6.~~7~~. Extensions for Survey Submission. (1) A request for an extension for submission of data shall be made in writing or via email to the Office of Health Policy.

(2) The request for an extension shall state the facility name, survey log-in identification number, contact person, contact phone number, contact email address, and a detailed reason for the requested extension.

(3) One (1) extension per survey of up to ten (10) days shall be granted.

(4) An additional extension shall only be granted if circumstances beyond the entity's control prevents timely completion of a survey.

Section 7.~~8~~. Data Corrections to Draft Annual Reports Utilizing Data Submitted in the Annual Surveys. (1)(a) Prior to the release of a draft report to a facility for its review, the Office of Health Policy shall review data for completeness and accuracy.

(b) If an error is identified, the facility shall be contacted by the Office of Health Policy and allowed fourteen (14) days to make corrections.

(2)(a) Prior to publication of the reports, the Office of Health Policy shall publish draft reports available only to the entities included in each individual report.

(b) Each facility shall be notified of a Web site and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review the data for errors.

(c) Corrections shall be submitted in writing or via email to the Office of Health Policy before the expiration of the fourteen (14) day review period.

(3)(a) After publication of the reports, reports shall not be revised as a result of data reported to the Office of Health Policy incorrectly by the facility.

(b) Corrections received after the fourteen (14) day review period shall not be reflected in the published report.

(c) A facility may provide a note in the comments section for the following year's report, referencing the mistake from the previous year.

Section 8.~~9~~. Annual Reports. (1) Utilizing data submitted in the annual surveys, the Office of Health Policy shall publish reports annually as follows:

- (a) Kentucky Annual Ambulatory Surgical Services Report;
- (b) Kentucky Annual Home Health Services Report;
- (c) Kentucky Annual Hospice Services Report;
- (d) Kentucky Annual Hospital Utilization and Services Report;
- (e) Kentucky Annual Private Duty Nursing Agency Report;
- (f) Kentucky Annual Long Term Care Services Report;
- (g) Kentucky Annual Magnetic Resonance Imaging Services Report;
- (h) Kentucky Annual Megavoltage Radiation Services Report;
- (i) Kentucky Annual Psychiatric Residential Treatment Facility Report; and
- (j) Kentucky Annual Positron Emission Tomography Report.

(2) Electronic copies of annual reports may be obtained at no cost from the Office of Health Policy's Web site at

<http://chfs.ky.gov/ohp/dhppd/dataresgal.htm>. A paper copy may be obtained for a fee of twenty (20) dollars at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621.

Section 9. A[10. Any] facility[, other than an exempt practitioner that has MRI equipment,] that fails to complete a required annual survey shall be referred to the Office of Inspector General for further action which may impact the facility's license renewal as provided for in 902 KAR 20:008, Section 2(6).

Section 10.[11. Magnetic Resonance Imaging Equipment Registration on a Voluntary Basis by Exempt Practitioners that have MRI Equipment. (1) An exempt practitioner who uses a Magnetic Resonance Imaging unit (MRI) may register the MRI equipment by disclosing the following information by telephone contact and followed up in writing to the Office of Health Policy:

- (a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;
- (b) Identification of designated contact person or authorized agent of each facility;
- (c) Make, model, and serial number of each unit;
- (d) Date the unit became operational at each site; and
- (e) Whether the unit is free-standing or mobile. If the unit is mobile, the submission shall also identify the number of days the unit is operational.

(2) Within thirty (30) days of a change in the facility's address, the addition of another MRI unit, or the discontinuation of any unit, the designated contact person or authorized agent shall notify the Office of Health Policy in writing.

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

- (a) "Kentucky Health Survey Registry[2013] Ambulatory Surgery II", screen prints, June 2014[2013];
- (b) "Kentucky Health Survey Registry[2013] Home Health II", screen prints, June 2014[2013];
- (c) "Kentucky Health Survey Registry[2013] Hospice", screen prints, June 2014[2013];
- (d) "Kentucky Health Survey Registry[2013] Hospital", screen prints, June 2014[2013];
- (e) "Kentucky Health Survey Registry[2013] Private Duty Nursing", screen prints, June 2014[2013];
- (f) "Kentucky Health Survey Registry[2013] Long Term Care", screen prints, June 2014[2013];
- (g) "Kentucky Health Survey Registry[2013] Magnetic Resonance Imaging", screen prints, June 2014[2013];
- (h) "Kentucky Health Survey Registry[2013] Megavoltage Radiation (Linear Accelerator)", screen prints, June 2014[2013];
- (i) "Kentucky Health Survey Registry[2013] Psychiatric Residential Treatment Facility", screen prints, June 2014[2013]; and
- (j) "Kentucky Health Survey Registry[2013] Positron Emission Tomography", screen prints, June 2014[2013].

(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[40604], Monday through Friday, 8 a.m. to 4:30 p.m.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment

on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 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 40621, phone 502-564-7905, fax 502-564-7573, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for submission of annual survey data to the Office of Health Policy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040(2)(a)1 by establishing the requirements for submission of annual survey data to the Office of Health Policy for the orderly administration of the certificate of need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.040(2)(a)1 by establishing the requirements for submission of annual surveys to the Office of Health Policy.

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

(a) How the amendment will change this existing administrative regulation: The regulation has been revised to delete language pertaining to the voluntary registration of MRI equipment and voluntary submission of the Magnetic Resonance Imaging Services Report by exempt practitioners. Also, the amendment incorporates by reference the revised screen shots of the annual surveys.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable the Office of Health Policy to discontinue surveying of CON-exempt MRI services, which have voluntarily reported utilization in the past. Also the annual surveys have been revised to clarify instructions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating the required annual surveys for the orderly administration of the certificate of need program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to enable the Office of Health Policy to discontinue surveying CON-exempt MRI services, which have voluntarily reported utilization in the past. Also the annual surveys have been revised to clarify instructions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity required to submit annual surveys. Approximately 900 entities complete a survey each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity required to submit an annual report shall complete the annual survey online by March 15th of each year.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in Question 3: The entities will have updated surveys for collection of 2014 data and will have access to the published utilization reports.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be the Office of Health Policy's existing budget. No additional funding will be required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a twenty (20) dollar fee for a paper copy of the published utilization report. An increase in the fee is not proposed.

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned health care facilities which are required to submit annual utilization reports.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)<sup>1</sup>

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation includes a twenty (20) dollar fee for anyone wishing to purchase a paper copy of an annual report. The fee is necessary to recoup the agency's printing costs incurred in producing paper reports. We anticipate that approximately forty (40) reports will be purchased for total revenue of \$800.00. The reports are also available electronically at no charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation includes a twenty (20) dollar fee for anyone wishing to purchase a paper copy of an annual report. The fee is necessary to recoup the agency's printing costs incurred in producing paper reports. We anticipate that approximately forty (40) reports will be purchased for total revenue of \$800.00. The reports are also available electronically at no charge.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (Amendment)

#### 902 KAR 20:008. License procedures and fee schedule.

RELATES TO: KRS 216.2925, 216.530, 216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.185, 216B.990

STATUTORY AUTHORITY: KRS 216.530, 216B.042(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function and establish reasonable application fees for licenses[(4) requires the Cabinet for Health Services to exercise the licensure function for health facilities and services]. This administrative regulation establishes the fee schedule and requirements for obtaining a license to operate a health facility and establishes the procedure for obtaining a variance.

Section 1. Definitions. (1)[~~"Accredited hospital" means a hospital accredited by either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA).~~

(2)] "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a health facility's license to operate.

(2) [(3)] "Cabinet" is defined by KRS 216B.015(6) [(5)].

(3) "Deemed hospital" means a hospital that has had its accreditation accepted by the Office of Inspector General pursuant to KRS 216B.185(1) as evidence that the hospital demonstrates compliance with the licensure requirements of KRS Chapter 216B.

(4)[~~"Inspecting agency" means the Office of the Inspector General, Cabinet for Health Services.~~

(5)] "Inspector General" means the Inspector General or designee.

(5) [(6)] "Variance" means the written approval of the Inspector General authorizing a health care facility to depart from a required facility specification, upon meeting the conditions established in Sections 4 and 5 of this administrative regulation.

Section 2. Licenses. (1) A[~~The~~] license required by KRS 216B.105(1) shall be conspicuously posted in a public area of the facility.

(2) An applicant for licensure as a health facility or service shall complete and submit to the Office of the Inspector General the appropriate application for licensure as follows:

(a) Application for License to Operate a Health Facility or Service;

(b) Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency, Non-residential Hospice, or Private Duty Nursing Agency;

(e) Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technological Service;

(f) Application for License to Operate a Long Term Care Facility; or

(g) Application for License to Operate a Family Care Home[An applicant for licensure shall file with the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, the appropriate application for licensure, as follows:

(a) Application for License to Operate a Family Care Home;

(b) Application for License to Operate a Long-term Care Facility;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency;

(e) Application for License to Operate a Special Health Clinic or Service;

(f) ~~Application for License to Operate a Health Facility or Service;~~

(g) ~~Application for Initial License to Operate a Critical Access Hospital (CAH);~~

(h) ~~Application for Relicensure to Operate a Critical Access Hospital (CAH); or~~

(i) ~~Application for a License to Operate a Residential Hospice Facility.~~

(3) An applicant for an initial license shall, as a condition precedent to licensure be in compliance with each[the] administrative regulation[regulations] applicable to the license requested, which shall be determined through an on-site inspection of the health facility.

(4) Licensure inspections.

(a) Except for a health facility subject to KRS 216.530, a licensure inspection may be unannounced.

(b) 1. A representative of the Office of Inspector General[inspecting agency] shall have access to the health facility pursuant to KRS 216B.042(2).

2. An applicant for licensure or a current licensee shall not deny access to a representative of the Office of Inspector General, after proper identification, to make an inspection for determining compliance with the requirements of each applicable administrative regulation for which the facility is licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1.

3. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the Office of Inspector General to enter the facility, or deny access to records relevant to the inspection shall result in disciplinary action, including denial, revocation, or suspension of the facility's license.

(c) An inspection of a health facility or service licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1 shall comply as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 902 KAR Chapter 20, 906 KAR Chapter 1, KRS Chapter 216, or KRS Chapter 216B; and

3. The inspection of a health facility or service based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction[and pertinent facility records].

(5) Violations.

(a) The Office of Inspector General[inspecting agency] shall notify the health facility in writing of a regulatory violation identified during an inspection.

(b) The health facility shall submit to the Office of Inspector General[inspecting agency], within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility's administrator, the licensee, or a person designated by the licensee and shall specify:

a. The date by which the violation shall be corrected.

b. The specific measures utilized to correct the violation; and

c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General[inspecting agency] shall review the plan and notify the facility in writing of the decision to:

a. Accept the plan;

b. Not accept the plan; or

c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2b of this paragraph shall:

a. State the specific reasons the plan is unacceptable; and

b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General[inspecting agency] shall review the amended plan of correction and notify the facility in writing of the decision to:

a. Accept the plan;

b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or

c. Require the facility to submit an acceptable plan of

correction.

5. A facility that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(6) A license shall:

(a) Expire one (1) year from the date of issuance, unless otherwise expressly provided in the license certificate; and

(b) Be renewed if the licensee:

1. Submits a completed licensure application;

2. Pays the prescribed fee;

3. Has no pending adverse action and

4. Unless exempted, has responded to requests from the cabinet[for Health Services, Department of Public Health] for:

a. Annual utilization surveys; and

b. Requests for information regarding health services provided.

(7) Except for a Level I psychiatric residential treatment facility licensed pursuant to the exception established in 902 KAR 20:320, Section 3(2)[2(4)(b)], more than one (1) license shall not be issued or renewed for a particular licensure category at a specific location.

(8) A new licensure application shall be filed within thirty (30) calendar days of the effective date[in the event] of a change of ownership. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(9) The licensee shall fully disclose to the cabinet the name, mailing[and] address, email address, and phone number, or a change in the name, mailing[or] address, email address, or phone number of:

(a) Each person having an ownership interest of twenty-five (25) percent or more in the facility; and

(b) 1. Each officer or director of the corporation, if a facility is organized as a corporation; or

2. Each partner, if a facility is organized as a partnership.

(10) An unannounced inspection shall be conducted:

(a) In response to a credible, relevant complaint or allegation; and

(b) According to procedures established in subsection (4) of this section.

(11) A licensee[facility,] that does not have a pending adverse action, but fails to submit a completed licensure application annually[which has failed to renew its license on or before the expiration date] shall cease operating the health facility unless:

(a) The items required under subsection (6)(b) of this section have been tendered; and

(b) The Office of Inspector General[inspecting agency] has provided the facility with a notice granting temporary authority to operate pending submission of the application[completion of the renewal process].

Section 3. Fee Schedule. (1)(a) Fees for review of plans and specifications for construction or renovation of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review	\$ <u>10</u> [-05] per sq. ft.
(initial through final)	\$200[100] minimum
(b) All other health facilities plans and specifications review	\$ <u>10</u> [-05] per sq. ft.
(initial through final)	\$200[100] minimum

(b) A request for review of plans and specifications shall be submitted on the Program Review Fee – Worksheet Health Facility Identification form, accompanied by payment described in paragraph (a) of this subsection.

(2) Initial and Annual fees. The initial and annual licensure fee[, including a renewal,] for health facilities and services shall be as follows:

License Type	Rate
(a) <u>Freestanding[Alternative] birth center</u>	\$ <u>500</u> [155]

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(b) Alzheimer's nursing home	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(c) Ambulatory surgical center	\$750[270]
(d) Chemical dependency treatment service	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(e) Community mental health[and mental retardation] center	\$1,500[\$1,300]
(f) Day health care	\$170[140]
(g) Family care home	\$42[40]
(h) Group home for individuals with an intellectual or developmental disability [homes for the mentally retarded/ developmentally disabled]	\$100[80]
(i) Health maintenance organization	\$12[10] per 100 patients
(j) Home health agency	\$500[140]
(k) Hospice	\$500[35]
(l) Hospital	
1. Deemed[Accredited] hospital	\$1,000 + \$25 per bed [\$40 per bed \$155/minimum]
2. Non-deemed[Nonaccredited] hospital	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(m) Intermediate care facility	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(n) ICF/IID[ICF/MR] facility	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(o) Network	\$500[270]
(p) Nursing facility	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(q) Nursing home	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(r) Ambulatory care clinic	\$500[270]
(s) Personal care home	\$100 + \$5 per bed [\$4 per bed \$80/minimum]
(t) Primary care center	\$500 + \$50 per extension[\$270 \$25 per satellite]
(u) Psychiatric hospital	
1. Deemed[Accredited] hospital	\$1,000 + \$25 per bed [\$40 per bed \$155/minimum]
2. Non-deemed[Nonaccredited] hospital	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(v) Psychiatric residential treatment facility	\$500[270]
(w) Rehabilitation agency	\$300[140]
(x) Renal dialysis facility	\$350[35] per station
(y) Rural health clinic	\$500[140]
(z)[Skilled nursing facility]	\$15 per bed \$155/minimum
(aa) Special health clinic	\$500[270]
(aa)[(bb)] Specialized medical technology service	\$500[270]
(bb)[(cc)] Mobile health service	\$500[270]
(cc)[(dd)] Comprehensive physical rehabilitation hospital	
1. Deemed[Accredited] hospital	\$1,000 + \$25 per bed [\$40 per bed \$155/minimum]

2. Non-deemed[Nonaccredited]	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(dd)[(ee)] Critical access hospital	\$1,000 + \$25 per bed [\$15 per bed \$155/minimum]
(ee)[(ff)] Private duty nursing agency	\$500[140]
(ff)[(gg)] Residential hospice facility	\$1,000 + \$25 per bed [\$9 per bed \$155 minimum]
[(hh) Group Homes for persons with acquired brain injuries]	\$80]
(gg)[(ii)] Prescribed Pediatric Extended Care Facilities	\$500[155]
(hh) Outpatient health care center	\$500

## (3) Change in status of a licensed health facility.

(a) Name change or change of facility administrator. If a health facility changes the name of the facility or the facility administrator changes, the licensee shall notify the Office of Inspector General of the facility's new name or new administrator within ten (10) calendar days of the effective date of the name change or administrator change.

## (b) Change of location.

1. If a health facility or one (1) of its extensions or satellites changes locations, the licensee shall notify the Office of Inspector General of the new location within ten (10) calendar days of the effective date of the change.

2. Upon notification of a change in location, the Office of Inspector General shall conduct an on-site inspection if the facility is one (1) of the following levels of care:

- Freestanding birth center;
- Alzheimer's nursing home;
- Ambulatory surgical center;
- Chemical dependency treatment service;
- Group home;
- Non-deemed hospital;
- Intermediate care facility;
- Intermediate care facility for individuals with an intellectual or developmental disability (ICF/IID);
- Nursing facility;
- Nursing home;
- Personal care home;
- Psychiatric residential treatment facility;
- Renal dialysis facility;
- Residential hospice facility; or
- Outpatient health care clinic.

Section 4. Existing Facilities With Waivers. (1) The Inspector General shall deem an existing health care facility to be in compliance with a facility specification requirement, even though the facility does not meet fully the applicable requirement, if:

- The Inspector General has previously granted, to the facility, a waiver for the requirement;
- The facility is licensed by the cabinet;
- The facility is in good standing as of the effective date of this administrative regulation; and
- The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

(2) If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:

- The Inspector General shall notify the facility by certified mail of the findings and the need to comply with the applicable administrative regulations; and
- The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(5)(b) of this administrative regulation.

Section 5. Variances. (1) The Inspector General may grant a health care facility a variance from a facility specification requirement if the facility establishes that the variance will:

- Improve the health, safety, or welfare of a resident or

patient; or

(b) Promote the same degree of health, safety, or welfare of a resident or patient as would prevail without the variance.

(2) A facility shall submit a request for a variance, in writing, to the Office of [the] Inspector General[, Cabinet for Health Services]. The request shall include:

(a) All pertinent information about the facility;

(b) The specific provision of the administrative regulation affected;

(c) The specific reason for the request; and

(d) Evidence in support of the request.

(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction.

(4) The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:

(a) Improved the health, safety, or welfare of a patient or resident; or

(b) Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility, by certified mail, of a decision to revoke a variance and the need to comply with the applicable regulatory requirement.

2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(5)(b) of this administrative regulation.

Section 6. Variance Hearings. (1)(a) A health care facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health and Family Services.

(b) The request shall be received by the secretary[~~of the cabinet~~] within twenty (20) days of the date the health care facility receives notice of the decision to deny, modify, or revoke the variance or request for a variance.

(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. Adverse Action Procedures. (1) A facility that has received a preliminary order to close or other notice of adverse action:

(a) Shall receive a duplicate license from the Office of Inspector General indicating that the facility has adverse action pending;

(b) Shall post the duplicate license in place of the original license;

(c) Shall be subject to periodic inspections by the inspecting agency to investigate complaints and ensure patient safety; and

(d) May continue to operate under duplicate license pending completion of the adverse action process, if patients and residents are not subjected to risk of death or serious harm.

(2) Until all appeals of the pending adverse action have been exhausted, the facility shall not have its:

(a) License renewed; or

(b) Duplicate license replaced.

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

(a) Form OIG 001, "Application for License to Operate a Health Facility or Service", June 2014 edition;

(b) Form OIG 002, "Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility", June 2014 edition;

(c) Form OIG 003, "Application for License to Operate a Hospital", June 2014 edition;

(d) Form OIG 004, "Application for License to Operate a Home Health Agency, Non-Residential Hospice, or Private Duty Nursing Agency", June 2014 edition;

(e) Form OIG 005, "Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or

Specialized Medical Technology Service", June 2014 edition;

(f) Form OIG 006, "Application for License to Operate a Long Term Care Facility", June 2014 edition;

(g) Form OIG 007, "Application for License to Operate a Family Care Home", June 2014 edition; and

(h) Form OIG PR-1, "Program Review Fee – Worksheet Health Facility Identification Form", June 2014[Application for License to Operate a Family Care Home, OIG 4 (10/2002);

(b) Application for License to Operate a Long-term Care Facility, OIG 5 (10/2002);

(c) Application for License to Operate a Hospital, OIG 140 (10/2002);

(d) Application for License to Operate a Home Health Agency, OIG 141(10/2002);

(e) Application for License to Operate a Special Health Clinic or Service, OIG 142 (10/2002);

(f) Application for License to Operate a Health Facility or Service, OIG 144 (10/2002);

(g) Application for Initial License to Operate A Critical Access Hospital (CAH), OIG 242 (10/2002);

(h) Application for Relicensure to Operate A Critical Access Hospital (CAH), OIG 242A (10/2002); and

(i) Application for a License to Operate a Residential Hospice Facility, OIG 155 (10/2002)].

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

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2014, at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2014, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 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 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Maryellen B. Mynear, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining a license to operate a health facility, the fee for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish reasonable fees for the licensure of health facilities and promulgate administrative regulations necessary for proper administration of the licensure function.

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

to the content of KRS 216B.042(1) by establishing the requirements for obtaining a license to operate a health facility and fees for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for obtaining a license to operate a health facility, the fee for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation as follows: Deletes the definition of "accredited hospital" and replaces this term with "deemed hospital"; Deletes the definition of "inspecting agency" and replaces this term with "Office of Inspector General" throughout; Updates applications for licensure as a health facility; Clarifies the Office of Inspector General's (OIG) authority to initiate disciplinary action against a facility's license if the facility denies access, including any effort to delay, interfere with, or obstruct an effort by OIG staff to enter the facility or deny access to records relevant to the OIG's inspection; Clarifies the scope of the OIG's investigative authority; Clarifies the timeframes by which a licensee must report a change in status, e.g. change of ownership, name, or location; and Increases the initial and annual health care facility licensure fees, as well as increases the fee for review of plans and specifications for construction or renovation of health facilities.

(b) The necessity of the amendment to this administrative regulation: Amendment of this administrative regulation is necessary to increase licensure fees to a reasonable level commensurate with the cost of regulating health care facilities.

Justification for the licensure fee increase: Most of the licensure fees established in this administrative regulation have not increased since 2003, the year this administrative regulation was last amended. The fee for family care homes and group homes for individuals with intellectual/developmental disabilities has not increased since 1990. In addition to the retention of flat fees for the past eleven (11) years, nominal increases approved prior to 2003 have rendered the current licensure fees insufficient to offset the true cost of regulating health facilities.

While Kentucky regulates several levels of care that other states do not regulate, a comparison of available information revealed that most of the surrounding states impose significantly higher fees on hospitals, long-term care facilities, ambulatory surgical centers, hospice providers, and home health agencies. Also, some states charge a separate fee for changes of ownership, name, or location, and some states charge a fee to facilities under investigation as the result of a complaint. Kentucky does not impose fees for any of those additional functions.

In addition to the significantly higher fees charged by other states, another factor considered in the proposed fee increase relates to recent increases in staff workload. Specifically, while the number of annual inspections for long-term care facilities decreased by 212 from 2007 through 2012 in comparison to the previous five year period, the number of complaint investigations increased by 2,276. Along with these complaints, the number of immediate jeopardies (a crisis situation in which the health and safety of residents and/or patients are at risk) increased from thirty-six (36) cited during the period from 2001 to 2006 to a total of 223 immediate jeopardies cited from 2007 to 2012, representing a 619 percent increase. An immediate jeopardy situation requires multiple surveyors and working in close collaboration with staff in the OIG's Central Office, resulting in a more demanding workload involving more complex investigations.

As health care coverage expands, the anticipated increase in the demand for services, especially primary care, home health, substance abuse treatment, and mental health services is expected to result in an increased number of facilities and services subject to regulation by the OIG. Additional revenue is needed to satisfactorily staff for these surveys and any subsequent complaint investigations.

Additionally, to achieve budget neutrality with respect to new levels of care created since this administrative regulation was last amended, the OIG has already begun the practice of establishing fees commensurate with the cost of regulating new facility types. For example, with each new licensure category required by law or otherwise established by administrative regulation since 2009 (i.e., limited services clinics, personal services agencies, specialty intermediate care clinics, and non-physician owned pain management facilities grandfathered by HB 1 from the 2012 Special Session), state law or regulation requires that the fee for each level of care be sufficient to cover the costs of regulatory oversight. The fees for these new categories of care range from \$350 to \$2,000 annually, and none of these levels are charged less than \$500 initially.

Justification for increasing the fee for review of plans and specifications for construction or renovation of health facilities: The 2006 Kentucky Building Code provides that the fee charged by the Department for Housing, Buildings and Construction (HBC) for plan reviews of occupancy types that would include health facilities is 0.14 (14) cents per square foot/\$250 minimum. By comparison, the proposal in this administrative regulation to increase the fee for plan reviews by the OIG's architects from 0.05 (5) cents per square foot/\$100 minimum to 0.10 (10) cents per square foot/\$200 minimum remains less than the current fee established in 2006 by HBC for similar reviews.

Conclusion: Because general fund dollars are used to implement this administrative regulation, increasing fees as proposed will help assure that funding is sufficient for the OIG to continue providing health facility licensure services in an effective manner to help ensure that Kentucky's citizens benefit from safe, adequate, and efficient medical care.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by increasing licensure fees in an amount sufficient to assure that funding is available to offset the true cost of regulating health facilities.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 216B.042 by increasing licensure fees to a reasonable level commensurate with the cost of regulating health care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The increase in initial and annual licensure fees proposed by this administrative regulation affects the following health facilities licensed by the Office of Inspector General:

Licensure Type	Number of Facilities
Freestanding birth center	0
Alzheimer's nursing home	1
Ambulatory surgical center	33
Chemical dependency treatment service	4
Community mental health center	14
Day health care	106
Home health agency	109
Hospice	24
Deemed hospital	105
Nondeemed hospital	21
Intermediate care facility	9
ICF/IID facility	14
Network	5
Nursing facility	282



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Nursing home	5
Ambulatory care clinic	14
Personal care home	154
Primary care center	146
Deemed psychiatric hospital	11
Nondeemed psychiatric hospital	2
Psychiatric residential treatment facility	24
Rehabilitation agency	290
Renal dialysis facility	107
Rural health clinic	164
Special health clinic	119
Specialized medical technology service	121
Mobile health service	146
Comprehensive physical rehabilitation hospital (deemed)	5
Comprehensive physical rehabilitation hospital (nondeemed)	1
Critical access hospital	29
Private duty nursing agency	10
Residential hospice facility	9
Prescribed pediatric extended care facility	7
Outpatient health care center	1

(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 licensed facilities identified in the response to question (3) will be subject to increased licensure fees as described in the response to (4)(b).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

License Type	Proposed Initial and Annual Licensure Fees
Freestanding birth center	None currently licensed at this time. However, increase from \$155 to \$500
Alzheimer's nursing home Intermediate care facility ICF/IID facility Nursing facility Nursing home Chemical dependency treatment service Non-deemed hospital Non-deemed psychiatric hospital Non-deemed comprehensive physical rehabilitation hospital Critical access hospital	Increase from \$15/bed, \$155 minimum to \$1,000 + \$25 per bed

Deemed hospital Deemed psychiatric hospital Deemed comprehensive physical rehabilitation hospital	Increase from \$10/bed, \$155 minimum to \$1,000 + \$25 per bed
Ambulatory surgical center	Increase from \$270 to \$750
Community mental health center	Increase from \$1,300 to \$1,500
Day health care	Increase from \$140 to \$170
Family care home	Increase from \$40 to \$42
Group home for individuals with an intellectual disability	Increase from \$80 to \$100
Health maintenance organization	Increase from \$10 to \$12 per 100 patients
Home health agency Private duty nursing Network Rural health clinic	Increase from \$140 to \$500
Hospice	Increase from \$35 to \$500
Prescribed Pediatric Extended Care Facility	Increase from \$155 to \$500
Ambulatory care clinic Special health clinic Specialized medical technology service Mobile health service	Increase from \$270 to \$500
Personal care home	Increase from \$4/bed, \$80 minimum to \$100 + \$5 per bed
Primary care center	Increase from \$270 + \$25 per satellite to \$500 + \$50 per extension
Psychiatric residential treatment facility	Increase from \$270 to \$500
Rehabilitation agency	Increase from \$140 to \$300
Renal dialysis facility	Increase from \$35 per station to \$350 per station
Residential hospice facility	Increase from \$9 per bed, \$155 minimum to \$1,000 + \$25 per bed
Outpatient health care center	Establish at \$500

In addition, health facilities required to submit facility specifications for review by the OIG's architects prior to construction or renovation will be subject to an increase in fees from 0.05 (5) cents per square foot/\$100 minimum to 0.10 (10) cents per square foot/\$200 minimum.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensure of health facilities and health services is a means to ensure that Kentucky's citizens have safe, adequate, and efficient medical care. Increasing licensure fees to a reasonable level that is commensurate with the costs of providing the licensure function will help ensure that licensing activities are not compromised due to insufficient funding.

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

(a) Initially: No additional costs will be incurred by the Office of Inspector General to implement this amendment. However, the proposed increase in fees will help assure that funding is sufficient to offset the OIG's current cost of providing health facility licensure services. Further, the Office of Inspector General anticipates that the proposed increase in initial and annual licensure fees will generate an estimated \$1,494,647 additionally during the first year. The proposed increase in the fee for review by the OIG's architects of facility specifications prior to construction or renovation is estimated to generate an additional \$87,400 during the first year.

(b) On a continuing basis: No additional costs will be incurred by the Office of Inspector General to implement this amendment. However, the proposed increase in fees will help assure that funding is sufficient on an ongoing basis to offset the OIG's current cost of providing health facility licensure services. Further, the

Office of Inspector General anticipates that the proposed increase in initial and annual health facility licensure fees will generate an estimated \$1,494,647 on an ongoing basis. The proposed fee increase for review by the OIG's architects of facility specifications prior to construction or renovation is estimated to generate an additional \$87,400 during subsequent years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment increases the initial and annual health care facility licensure fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment increases the initial and annual health care facility licensure fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact a health care facility licensed as one of the following: Alzheimer's nursing home, ambulatory surgical center, chemical dependency treatment service, community mental health center, day health center, family care home, group home for individuals with intellectual or developmental disabilities, health maintenance organization, home health agency, hospice, deemed hospital, non-deemed hospital, intermediate care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities network, nursing facility, nursing home, ambulatory care clinic, personal care home, primary care center, deemed psychiatric hospital, non-deemed psychiatric hospital, psychiatric residential treatment facility, rehabilitation agency, renal dialysis facility, rural health clinic, special health clinic, specialized medical technology service, mobile health service, deemed comprehensive physical rehabilitation hospital, non-deemed comprehensive physical rehabilitation hospital, critical access hospital, private duty nursing agency, residential hospice facility, prescribed pediatric extended care facility, or outpatient health care center.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Office of Inspector General anticipates that the proposed increase in initial and annual health facility licensure fees will generate an estimated \$1,494,647 additionally during the first year. The proposed fee increase for review by the OIG's architects of facility specifications prior to construction or renovation is estimated to generate an additional \$87,400 during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Office of Inspector General anticipates that the proposed increase in initial and annual health facility licensure fees will generate an estimated \$1,494,647 additionally per year. The proposed fee increase for review by the OIG's architects of facility specifications prior to construction or renovation is estimated to generate an additional \$87,400 during subsequent years.

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

year? No additional costs will be incurred by the Office of Inspector General to implement this amendment. However, the proposed fee increase will help assure that funding is sufficient to offset the OIG's current cost of providing health facility licensure services.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the Office of Inspector General to implement this amendment. However, the proposed fee increase will help assure that funding is sufficient on an ongoing basis to offset the OIG's current cost of providing health facility licensure services.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

#### 910 KAR 1:180. Homecare program for the elderly.

RELATES TO: KRS 13B.010-13B.170, 194A.700(1), (7), 205.010(6), 205.201, 205.203, 205.455-465, 209.030(2) (3), 42 U.S.C. Chapter 35

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. Chapter 35 authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) authorizes the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet as the state agency to administer 42 U.S.C. Chapter 35 in Kentucky and promulgate administrative regulations for this purpose. This administrative regulation sets forth the standards of operation for a homecare program for elderly persons in Kentucky

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) [division which] Releases funds under contract for the delivery of services within the planning and service area.

(3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant's or recipient's service level and development of a plan of care utilizing a holistic, person centered approach by a qualified independent care coordinator (ICC).

(4) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based[homecare] services as identified in the Plan of Care[a "DAS-891, Plan of Care"] by:

(a) Planning;

(b) Referring;

(c) Monitoring;[and]

(d) Advocating; and

(e) Following the timeline of the assessment agency to obtain:

1. Service level; and

2. Development of the Plan of Care.

(5) "Case management supervisor" means an individual meeting the requirements of Section 5(1)(a) and (b) of this administrative regulation and who shall have four (4) years or more experience as a case manager.

(6) [(5)] "Case manager" means the individual employee responsible for:

(a) Coordinating services and supports from all agencies involved in providing services required by the Plan of Care;

(b) Ensuring all service providers have a working knowledge of

the Plan of Care; and

(c) Ensuring services are delivered as required.

(7) "Department" means the Department for Aging and Independent Living.

(8) ~~an individual who meets the requirements of Section 5(1) and (2) of this administrative regulation.~~

(6)] "District" is defined by KRS 205.455(4).

(9) "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting aging or disabled individuals through:

1. Practicum placement;

2. Clinicals; or

3. Volunteerism.

(10) "Extraordinary out of pocket expenses" means medical expenses not covered by insurance including:

(a) Copays;

(b) Deductibles;

(c) Prescriptions;

(d) Premiums for medical insurance; or

(e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures.

(11)(7)] "Formal support system" means paid services provided to an individual from any funding source.

(12)(8)] "Homecare services" means services that:

(a) Are:

1. Provided to an eligible individual who is functionally impaired as defined by KRS 205.455(7); and

2. Directed to the individual specified in subparagraph 1 of this paragraph toward:

a. Prevention of unnecessary institutionalization; and

b. Maintenance in the least restrictive environment, excluding residential facilities; and

(b) Include:

1. Chore services as defined by KRS 205.455(1);

2. Core services as defined by KRS 205.455(2);

3. Escort services as defined by KRS 205.455(5);

4. Home-delivered meals as defined by KRS 205.455(8);

5. Home-health aide services as defined by KRS 205.455(9);

6. Homemaker services as defined by KRS 205.455(10);

7. Home repair services as defined by KRS 205.455(11);

8. Personal care services as established in subsection (16)[44] of this section;

9. Respite services as defined by KRS 205.455(12);

(13) "Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and annual reassessment.

(14)(9)] "Informal support system" means any care provided to an individual which is not provided as part of a public or private formal service program;

(15)(10)] "Instrumental activities of daily living" as defined by KRS 194A.700(7).

(16) "Natural Supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance.

(17)(11)] "Personal care services" means assistance with activities of daily living.

(18)(12)] "Reassessment" means reevaluation of the situation and functioning of a client.

(19) "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.

(20) "Social service assistant" means an individual who:

(a) Has at least a high school diploma or equivalent;

(b) Works under the direction of the case manager supervisor;

(c) Assists the case manager with record keeping, filing, data entry, and phone calls;

(d) Helps determine what type of assistance their clients need;

(e) Assists the client in getting services to carry out the plan of care;

(f) Coordinates services provided to the client;

(g) Assists clients in applying for other services or benefits for which they may qualify; and

(h) Monitors clients to ensure services are provided appropriately.

Section 2. Service Provider Responsibilities. A service provider contracting with a district to provide homecare services supported in whole or in part from funds received from the cabinet shall:

(1) Assure the provision of homecare services throughout the geographic area covered under its plan or proposal;

(2) Review the provision of homecare services to assure safety and consistency;

(3) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of homecare services;

(4) Permit staff of the cabinet and the district to monitor and evaluate homecare services provided;

(5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the ~~department~~[Division of Aging Services];

(6) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(7) Develop and maintain written personnel policies and a wage scale for each job classification; and

(8) Designate a supervisor to assure that staff providing homecare services are provided supervision.

Section 3. Homecare Plan. For program approval, a district shall submit to the cabinet a proposal within its area plan to include at least the following:

(1) An assurance of access for the ~~department~~[Division of Aging Services] to records of the district pertaining to its contract for delivery of homecare services; and

(2) A plan for the delivery of homecare services in the area to be served by the district containing:

(a) Identification of services currently provided in the district; and

(b) The following assurances:

1. A justification of a decision not to fund a homecare service, including an assurance of adequate availability from another funding source;

2. A policy and procedure for assuring a client's:

a. Eligibility in accordance with Section 4[5(4)] of this administrative regulation; and

b. Implementation of case management;

3. A policy and procedure for a client's referral for service to other appropriate programs and services as specified in paragraph (a) of this subsection;

4. A policy and procedure for volunteer programs to be utilized;

5. Identification of a service provider for each specific service;

6. A policy and procedure for the periodic monitoring of a client for the appropriateness of homecare services and to assure safety and consistency;

7. A number of proposed clients for homecare services to be provided directly or by contract;

8. A unit cost per service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 8(2) of this administrative regulation;

9. A policy and procedure for the acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;

10. A policy and procedure for the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3);

11. A policy and procedure for the manner in which delivery of homecare services shall be provided to an eligible individual;

12. A policy and procedure for monitoring a subcontract for delivery of direct homecare services; and

13. A policy and procedure assuring that an assessment, as specified in Section 5(3) of this administrative regulation, shall include the following information submitted electronically to the ~~department~~[division] in the formats prescribed by the Aging Services Tracking System:

a. Demographic information, including family income;

- b. Physical health;
- c. Activities of daily living and instrumental activities of daily living;
- d. Physical environment;
- e. Mental and emotional status;
- (f) Assistive devices, sensory impairment, and communication abilities;
- (g) Formal and informal resources; and
- (h) Summary and ~~judgment~~[judgement].

Section 4. Eligibility. (1) A prospective client for homecare services shall:

- (a) Demonstrate that the prospective client is a person sixty (60) years of age or older;~~and~~

(b) Not be eligible for the same or similar services through Medicaid unless the individual is:

- 1. Considered inappropriate for person directed services due to:

- a. An inability to manage his own services; and
- b. A lack of availability of a person to act as his representative;

or

- 2. Unable to access the Home and Community Based Waiver through a traditional provider; and

(c) Meet one (1) of the following criteria:

- 1. Be functionally impaired in the performance of:
  - a. Two (2) activities of daily living;
  - b. Three (3) instrumental activities of daily living; or
  - c. A combination of one (1) activity of daily living and two (2) instrumental activities of daily living; or

~~2. [(e)] Have a stable medical condition requiring skilled health services[along with services related to activities of daily living requiring an institutional level of care]; or~~

3. [(d)] Be:

- a. [1-] Currently residing in[a]:
  - (i)[a-] A skilled nursing facility;
  - (ii)[b-] An intermediate care facility; or
  - (iii)[c-] A personal care facility; and

b. [2-] Able to be maintained at home if appropriate living arrangements and support systems are established.

(2) Eligibility shall be determined by an ICC[a case manager]:

(a) Qualified in accordance with Section 5(1) and (2) of this administrative regulation; and

(b) In accordance with Section 5(3)[(4)] of this administrative regulation.

(3) If a client meets eligibility requirements of subsection (1) of this section for homecare services, the client or caregiver shall be informed that the client shall be eligible for services as long as he or she meets eligibility requirements.

(4) An ICC[The case manager] shall determine a prospective client's eligibility for:

(a)[The following services in accordance with 910 KAR 1:160:

- 1. ~~Adult day services;~~
- 2. ~~Adult day health services;[or]~~
- (b)[3-] ~~Alzheimer's respite care services;[or]~~
- (c)[(b)] ~~In-home services; or~~
- (d) ~~Respite for the unpaid primary caregiver; and~~

(e) Service level of case management as determined on the DAIL-HC-01, Scoring Service Level.

(5)(a) The homecare program shall not supplant or replace services provided by the client's natural[informal] support system.

(b) If needs are being met by the natural[informal] support system, the client shall be deemed ineligible.

(c) An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

(6) Applicants who are eligible for services and funding is not available shall be placed on a waiting list for services.

Section 5. Case Management Requirements. (1) A case manager and an ICC shall:

(a) Meet one (1) of the following qualifications:

1. Possess a Bachelor's degree in a health or human services profession from an accredited college or university:

- a. With one (1) year experience in health or human services; or

b. The educational or experiential equivalent in the field of aging or physical disabilities;

2. Be a currently licensed RN as defined in KRS 314.011(10) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities;

3. Be a currently licensed LPN as defined in KRS 314.011(10) who has:

a. At least three (3) years of experience in the field of aging or physical disabilities; and

b. An RN to consult and collaborate with regarding changes to the Plan of Care;

4. A Master's degree from an accredited college or university can substitute for the required experience;

(b) Be a department certified case manager beginning July 1, 2015; and

(c) Be supervised by a case management supervisor[(a) A minimum of a bachelor's degree in one (1) of the following, no experience required:

- 1. Social work;
- 2. Gerontology;
- 3. Psychology;
- 4. Sociology; or
- 5. A field relevant to geriatrics;

(b) A minimum of a bachelor's degree in nursing with a current Kentucky nursing license, no experience required;

(c) A bachelor's degree in a field not relevant to geriatrics or listed in Section 1(4) of this administrative regulation with two (2) years experience in working with the elderly;

(d) A Kentucky registered nurse with a current Kentucky license and two (2) years experience in working with the elderly; or

(e) A Licensed practical nurse with a current Kentucky license and three (3) years experience in working with the elderly.

(2)(a) In addition to meeting the requirements of subsection (1) of this section,

case management training shall be required as follows:

- 1. Fourteen (14) hours of initial training within six (6) months of hire; and
- 2. Sixteen (16) hours of in-service training annually.

(b) Volunteer experience working with the elderly shall be counted on an hour-for-hour basis].

(2)[(3)] Each client shall be assigned a:

- (a) Case manager; or
- (b) Social service assistant.

(3)[(4)] (a) A client shall be assessed initially and reassessed at least annually[every six (6) months] thereafter by an ICC[a case manager].

(b) After each assessment or reassessment, the ICC shall determine eligibility and service level of each assessed individual[case manager shall complete the DAS-888, Homecare Certification of Eligibility].

(c) If the client is ineligible, the case shall be closed with the reason documented in the case record and notification shall be mailed to the client or caregiver.

(4)[(5)] The case manager shall:

(a) Be responsible for coordinating, arranging, and documenting those services provided by:

- 1. Any funding source; or
- 2. A volunteer;

(b)1. Make a reasonable effort to secure and utilize informal supports for each client; and

2. Document the reasonable effort in the client's case record; and

(c) Monitor each client by conducting a home visit according to the assessed service level and through a telephone contact between home visits. Clients shall be contacted at a minimum as follows:

- 1. Level 1, a home visit shall be conducted every other month;
- 2. Level 2, a home visit shall be conducted every four (4) months; and

3. Level 3, a home visit shall be conducted every six (6) months[monthly including one (1)]:

1. Home visit with face-to-face contact at least every other month; or

2. ~~Phone contact during any month a home visit does not occur~~; and

(d) Document in the case record each contact made with a client, as specified in paragraph (c) of this subsection, or on behalf of the client.

(5)(a) A district shall employ an ICC to assess the eligibility and needs for each client.

(b) Clients assessed at a Level 1 or a Level 2 shall be assigned a case manager.

(c) Clients assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting their needs ~~(7) (a) A district shall assure a minimum of one (1) full-time equivalent case manager for each 100 clients.~~

~~(b) If the case manager also provides assessment services, the case manager's caseload shall not exceed seventy-five (75) clients.~~

~~(c) Time used to provide agency administration or supervision of other staff shall not be counted toward meeting the full-time equivalency requirement.~~

~~(d) Two (2) adult day care, adult day health care or Alzheimer's respite care clients may be counted as one (1) for the purpose of determining compliance with paragraphs (a) and (b) of this subsection.~~

(6) [(8)] A client shall receive homecare services in accordance with an individualized Plan of Care developed through person centered planning cooperatively with the client's case manager.  
The plan shall:

(a) Relate to an assessed problem;

(b) Identify a goal to be achieved;

(c) Identify a scope, duration and unit of service required;

(d) Identify a source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager, with a copy provided to the client.

(7) Case management services shall not be provided to individuals on a waiting list.

Section 6. Quality Service. If a client is determined eligible for homecare services, the case manager shall:

(1) Read, or have read and explained to the client, the purpose of the DAIL-HC- 02 ~~["DAS-889]~~, Quality Service Agreement["];

(2) Provide a copy of the completed agreement to the client which shall contain the name, address, and telephone number of:

(a) The current case manager or social service assistant;

(b) A designated representative of the district; and

(c) A representative of the department ~~[Division of Aging Services];~~

(3) Ensure that a copy of a DAIL – HC- 03 ~~["DAS-890]~~, Report of Complaint or Concern["] containing written complaints and detailed reports of telephoned or verbal complaints, concerns or homecare service suggestions is maintained in the client's permanent file and documented in a centralized log; and

(4) Document investigation and efforts at resolution or service improvement that shall be available for monitoring by the district and department ~~[Division of Aging Services]~~ staff.

Section 7. Request for a Hearing. A client may request a hearing:

(1) As provided by KRS 13B.010-170; and

(2) Within thirty (30) days of any decision by the:

(a) Cabinet;

(b) District; or

(c) Service provider.

Section 8. Fees and Contributions. (1) The ICC ~~[A case manager]~~ shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment, case management services, or home-delivered meals.

(b) The ICC ~~[case manager]~~ shall:

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

(c) A fee shall not be assessed to an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d)1. SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family using 130 percent the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract. The copayment amount shall be based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0 – 129%	0%	0%	0%
130% - 149%	20%	0%	0%
150% - 169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%
250% and above	100%	100%	100%

(3)(a) A contribution from an individual or ~~[a]~~ family with a zero percent copay ~~[, or other entity]~~ shall be encouraged.

(b) Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Homecare services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve the procedure implemented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

Section 9. Allocation Formula. The homecare program funding formula shall consist of a \$40,000 ~~[\$20,000]~~ base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

Section 10. Termination or Reduction of Homecare Services.

(1)(a) A case manager or client may ~~[shall decide to]~~ terminate homecare services.

(b) Homecare services shall be ~~[may be reduced or]~~ terminated if:

1. The program can no longer safely meet the client's needs;

2. The client does not pay the copay for services as established in Section 8(2) of this administrative regulation;

3. The client refuses to follow the plan of care; or

4. The client or family member has exhibited abusive, intimidating, or threatening behavior and the client or representative is unable or unwilling to comply with the corrective action plan.

(2) Homecare services may be reduced if:

(a) The client's condition or support system improves;

(b) Program funding has been reduced; or

(c) The client refuses to follow the plan of care for a particular service ~~[The client's condition or support system improves; or~~

2. A determination is made that the "DAS-891, Plan of Care" cannot be followed].

(3) [(2)] If homecare services are terminated or reduced, the case manager shall:

(a) Inform the client of the right to file a complaint;

(b) Notify the client or caregiver of the action taken; and

(c) Assist the client and family in making referrals to another agency if applicable.

(4)(3) If homecare services are terminated or reduced due to reasons unrelated to the client's needs or condition, the designated district representative in conjunction with the case manager[.] shall determine reduction or termination on a case-by-case basis.

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

- (a) "DAIL-HC-01, Scoring Service Level", 4/2014;
- (b) "DAIL-HC-02, Quality Service Agreement", 4/2014; and
- (c) "DAIL-HC-03, Report of Complaint or Concern", 4/2014["DAS-888, Homecare Certification of Eligibility, 8/05";
- (b) "DAS-889, Quality Service Agreement, 8/05";
- (c) "DAS-890, Report of Complaint or Concern, 8/05"; and
- (d) "DAS-891, Plan of Care, 8/05".

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

DEBORAH S. ANDERSON, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2014, at 9:00 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2014, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Homecare program for the elderly.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the Area Agencies on Aging and Independent Living with the requirements of the home care program for the elderly including assessments, eligibility criteria, service provision and case management services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides for services to be provided within the home of an individual age 60 or older who have deficits in providing for their own Activities of Daily Living and Instrumental Activities of Daily Living and provides case management to ensure community resources are utilized to provide the needed and necessary services which will allow the individuals to remain in their own home for as long as possible and in compliance with the requirements of KRS 205.203 which authorizes the Secretary of the Cabinet for Health and Family Services to provide in-home services to the elderly and the collection of fees and KRS 205.455-465 which provides for essential services to the functionally impaired elderly to assist in preventing unnecessary institutionalization

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of operation for

the homecare program for elderly persons in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides clarification by defining Case Manager and the qualifications of a case manager, defining extraordinary out of pocket expenses, the Independent Care Coordination Agency "ICCA", Natural Supports, and a Social Service Assistant.

The amendment clarifies, individuals are not eligible for homecare services when they are eligible for the same or similar services through Medicaid unless they are unable to find a traditional provider through the HCB waiver or they are considered inappropriate for person directed services. This amendment allows for a Social Service Assistant to maintain contact with high functioning clients that are able to manage their own affairs and provides the qualifications for a Social Service Assistant. Clients in the Homecare program will be assessed by the "ICCA" for eligibility and level of need. The clients level of need will determine the level of case management to be assigned and the required contacts to be made by the case managers. The base funding for each district has increased from \$20,000 to \$40,000 with the remaining allocation distributed in proportion to the district's elderly sixty (60) plus population. The amendment also provides further clarification on the reduction or termination of services.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide clarification in definitions and to establish a continuum of care within community based services that will utilize the state funded programs only after programs that draw down Federal match are accessed or the individual is determined ineligible. The amendment also establishes levels of case management so that individuals with the highest need are receiving the highest level of care and resources are not being spent where they are not needed. The change in the base allocation will allow the districts with a smaller population to have funding to provide at least one full time equivalent staff person and to meet the program requirements. The base funding has been unchanged since the inception of the homecare program over thirty (30) years ago.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the authorizing statute KRS 194A.050(1) and 205.204(2) by providing in-home services to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the elderly citizens of the Commonwealth. This administrative regulation provides home based services to allow individuals to remain in their own home longer and diverts individuals from unnecessary institutionalization.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective administration of the statutes as it provides clarification on eligibility, case management service requirements, clarification of definitions and provides a base allocation to ensure statewide staffing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are fifteen (15) Area Agencies on Aging and Independent Living agencies that provide case management and assessment services, 4,508 current individuals receiving services through the homecare program and an additional 5,793 on a waiting list for services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Agencies on Aging and Independent Living (AAAIL) will have to evaluate their case management staff to ensure they meet the qualifications to provide the services. Those that do not meet the case management requirements may be able to remain employed as a Social Service Assistant if the AAAIL decides to employ this level of staffing. The AAAIL will be the assessment entity and will be required to employ

sufficient, qualified staff to complete the assessments timely. Current clients that meet the eligibility for the same or similar services through Medicaid will be required to have services delivered through the federally funded program rather than the state funded homecare program. The client will be able to maintain their current case manager or chose to change to another provider. In addition the service delivery provider, if a Medicaid provider may continue to provide the direct services or the client may choose a new provider. Individuals that are moved under Medicaid funding whose current provider is not a Medicaid provider will be given a choice of new service provider under Medicaid or they may chose the Participant Directed Option and hire the current provider or qualified individual.

(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 the providers is anticipated. They will have the opportunity to receive additional funds through providing services to more individuals. The leveling of case management will reduce the overall costs of the program by reducing travel and staff time. Face to face home visits will no longer be required monthly by the case manager unless they are assessed to meet the highest level of care. Also with the addition of a Social Service Assistant the cost of staffing will be reduced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More individuals that need services who traditionally end up on waiting lists will be served as those eligible for the same or similar service that is available through Medicaid will be moved to those services freeing up monies to serve those that don't qualify for the federal programs.

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

(a) Initially: FY 15 - Approximately \$16 million, which is the same funding as FY 14.

(b) On a continuing basis: FY 16 - Approximately \$16 million, it is anticipated that funding will remain consistent.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are fifteen (15) Area Development Districts throughout the state and the Department for Aging and Independent Living affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.700 – 729, 216.595(3)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment will not generate additional revenue or an increase in costs in expenditures.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? The amendment, itself, will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? FY 15- approximately sixteen (16) million dollars

(d) How much will it cost to administer this program for subsequent years? FY 16- approximately sixteen (16) million dollars

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 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

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

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for at least:

(a) Six (6) months; or

(b) Twelve (12) months if all members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a six (6) month or twelve (12) month certification as specified in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household, in which all members are elderly or have a disability as defined in 921 KAR 3:010 and have no earned income, shall complete an interim report using Form FS-2, SNAP 6-Month Review[Report], during the [sixth (6) month of the] household's certification period if the household reports[unless all household members]:

1. A new household member who is non-elderly or non-disabled; or[Are elderly or have a disability as defined in 921 KAR 3:010; and]

2. A gain of ~~Have no~~ earned income.

(b) If a household fails to return a completed FS-2[~~SNAP-6-Month Report~~], or the required income verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

- (1) Notice of eligibility;
- (2) Notice of denial; or
- (3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures.

(1) A household with a self-employed member shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or

2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and

2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as follows:

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as follows:

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as follows:

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as follows:

(a) An eligible household shall include:

1.a. A narcotic addict; or

b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The following case processing procedures shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2:

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from



the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as follows:

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or
2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as follows:

(a) An Application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall

report a change which causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, SNAP 6-Month Review", 10/14~~edition 7/12~~, is incorporated by reference.

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2014, 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 July 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 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, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation establishes the certification process necessary to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the certification process for SNAP eligibility determination.

(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 certification process for SNAP.

(2) If 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 adjust the twelve (12) month certification period to a six (6) month certification period for SNAP households with the exception of households in which all members are elderly or have a disability and have no earned income. This amendment will also revise

material incorporated by reference, form FS-2, SNAP 6 Month Review, to comply with federal regulations by updating the nondiscrimination statement as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), Office of Civil Rights. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to decrease the SNAP benefit error rate and the number of improper payments through improved accuracy in the eligibility determination process. In addition, the amendment updates the nondiscrimination statement included on incorporated material to conform with federal requirements. FNS revised the nondiscrimination statement in 2013. If federal requirements are not met, including conformity with nondiscrimination requirements, the state risks corrective action up to and including federal penalties and sanctions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by aligning with federal performance and practice requirements.

(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 assuring compliance with federal requirements and affording public assistance recipients with more accurate SNAP benefits and adequate notice of their rights regarding nondiscrimination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients and potential applicants are affected by this administrative regulation. During March 2014, approximately 828,244 individuals in 400,366 households participated in SNAP and over 47,000 SNAP applications were received in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require SNAP recipients to complete a six month renewal interview with the exception of households in which all members are elderly or have a disability and have no earned income. SNAP recipients can conduct these interviews through the agency's call services; the interviews do not necessitate that the recipients make appointments or appear in a local departmental office.

(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 not impose a new cost to the entities identified in question (3). If there is any new burden placed upon SNAP recipients, it will be minimal. Any burden should be offset by the benefits outlined in (c) of this item.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department for Community Based Services (DCBS) implemented a twelve month certification period for all SNAP households in 2011. The longer certification period necessitated a six-month review process. The six-month review process--actualized through the mailing, completion, and return of the FS-2--did not realize benefits to SNAP recipients or the agency; rather the process became error prone resulting in the issuance of inaccurate benefits to SNAP recipients or their discontinuation from the program in the event the FS-2 was lost, not returned, or returned untimely. DCBS was also limited by federal regulation regarding the information that could be re-verified or solicited from SNAP households during the review process. The six month certification process, as proposed in the amendment to this administrative regulation, will reduce errors on the part of the agency and the SNAP heads of household. Interviews better assure that accurate information and a fuller array of information are elicited from the SNAP recipient and are properly

documented. Increased accuracy will reduce the need for claims due to improper payments, preserve the full federal share of the agency's eligibility determination costs, and enhance the overall integrity of the program.

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

(a) Initially: The changes to the incorporated material are technical and conforming in nature. The changes to the certification period may necessitate minimal information technology costs initially, though these costs will be offset by reduced mailing costs and improved accuracy. Better accuracy will prevent the need to establish and collect claims for improper payments and help the state avoid federal corrective action and/or financial penalty.

(b) On a continuing basis: There is no new continuing cost to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded. Administrative functions are funded at a fifty (50) percent state and fifty (50) percent federal match rate. The funding has 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: There is no increase in fees or funding required to implement this administrative regulation amendment.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

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

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

counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any 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 administrative regulation will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation will not require any additional cost in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Registration for Professional Geologists  
(New Administrative Regulation)**

**201 KAR 31:100. Administrative subpoena.**

RELATES TO: KRS 322A.030(12)

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.030(12).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.030(5) authorizes the Kentucky Board of Registration for Professional Geologists to promulgate administrative regulations required to perform its duties. KRS 322A.030(12) authorizes the board to issue subpoenas to assist in the investigation of a complaint of suspected violation of KRS Chapter 322A. This administrative regulation establishes procedures for issuing an administrative subpoena.

Section 1. Definitions. (1) "Document" means any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including, but not limited to, originals, copies and drafts and both sides thereof, and including but not limited to: papers, books, letters, photographs, objects, tangible things, correspondence, electronic mail, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports, drawings, blueprints, and tape recordings of any type or size, and recordings of telephone or other conversations, or of interviews, conferences, or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical reports, desk calendars, appointment books, diaries, lists, tabulations, summaries, sound recordings, computer printouts, data processing input and output, microfilms, and all other records kept by electronic, photographic or mechanical means, and things similar to any of the foregoing, however denominated.

(2) "Respondent" means any person, individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

Section 2. The Kentucky Board of Registration for Professional Geologists may issue an administrative subpoena to investigate a complaint or suspected violation of KRS Chapter 322A.

Section 3. Administrative Subpoenas. (1) The board may issue a subpoena in accordance with KRS 322A.030(12) to require the production of books, papers, documents, or other evidence at a specified time and place.

(2) If information requested by the board is encrypted, the respondent shall:

(a) Provide the information in a readable format; and

(b) Provide proof acceptable to the board that the requested information has been translated to a readable format without error or omission.

(3) A person or entity served with a subpoena shall not intentionally destroy, alter, or falsify documents requested by the board.

Section 4. Noncompliance. (1) If a person fails without good cause to produce requested documents in accordance with Section 3(1) of this administrative regulation, the board may apply to the circuit court of the county in which compliance is sought for an appropriate order to compel compliance with the provisions of the subpoena.

(2) If a person served with a subpoena issued pursuant to Section 3(1) of this administrative regulation believes that the subpoena seeks to compel the production of documents that are protected, privileged, or not properly the subject of an administrative subpoena, the individual may, prior to the date designated for the production of the documents, apply to the circuit

court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely.

LARRY R. RHODES, Chairman

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 11, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held July 28, 2014, at 9:00 a.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lindsey Lane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to be used in relations to an administrative subpoena being issued by Kentucky Board of Registration of Professional Geologists.

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedures for the administrative subpoena process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322A.030(12) authorizes the board to issue subpoenas to assist in the investigation of a complaint of suspected violation of KRS Chapter 322A.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will inform the public of the administrative subpoena procedures.

(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: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,500 individuals registered or licensed by the board. Additionally, this administrative regulation may affect business or individuals involved in business arrangements with those licensees or operating without a license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities and individuals will be required

to require the produce books, papers, documents, or other evidence when commanded by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: The expense should be relatively minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities and individuals will be protected by disclosures to the board or entitled to due process in opposition to the subpoena.

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

(a) Initially: No cost is anticipated to implement this administrative regulation.

(b) On a continuing basis: No cost is anticipated on a continuing basis.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The board is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees 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. No fees are established directly or indirectly by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Registration for Professional Geologists.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 322A.030(5), 322A.060, 322A.070.

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

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

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

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

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

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (New Administrative Regulation)

#### 201 KAR 45:170. Application procedures.

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(c), 309.336(2)(b), Chapter 310, 311, 314, 315, 319, 319A, 320, 327,

335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.334 requires the board to establish additional requirements to apply for licensure as a master licensed diabetes educator, and KRS 309.336(2)(b) requires the board to establish additional requirements to apply for an apprentice diabetes educator permit. This administrative regulation establishes application procedures for licensed diabetes educators, master licensed diabetes educators, and apprentice diabetes educators.

Section 1. Licensed Diabetes Educator Application Procedures. An applicant for licensure as a diabetes educator shall submit to the board:

- (1) A completed Application for Licensure, Form DE-01;
- (2) Evidence to the board showing successful completion of one (1) of the following:
  - (a) A board-approved course as specified in 201 KAR 45:180;
  - (b) The credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators; or
  - (c) An equivalent credentialing program; and
- (3) Payment of the licensure fee as established in 201 KAR 45:100.

Section 2. Master Licensed Diabetes Educator Application Procedures. An applicant for licensure as a master licensed diabetes educator shall submit to the board:

- (1) A completed Application for Licensure, Form DE-01;
- (2) Proof of completion of the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators in Board Certified Advanced Diabetes Management or as a Certified Diabetes Educator; and
- (3) Payment of the licensure fee as established in 201 KAR 45:100.

Section 3. Apprentice Diabetes Educator Application Procedures. An applicant for an apprentice diabetes educator permit shall submit to the board:

- (1) A completed Application for Apprentice Diabetes Educator Permit, Form DE-03;
- (2) Payment of the licensure fee as established in 201 KAR 45:100; and
- (3) Proof of an active license or certification in good standing as at least one (1) of the following:
  - (a) American College of Sports Medicine Certified Clinical Exercise Specialist or Registered Clinical Exercise Physiologist;
  - (b)1. Certified social worker or licensed clinical social worker pursuant to KRS Chapter 335; and
  2. The applicant shall also have at least two (2) years of experience in a health profession;
    - (c) Dietitian pursuant to KRS Chapter 310;
    - (d) Health educator holding active certification as a master certified health education specialist with the National Commission on Health Education Credentialing;
    - (e) Nutritionist pursuant to KRS Chapter 311;
    - (f) Occupational therapist pursuant to KRS Chapter 319A;
    - (g) Optometrist pursuant to KRS Chapter 320;
    - (h) Osteopath pursuant to KRS Chapter 311;
    - (i) Pharmacist pursuant to KRS Chapter 315;
    - (j) Physical therapist pursuant to KRS Chapter 327;
    - (k) Physician pursuant to KRS Chapter 311;
    - (l) Physician assistant pursuant to KRS Chapter 311;
    - (m) Podiatrist pursuant to KRS Chapter 311;
    - (n) Psychologist pursuant to KRS Chapter 319;
    - (o) Registered nurse pursuant to KRS Chapter 314; or
    - (p) A license or certification from a state or the District of Columbia equivalent to one (1) of the licenses or certifications listed in this subsection.
- (4) The board shall not consider an applicant for an apprentice diabetes educator permit who does not hold an active license or

certification as listed in subsection (3) of this section.

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

- (a) "Application for Licensure", Form DE-01, 06/2014; and
- (b) "Application for Apprentice Diabetes Educator Permit", Form DE-03, 06/2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014 at 10:00 AM Eastern Time at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements to apply for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it establishes the requirements to apply for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the requirements to apply for licensure.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 100 individuals have already been licensed as diabetes educators, and future applications may result in up to 250 individuals being licensed as diabetes educators.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with the administrative regulation or amendment: Applicants for licensure will be required to comply with the application procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will be able to apply for licensure.

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

(a) Initially: The budget for the board is unknown, as it is unknown how many persons will ultimately apply for licensure.

(b) On a continuing basis: The budget for the board cannot be estimated for the future until the total number of licensees is known with more precision.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.334, 309.335, 309.336

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of diabetes educators for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of diabetes educators for the subsequent years.

(c) How much will it cost to administer this program for the first year? The board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Licensed Diabetes Educators  
(New Administrative Regulation)**

**201 KAR 45:180. Diabetes Education Courses**

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.335(1)(b)1. requires the board to promulgate administrative regulations specifying requirements for the board-approved course in diabetes education. This administrative regulation establishes the requirements and procedures for the board-approved course in diabetes education.

Section 1. The American Association of Diabetes Educators Core Concepts Course shall constitute a board-approved course in diabetes education.

Section 2. A person may petition the board to approve another course in diabetes education that is substantially equivalent to the American Association of Diabetes Educators Core Concepts Course.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2014 at 10:00 a.m. Eastern Standard Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements for board-approved courses in diabetes education.

(b) The necessity of this administrative regulation: This regulation is necessary because it establishes the requirements for board-approved courses in diabetes education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the requirements for board-approved courses in diabetes education.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 100 individuals have already been licensed as diabetes educators, and future applications may result in up to 250 individuals being licensed as diabetes educators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Applicants for licensure will be required to take a course in diabetes education conforming to this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will be able to take courses in diabetes education and apply for licensure.

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

(a) Initially: The budget for the Board is unknown, as it is unknown how many persons will ultimately apply for licensure.

(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the total number of licensees is known with more precision.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of diabetes educators for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? The revenue will depend on the number of diabetes educators for the subsequent years.

(c) How much will it cost to administer this program for the first year? The board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

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

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Office of the Secretary**  
**(Repealer)**

**500 KAR 4:011. Repeal of 500 KAR Chapter 4.**

RELATES TO: KRS 13A.100, 15.530, 15.540, 15.550, 15.560, 15.570

STATUTORY AUTHORITY: KRS 15A.160, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.530 requires the Kentucky Law Enforcement Council to certify training for law enforcement telecommunicators and authorizes the Kentucky Law Enforcement Council to prescribe standards for schools conducting telecommunicator training courses for law enforcement units required by KRS 15.560 in order to gain or retain certification. 500 KAR Chapter 4 was replaced in its entirety by administrative regulations contained within 503 KAR Chapter 1 and 503 KAR Chapter 3 and is no longer necessary. This administrative regulation repeals 500 KAR Chapter 4.

Section 1. The following administrative regulations in 500 KAR Chapter 4 are hereby repealed:

- (1) 500 KAR 4:010. Definitions;
- (2) 500 KAR 4:020. Training: qualifications; application;
- (3) 500 KAR 4:030. Certification of schools;
- (4) 500 KAR 4:040. Approval of course curriculums;
- (5) 500 KAR 4:050. Certification of instructors;
- (6) 500 KAR 4:060. Basic training: graduation requirements; records;
- (7) 500 KAR 4:070. In-service training: graduation requirements; recognized courses, records; and
- (8) 500 KAR 4:080. Review of council and school decisions; appeal to circuit court.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2014, at 9:00 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Dana M. Todd, Assistant General

Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Dana M. Todd

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(c), repeals 503 KAR Chapter 4. Telecommunicators.

(b) The necessity of this administrative regulation: This administrative regulation repeals regulations that were replaced in 1999 by administrative regulations located in 503 KAR Chapter 1 and Chapter 3.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals obsolete or duplicate Kentucky regulatory material pertaining to law enforcement telecommunicators/public safety dispatchers as authorized by KRS 15.590.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will repeal obsolete administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repealer administrative regulation is not expected to affect individuals, businesses, organizations, or local government. It will affect the Justice and Public Safety Cabinet by eliminating archaic and potentially contradictory policies established by obsolete administrative regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefit, other than the elimination of potentially confusing out-of-date administrative regulation material, is expected for regulated entities.

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

(a) Initially: The administrative regulation imposes no initial cost to the cabinet.

(b) On a continuing basis: The administrative regulation imposes no continuing cost to the cabinet.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this administrative regulation.

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



funding increase is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering is not applied as this is a repealer administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Justice and Public Safety Cabinet will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action being taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no administrative cost to the cabinet.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no administrative cost to the cabinet.

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

Revenues (+/-): None  
Expenditures (+/-): None  
Other Explanation: None

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (New Administrative Regulation)

##### 791 KAR 1:010. Applications, permits and renewals.

RELATES TO: KRS 165A.350(3), 165A.360(1), (2), (9)

STATUTORY AUTHORITY: KRS 165A.340(3), (6), (10), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3), (6), and (10) and 165A.400 authorize the commission to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A. This administrative regulation establishes the required application requirements and incorporates by reference the required forms.

Section 1. Initial Licensure Application and Student Protection Fund Contribution for Schools. (1) A school residing in and doing business in Kentucky shall submit:

(a) Form PE-15, Application for Resident School; and

(b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.

(2) A school not residing in Kentucky, but seeking to do business in Kentucky, shall submit:

(a) Form PE-16, Application for Non-Resident School; and

(b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.

Section 2. Annual Renewal License Application for Schools. (1) The annual renewal license application for a school residing in and doing business in Kentucky shall be the Form PE-17, Application for License Renewal Resident School.

(2) The annual renewal license application for a school not residing in Kentucky, but doing business in Kentucky, shall be the Form PE-18, Application for License Renewal Non-Resident School.

(3) Each school shall:

(a) List each program for which it is approved, including the Classification of Instructional Programs (CIP) code, the number of contact or credit hours for the program, the length of the program, and the cost of the program;

(b) Provide a copy of:

1. Its enrollment agreement noting each item that is required by statute;

2. a. Its most recent audited financial statement, if the school is accredited; or

b. Its most recent financial income statement certified by an independent accountant, if the school is not accredited;

3. Its faculty and personnel handbook;

4. Its current catalog, certified and true and correct in content;

5. Any advertising and marketing materials utilized by the school;

6. Its occupational license and current fire inspection report;

7. Its organizational chart for each school; and

8. Its certificate of accreditation, if accredited; and

(c) Submit a Form PE-11, Form for Instructional Staff and Key Administrative Personnel.

Section 3. Permit Application for Agents. The permit application for each agent of a school licensed by the commission shall be the Form PE-19, Application for Permit to Act as an Agent, to seek initial approval with the commission, and the Form PE-20, Application for Renewal of Permit to Act as an Agent, to seek renewal with the commission annually.

Section 4. Transfer of Ownership of a School. The application for recording a transfer of ownership of a school licensed by the commission shall be the Form PE-21, Application to Transfer Ownership of a School.

Section 5. Change of Name of a School. The application for approval of a change of name of a school shall be the Form PE-22, Application to Change the Name of a School.

Section 6. Change of Location of a School. The application for approval of a change of location of a school shall be the Form PE-23, Application to Change the Location of a School.

Section 7. Application to Award an Associate Degree. The application to award an associate degree shall be the Form PE-10, Application to Award an Associate Degree.

Section 8. New Program. The application for approval of a new certificate or diploma program shall be the Form PE-14, Application for a New Program.

Section 9. Request for Transcript. The request for a transcript shall be the Form PE-28, Request for Transcript.

Section 10. Revision of an Existing Certificate, Diploma, or Associate Degree Program. (1)(a) The school shall submit written notification detailing cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period to the commission on a Form PE-12, Notification to Revise an Existing Program for Less Than 25%.

(b) A change in the name of an existing program that does not change the overall objective of the program shall not be considered in the computation of the cumulative curriculum changes.

(2)(a) A school shall submit a Form PE-13, Application to Revise an Existing Program for 25% or More, to the commission if cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period.

(b) A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.

(3) A school shall notify the commission in writing of the program name changes, course name changes, or course description changes.

Section 11. (1) Beginning in 2016 and every year thereafter, the school shall report its job placement rate per licensed program to the commission by January 15, and shall be the Form PE-39, Job Placement Reporting.

(2) The job placement rate in the field of study for the program shall be calculated as follows:

(a) Determine the total number of students who, during the immediately preceding July 1-June 30 period, graduated from the program;

(b) Of the total number determined under paragraph (a) of this subsection, determine the number of graduates who the school has documented as not available for employment due to health-related issues for individual or family member, death, active military duty, spouse or dependent of military personnel relocated due to military transfer, incarceration, visa restrictions, or continuing education at least half-time;

(c) Subtract the total number of graduates not available for employment in paragraph (b) of this subsection from the total number of graduates under paragraph (a) of this subsection. This difference shall be the denominator for the equation;

(d) Of the total number determined under paragraph (c) of this subsection, determine the number of graduates who obtained job placement in a position in the field of study as defined in subsection (9) and (10) of this section. This shall be the numerator for the equation; and

(e) Divide the number of students determined under paragraph (d) of this subsection by the difference found in paragraph (c) of this subsection. This quotient converted to a percentage shall be the job placement rate.

(3) For purposes of the job placement rate calculation, the school shall obtain the placement data by contacting employers or graduates to obtain the relevant information under the definitions in subsections (9) and (10) of this section. Such contact and information shall be documented in writing, and shall include:

(a) Name of the employer;

(b) Name of the graduate;

(c) Addresses and telephone numbers of graduate and employer;

(d) Title of employment;

(e) Duties of employment;

(f) Length of employment;

(g) Total hours worked per pay period;

(h) Name and title of the person(s) providing the information to the school;

(i) Name and title of the person(s) at the school who received and recorded the information;

(j) The date the information was provided;

(k) When the school obtains the relevant information by telephone or personal contact, as opposed to a written document, the school shall send a confirming letter to the provider of the information setting forth in specific detail the information provided and the date it was provided. The school shall maintain a copy of the confirming letter and evidence it was sent; and

(l) Statement whether the school designated the graduate as placed in field or not.

(4) All data and information used by a school to support the job placement rate, including any information that the graduate is not

available for employment, shall be reliable, verifiable, and documented in writing.

(5) Documentation supporting job placement rates for each applicable period for each program shall be maintained by the school in a retrievable and well-organized manner.

(6) The job placement rates calculated by the school and the underlying documentation shall be subject to review and audit by the commission and the costs for such shall be paid by the school. This may include requiring the school to:

(a) Submit graduate data to the Kentucky Center for Education and Workforce Statistics to include a graduate's name, date of birth, Social Security number, gender, ethnicity, residency at point of graduation, and the CIP code and level of the program from which the student graduated; and

(b) Have a certified public accountant report on the school's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

(7) Nothing herein shall prevent any other state agency from investigating, reviewing, or auditing the underlying documentation and the rates provided hereunder in accordance with any appropriate law, including the Kentucky Consumer Protection Act, KRS 367.110 et seq.

(8) A school that operates a program that is intended to and only provides continuing education courses to attendees for the purpose of the attendee maintaining current licensure shall so certify to the commission. Such school shall also obtain written statements from all attendees affirming that the person's purpose in attending courses offered by the school is to maintain current licensure. Such school's certification to the commission and underlying written affirmations shall suffice for the calculation of job placement rates for that continuing education program.

(9) Job placement in a position in the field of study shall be defined as follows:

(a) Within 180 days of graduating from the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study and the school shall document same.

(b) If a license or certification is required or generally requested for positions in the occupation, then within 180 days after the results are available from the first exam that the graduate would have been able to take after completing the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study.

(c) In addition to paragraph (a) or (b) of this subsection, for a part-time position in the field of study to be considered job placement, the school shall possess a handwritten statement from the graduate at time of completion that part-time employment is the graduate's objective for employment including a general explanation for such objective.

(d) For self-employment to be considered as job placement, the school shall possess a handwritten statement from the graduate describing:

1. The work and demonstrating that it is in a position in the field of study;

2. That the graduate has received compensation in return for services provided in connection with the self-employment; and

3. That the graduate has completed at least 675 hours of work in connection with the graduate's self-employment, including time spent marketing the business, cultivating clients, negotiating contracts, and initiating or completing the work.

(10) Position in the field of study shall be defined as follows:

(a) The graduate's employment shall be a position included in the most recent National Center for Education Statistics and U.S. Bureau of Labor Statistics CIP-SOC Crosswalk for the program studied identified by the six (6) digit U.S. Department of Education classification of instructional program code, and the routine work shall predominantly require using the core skills and knowledge expected to have been taught in the program and the position shall require education beyond high school level; or

(b) In instances where graduates are continuing in prior employment, the graduate's prior employment position shall be

reasonably related to the program training and the graduate attests in the graduate's handwriting at the time of enrolling in the program and upon completion of the program, with reference to a specific written policy of the employer, to the benefit of the training as a catalyst for maintaining or advancing in a position.

(11) Failure to comply with this section shall be grounds for denial of a license, or suspension or revocation of an existing license.

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

- (a) "Application for Resident School", Form PE-15, 2013;
- (b) "Application for Non-Resident School", Form PE-16, 2013;
- (c) "Application for License Renewal Resident School", Form PE-17, 2013;
- (d) "Application for License Renewal Non-Resident School", Form PE-18, 2013;
- (e) "Form for Instructional Staff and Key Administrative Personnel", Form PE-11, 2013;
- (f) "Application for Permit to Act as an Agent", Form PE-19, 2013;
- (g) "Application for Renewal of Permit to Act as an Agent", Form PE-20, 2013;
- (h) "Application to Transfer Ownership of a School", Form PE-21, 2013;
- (i) "Application to Change the Name of a School", Form PE-22, 2013;
- (j) "Application to Change the Location of a School", Form PE-23, 2013;
- (k) "Application to Award an Associate Degree", Form PE-10, 2013;
- (l) "Application for a New Program", Form PE-14, 2013;
- (m) "Request for Transcript", Form PE-28, 2013;
- (n) "Notification to Revise an Existing Program for Less Than 25%", Form PE-12, 2013;
- (o) "Application to Revise an Existing Program for 25% or More", Form PE-13, 2013; and
- (p) "Job Placement Reporting", Form PE-39, 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director; Kentucky Commission on Proprietary Education; 500 Mero Street, 3rd floor, Capital Plaza Tower; Frankfort, KY 40601, phone(502) 564-4185, fax (502) 564-4248.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a new regulation which incorporates and updates the applications used by the Kentucky Commission on Proprietary Education (KCPE).

(b) The necessity of this administrative regulation: All applications and forms used by the KCPE must be established in regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is authorized by KRS 165A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation of proprietary schools is in large part controlled through the licensing process which requires the creation and use of applications.

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

(a) How the amendment will change this existing administrative regulation: This regulation is new; however, the forms incorporated are merely being transferred from within another regulation already in existence.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 135 proprietary education schools affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Proprietary education schools will continue to fill out the applications and forms they previously filled out. There is the addition of the Annual Report forms as KRS 165A.340(6)(a) now requires schools to report additional data to the Commission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be additional cost in terms of staff time at the school to complete the Annual Report forms for the data now required per KRS 165A.340(6)(a).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A purpose of the regulation is to update the mailing address and name of the Commission which will allow schools to know where to send their forms.

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

(a) Initially: There will be initial cost to the KCPE to implement the new requirements for collecting additional data annually as now required per KRS 165A.340(6)(a).

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by fees paid by the proprietary education schools.

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

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

increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied as the same forms/applications are used by all schools regardless of size or location.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340 and KRS 165A.400

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 for the first year.

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

(c) How much will it cost to administer this program for the first full year? No additional cost is anticipated to administer these updated forms for the first full year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer these updated forms for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Repealer)

##### 791 KAR 1:091. Repeal of 791 KAR 1:090.

RELATES TO: KRS Chapter 13B, 165A.330(1), 165A.350(4)(b), 165A.360(3)(b), 165A.370(2)-(4), 165A.490, 165A.495, 165A.510(10), 165A.990

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.400, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: 791 KAR 1:030 establishes the procedure for filing complaints and hearings for all schools licensed by the Kentucky Commission on Proprietary Education, including commercial driver license training schools, thus obviating the need for 791 KAR 1:090. This administrative regulation repeals 791 KAR 1:090.

Section 1. 791 KAR 1:090, Complaint procedure against agents, commercial driver license training schools, uncredentialed agents, and uncredentialed commercial driver license training schools, is hereby repealed.

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: June 9, 2014

FILED WITH LRC: June 12, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2014 at 9:30 a.m. at the offices of the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2014, of their intent to attend. If no notification of

intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: Robert Curry, Acting Executive Director; Kentucky Commission on Proprietary Education; 500 Mero Street, 3rd floor, Capital Plaza Tower; Frankfort, Kentucky 40601, phone (502) 564-4185, fax (502) 564-4248.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 791 KAR 1:090.

(b) The necessity of this administrative regulation: 791 KAR 1:090 is no longer necessary because 791 KAR 1:030 establishes the procedure for filing complaints and hearings for all schools licensed by the Kentucky Commission on Proprietary Education (KCPE), including commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The information contained in 791 KAR 1:090 is now contained in 791 KAR 1:030.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It removes unnecessary language from KCPE's regulations.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The sixteen (16) commercial driver license (CDL) training schools will be able to find the information in a different 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: This regulation will repeal 791 KAR 1:090 so the CDL training schools will look to 791 KAR 1:030 for the necessary information.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All KCPE licensed schools will be able to find the relevant information in one place, eliminating confusion.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? There will be no cost for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this regulation.

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

(9) TIERING: Is tiering applied? No tiering is applied. The repealer will apply to all CDL training schools.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This will impact the Kentucky Commission on Proprietary Education (KCPE).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340(6)(a) requires the KCPE to promulgate administrative regulations.

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

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

(c) How much will it cost to administer this program for the first full year? It will not cost any money to administer this for the first full year.

(d) How much will it cost to administer this program for subsequent years? It will not cost any money to administer this 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (New Administrative Regulation)

#### 902 KAR 95:040. Radon Contractor Certification Program.

RELATES TO: KRS 211.9101 - 211.9135

STATUTORY AUTHORITY: KRS 211.9135(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9135(3) requires the Cabinet for Health and Family Services to be the regulatory agency for the control of radon and radon activities in the Commonwealth of Kentucky, including laboratory analysis, mitigation, and measurements. This administrative regulation establishes general requirements for the certification of individuals who perform radon measurement, radon mitigation, or laboratory analysis.

Section 1. Definitions. (1) "AARST" means the American Association of Radon Scientists and Technologists.

(2) "ANSI" means the American National Standards Institute.

(3) "ANSI/AARST" means those standard operating procedures or practices developed and maintained by the AARST Consortium on National Radon Standards for radon measurement, mitigation, or laboratory analysis.

(4) "Commercial building" means a building other than a

residential or multi-family building, including those buildings intended for public purposes.

(5) "EPA" means the Environmental Protection Agency.

(6) "Multi-family housing" means attached family dwellings in which occupants are primarily permanent in nature that are:

(a)1. Greater than four (4) units, or

2. Three (3) stories in height; and

(b) Contain an independent heating, ventilation, and air conditioning (HVAC) system.

(7) "NRPP" means the National Radon Proficiency Program.

(8) "NRSB" means the National Radon Safety Board.

(9) "Picocuries per liter" or "pCi/L" means a unit of radioactivity corresponding to one (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or 0.037 decays per second in every liter of air.

(10) "Residential" means detached one (1) to four (4) unit family dwellings not more than three (3) stories in height in which occupants are permanent in nature.

Section 2. Certification Requirements. (1) Except as provided for in KRS 211.9107(1) through (7), a person or business entity shall not:

(a) Advertise or claim to be certified;

(b) Provide professional or expert advice; or

(c) Conduct radon measurement, mitigation, or laboratory analysis without first obtaining certification from the cabinet.

(2) A person shall be eligible to be certified as a radon measurement contractor or a radon mitigation contractor if the individual:

(a) Is a minimum of eighteen (18) years of age;

(b) Submits to the cabinet:

1. An application on cabinet Form DFS-375, Application for Certification for Radon Contractors and Laboratories;

2. A two (2) inch by two (2) inch passport photo;

3. Verification of completion of an AARST-NRPP or NRSB course and exam;

4. The fees established in Section 3 of this administrative regulation;

5. A quality assurance plan that meets the requirements in Section 4(1) and (2) of this administrative regulation; and

6. Proof of fulfillment of continuing education requirements as established in KRS 211.9127; and

(c) Adheres to the requirements established in KRS 211.9123 if the individual is a non-resident of Kentucky.

(3) A radon laboratory shall be eligible for certification if the entity:

(a) Employs a minimum of one (1) individual who is a Kentucky certified radon measurement contractor;

(b) Submits the fees established in Section 3 of this administrative regulation;

(c) Submits a quality assurance plan as established in Section 4 of this administrative regulation; and

(d) Adheres to the requirements established in KRS 211.9123 if the entity is a non-resident analytical laboratory that is seeking reciprocity.

(4) Certification requirements shall not apply to an individual or business entity pursuant to KRS 211.9107.

(5) A contractor with a dual certification as a radon measurement contractor and a radon mitigation contractor shall adhere to limitations pertaining to KRS 211.9117(1) and (2).

(6) Only radon measurements performed by a certified radon measurement contractor shall be reported or disclosed to another party.

(7) A radon contractor or radon laboratory shall meet the requirements established in KRS 211.9101 through 211.9135.

(8) A certified radon measurement contractor working exclusively for a radon laboratory shall not be required to meet the insurance and quality assurance requirements outlined in subsection (1) of this section.

Section 3. Schedule of Fees. (1) The following annual fees shall accompany all applications for certification or renewal and shall be non-refundable:

- (a) Initial certification: \$250;
- (b) Annual renewal; \$250;
- (c) Duplicate certificate: twenty (20) dollars; and
- (d) Late renewal: \$100.

(2) A certified radon mitigation contractor shall pay a registration fee for each residential or commercial mitigation system installed.

(3) The following registration fees shall apply:

- (a) Residential radon mitigation system: twenty-five (25) dollars per discharge opening; or
- (b) Commercial or multi-family radon mitigation system: fifty (50) dollars per discharge opening.

(4) A certified radon mitigation contractor shall submit Form DFS 376, Application for Registration for Radon Mitigation System, for each residential or commercial mitigation system installed.

Section 4. Quality Assurance Plan and Standard Operating Procedures. (1) a person certified as a measurement contractor shall submit for cabinet approval a quality control program plan that includes:

- (a) A quality statement committing to provide quality work;
- (b) A description of the management and structure of the organization;
- (c) A listing of personnel and personnel qualifications and training;
- (d) A description of types of radon measurements performed and other related services offered;
- (e) A description of measurement types and devices the measurement contractor will utilize in conducting measurements;
- (f) A list of equipment serial numbers, model numbers, and calibration records used in performing analytical analysis;
- (g) A list of manufacturers and test types used while conducting measurement for laboratory analysis;
- (h) A worker protection program that includes the methods utilized to minimize or reduce the amount of radon or radon progeny exposures in the work area;
- (i) Procedures for procuring and storing measurement devices and materials;
- (j) Procedures for maintaining documents and records;
- (k) Procedures for calibrating and testing instruments;
- (l) A corrective action program;
- (m) Examples of forms, reports, and correspondence used in communications;
- (n) A description of the quality assurance measures including the:

- 1. Evaluation criteria; and
- 2. Frequency of the evaluations; and

(o) A statement of compliance with ANSI-AARST standard operating procedures.

(2) A person certified as a radon mitigation contractor shall submit to the cabinet a quality control program plan that includes:

- (a) A quality statement committing to provide quality work;
- (b) A description of the management and structure of the organization;
- (c) A listing of personnel and personnel qualifications and training;
- (d) A description of all types of radon mitigation methods performed and other related services offered;
- (e) A description of diagnostic testing methods utilized in designing mitigation systems;
- (f) A worker protection program that includes the methods utilized to minimize or reduce the amount of radon or radon progeny exposures in the work area;
- (g) Procedures for maintaining documents and records;
- (h) Procedures for calibrating and testing instruments;
- (i) A corrective action program;
- (k) Examples of forms, reports, and correspondence used in communications;
- (l) A description of the quality assurance measures including the:

- 1. Evaluation criteria; and
- 2. Frequency of the evaluations; and

(m) A statement of compliance with ANSI-AARST standard

operating procedures.

(3) A person certified as a radon measurement contractor shall conduct measurements in accordance with the following standard operating procedures and quality assurance protocols:

(a) Residential building measurement: AARST-ANSI Protocols for Radon Measurements in Homes (MAH 2005);

(b) Multi-family building measurement: AARST-ANSI Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (MAMF-2012);

(c) Quality assurance protocols: EPA Protocols for Radon and Radon Decay Product Measurements in Homes (EPA 402-R-92-003).

(4) A person certified as a radon mitigation contractor shall conduct mitigations in accordance with the following standards:

(a) Residential building active mitigation: AARST-ANSI Active Soil Depressurization Radon Mitigation Standards (ASD RMS) for Low Rise Residential Buildings;

(b) Multi-family active mitigation: AARST-ANSI Radon Mitigation Standards for Multifamily Buildings (RMS-MF(PS)-2013); and

(c) Residential passive mitigation: AARST-ANSI Reducing Radon in New Construction of 1&2 Family Dwellings and Townhouses (CCAH-2013).

(5) All mitigation systems shall:

(a) Be designed to reduce a radon concentration in each area within the footprint of the building as low as reasonably achievable (ALARA); and

(b) Achieve a radon level below the Environmental Protection Agency's action level of four and zero-tenths (4.0) picocuries per liter for all post mitigation testing.

(6) Failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter shall require additional radon mitigation and testing until the level is achieved.

(7) Upon modification to a component of the quality assurance program plan, the radon contractor shall resubmit the plan for approval by the cabinet prior to implementation of the modifications.

Section 5. Certification, Training, Exams, and Continuing Education Requirements. (1) Continuing education units shall be obtained pursuant to KRS 211.9127.

(2) A certified person shall be responsible for submitting proof of continuing education in accordance with KRS 211.9127.

(a) A person dually certified as a radon measurement and mitigation contractor shall acquire sixteen (16) hours of continuing educational credits per year.

(b) A person dually certified as a radon measurement contractor and a radon mitigation contractor shall maintain a separate license for each discipline.

(3) Continuing education units shall be obtained from NRPP or NRSB approved courses.

(4) Measurement contractor certification courses shall be a minimum of sixteen (16) hours of supervised instruction.

(5) Mitigation contractor certification courses shall be:

(a) A minimum of sixteen (16) hours of supervised instruction; and

(b) Include an additional four (4) hours of hands-on field work at a mitigation site.

(6) Measurement and mitigation contractors shall obtain an additional one (1) hour of course content on the requirements of this administrative regulation and KRS 211.9101 through 211.9135.

Section 6. Renewal of Certification and Inactive Certification.

(1) Each annual certification shall expire on June 30.

(2) A person seeking certification or renewal of certification shall:

(a) Meet the requirements in accordance with Section 2 of this administrative regulation; and

(b) If renewing a certification, submit cabinet Form DFS-375, Application for Certification for Radon Contractors and Laboratories, a minimum of thirty (30) calendar days prior to certification expiration. Form DFS-375 shall be deemed submitted

on the date that it is received by the cabinet.

(3) Certifications not renewed within thirty (30) days after the renewal date shall pay a late renewal fee as established in Section 3 of this administrative regulation.

Section 7. Termination of Certification. (1) A certified radon measurement contractor or radon mitigation contractor shall be responsible for notifying the cabinet in writing upon electing to terminate certification.

(2) A person previously certified by the cabinet and not engaged in radon measurement or mitigation in the Commonwealth but desiring to maintain certification may request and be granted inactive status.

(a) If inactive status is granted, the person shall:

1. Pay the certification fee established in Section 3 of this administrative regulation; and

2. Be exempt from continuing education requirements.

(b) A certified radon contractor on inactive status may petition the cabinet for renewal of active certification. If a certified radon contractor on inactive status wishes to renew active certification, the petitioner shall meet the requirements of this administrative regulation.

Section 8. Certification Denial, Suspension, or Revocation. Certifications shall be subject to denial, suspension, or revocation in accordance with KRS 211.9125.

Section 9. Reporting Requirements. (1) A person, business entity, or analytical laboratory shall submit a report to the cabinet on a quarterly basis after a:

(a) Radon or radon progeny test;

(b) Radon mitigation activity;

(c) Modification to any component of the radon contractor's quality assurance program plan; or

(d) Request from the cabinet.

(2) The report shall include the:

(a) Zip code of location of the building;

(b) Name and telephone number of the owner or owners of the building where the radon testing or mitigation activities were conducted; and

(c) Results of any tests performed.

(3) The results for each measurement conducted shall include the:

(a) Method used for radon or radon decay product testing;

(b) Conditions under which the test or tests were conducted;

(c) Location or locations within the building where the test or tests were conducted;

(d) Results of the test or tests in picocuries per liter (pCi/L) of radon gas;

(e) Date on which the test or tests were conducted; and

(f) Purpose of the test or tests.

(4) The mitigation report shall include the:

(a) Type of structure mitigated;

(b) Type of mitigation system installed;

(c) Location of mitigation system within the structure;

(d) Post-mitigation measurements;

(e) Floor plan of the structure with the location of a mitigation system; and

(f) Diagnostic and communication testing.

Section 10. Administrative Hearings. Persons, business entities, and analytical laboratories shall be afforded an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 11. Penalties. The cabinet may assess civil penalties in accordance with KRS 211.9125 against any individual in violation of any cabinet administrative regulation pertaining to radon measurement, mitigation, or laboratory analysis.

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

(a) Form "DFS-375, Application for Certification for Radon Contractors and Laboratories", 9/2012;

(b) Form "DFS-376, Application for Registration for Radon Mitigation System", 9/2012;

(c) "Protocols for Radon Measurements in Homes (MAH 2005)", 9/2005;

(d) "Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (MAMF-2012)", 2012;

(e) "Protocols for Radon and Radon Decay Products Measurements in Homes (EPA 402-R-92-003)", 5/1993;

(f) "Active Soil Depressurization Radon Mitigation Standards (ASD RMS) for Low Rise Residential Buildings", 6/2006;

(g) "Radon Mitigation Standards for Multifamily Buildings (RMS-MF(PS)-2013)", 2013; and

(h) "Reducing Radon in New Construction of 1&2 Family Dwellings and Townhouses (CCAH-2013)", 12/2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

Stephanie Mayfield Gibson, MD, FCAP, Commissioner  
Audrey Tayse Haynes, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2014, 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 July 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 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, email Tricia.Orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kenneth Spach

(1) Provide a brief summary of:

(a) What this administrative regulation does:

- Defines terms not defined in the statutes;
- Establishes the general requirements for certification of individuals who perform radon measurement, radon mitigation, and laboratory analysis;
- Establishes a schedule of fees:
  - for the certification and renewal of radon professionals and laboratory analysis;
  - for the registration of the installation of radon mitigations systems; and
  - for the inspection and surveillance activities conducted by the cabinet.
- Establishes the general requirements for reporting and records pertaining to radon measurement, mitigation, and laboratories; and
- Establishes the general requirements for continuing education of radon measurement and mitigation professionals and for continuing education course approval.

(b) The necessity of this administrative regulation: KRS 211.855 authorizes the cabinet for health and family services to be the regulatory agency for radon activities including laboratory analysis, mitigation, and measurements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.855 TO 211.858

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

- Defines terms not defined in the statutes;
- Establishes the general requirements for certification of individuals who perform radon measurement, radon mitigation, and laboratory analysis;
- Establishes a schedule of fees:
  - for the certification and renewal of radon professionals and laboratory analysis;
  - for the registration of the installation of radon mitigations systems; and
  - for the inspection and surveillance activities conducted by the cabinet.
- Establishes the general requirements for reporting and records pertaining to radon measurement, mitigation, and laboratories; and
- Establishes the general requirements for continuing education of radon measurement and mitigation professionals and for continuing education course approval.

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

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

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

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

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

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

- Radon measurement businesses – 33
- Home inspection businesses – 345
- Radon mitigation businesses – 19
- County health departments – 120
- State agencies (CHFS) – 1
- Radon laboratories – 20
- Professional organizations – 5 (American Association of Radon Professionals, Kentucky Real Estate Inspection Association, Kentucky Home Builders Association, National Environmental Health Association, National Radon Safety Board)

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

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment:

- Measurement professional:
  - pay \$250.00 certification fee;
  - submit an application;
  - provide documentation of successful completion of cabinet approved radon measurement course and exam;
  - provide proof of continuing education once certified;
  - submit a quality assurance program plan; and
  - provide proof of insurance (\$500,000);
  - purchase applicable standards costing approximately \$300
- Mitigation professional:
  - pay \$250.00 certification fee;
  - submit an application;
  - provide documentation of successful completion of cabinet approved radon mitigation course and exam;
  - provide proof of continuing education once certified;
  - submit a quality assurance program plan;
  - provide proof of insurance (\$500,000);
  - purchase applicable standards costing approximately \$300, and
  - depending on the system they install pay a registration fee of:

- single family - \$ 25.00
- commercial - \$ 50.00

- Radon laboratory:
  - pay \$250.00 certification fee;
  - submit an application;
  - submit a description of all measurement devices used and analytical services offered;
  - submit a quality assurance program plan;
  - staff member that fulfills the requirements of a certified radon measurement professional; and
  - provide documentation of enrolment and good standing within an independent accreditation program for the devices submitted.
  - purchase applicable standards costing approximately \$300
- County health departments:
  - obtain basic training for all environmental health specialists that will be involved in the complaint referral of radon mitigation systems and in radon measurement.
  - refer consumer complaints the state staff.
- State staff:
  - obtain training for all environmental health specialists that will be involved in the inspection of radon mitigation systems and in radon measurement;
  - provide trainings for staff, local environmental health specialist and industry
  - provide 3 full-time staff members to administer the program; and
  - develop data bases and reporting mechanisms to administer the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

- initial certification fee of \$250.00 per year;
- renewal certification fee each year of \$250;
- purchase applicable standards costing approximately \$300
- depending on the system they install pay a registration fee of:
  - single family - \$ 25.00
  - commercial - \$ 50.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assure that each individual, company or laboratory providing services in the radon field in the commonwealth of Kentucky will be held and assessed to a set standard of certification. Better certification standards across service providers will benefit Kentuckians by providing more competent services and training to those working to protect citizens from the harmful effects of radiation.

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

(a) Initially: Trainings for the mitigation and measurement professionals, trainings for local health department environmentalist, and salaries for 2 full-time field inspectors and an administrative person would cost approximately \$150,000.

(b) On a continuing basis: the cost for subsequent years would be approximately \$150,000. this cost includes providing one continuing education course for current professionals and trainings for newly hired professionals as well as administrative personnel.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: the source of funding will be via the establishment of certification and registration fees for radon contractors and laboratories.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: the establishment of fees will be necessary to administer this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation will establish fees for certification and registration as follows:

- Initial certification fee of \$250.00;
- Annual renewal fee of \$250.00;



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- Duplicate certification fee of \$20.00
- Late renewal fee of \$100; and
- Registration fees of radon mitigation systems of:
  - single family - \$ 25.00
  - commercial - \$ 50.00

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation as it will apply equally to those individuals or entities regulated by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local county health departments and the Department for Public Health, Environmental Management Branch

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.855

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Approximately \$150,000 of revenue would be generated via fees 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? Approximately \$150,000 of revenue would be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? Administration of the program for the first year will cost approximately \$150,000, which includes trainings for the mitigation and measurement professionals, trainings for local health department environmentalist, and salaries for 2 full-time field inspectors and an administrative person.

(d) How much will it cost to administer this program for subsequent years? The cost for subsequent years would be approximately \$150,000, which includes providing one continuing education course for current professionals and trainings for newly hired professionals as well as administrative personnel.

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

Commissioner's Office

(Repealer)

#### 907 KAR 3:111. Repeal of 907 KAR 3:110.

RELATES TO: 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 13A.310(a)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Kentucky Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 907 KAR 3:110. 907 KAR 3:110 is being repealed because the scope of services addressed in it are now addressed in other administrative regulations.

Section 1. 907 KAR 3:110, Community mental health center

substance abuse services, is hereby repealed.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2014 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2014 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 907 KAR 3:110, Community mental health center substance use services. 907 KAR 3:110 establishes provisions regarding substance use treatment (provided by community mental health centers or CMHCs) for pregnant women.

(b) The necessity of this administrative regulation: It is necessary to repeal 907 KAR 3:110, as provisions regarding substance use disorder services are now established in administrative regulations other than 907 KAR 3:110.

(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 eliminating an unnecessary/duplicative administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of the authorizing statutes by eliminating by eliminating an unnecessary/duplicative administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This repealer administrative regulation affects community mental health centers in that it eliminates an unnecessary/duplicative administrative regulation regarding community mental health center services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required of regulated entities or individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on regulated entities or individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Community mental health centers will benefit from the clarity of eliminating an unnecessary/duplicative administrative regulation.

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

(a) Initially: The administrative regulation imposes no cost on the Department for Medicaid Services.

(b) On a continuing basis: The administrative regulation imposes no cost on the Department for Medicaid Services.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee nor funding increase is necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes nor increases any fee.

(9) Tiering: Is tiering applied? Tiering is not applied as this is a repealer administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Not applicable, this administrative regulation is being repealed. 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? This administrative regulation will generate no revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no administrative cost on the Department for Medicaid Services.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no administrative cost on the Department for Medicaid Services.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of June 10, 2014

**Call to Order and Roll Call**

The June 2014 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 10, 2014, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Ernie Harris, Co-chair, called the meeting to order, the roll call was taken. The minutes of the May 2014 meeting were approved.

**Present were:**

**Members:** Senators Perry Clark, Robert Damron, Alice Forgy Kerr, Sara Beth Gregory; and Representatives Robert Damron, Jimmie Lee, and Tommy Turner.

**LRC Staff:** Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Emily Harkenrider, Karen Howard, and Betsy Cupp.

**Guests:** Gary Stephens, Education Professional Standards Board; Maryellen Allen, State Board of Elections; Lynn Zellen, Office of the Secretary of State; Rob Carter, Mike Grammer, Garry Morris, Department of Revenue; Carolyn Reed, Michael Rodman, Board of Medical Licensure; Sonja Minch, Francis Simpson; Board of Barbering; Jonathan Buckley, David Cox, Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Board of Nursing; Mark Brengelman, Scott Majors, Board of Physical Therapy; James Grawe, Margaret Hazlette, Board of Social Work; Stewart Bridgman, James Grawe, Board of Licensure for Professional Art Therapists; Angela Evans, Board for Applied Behavior Analysts; Karen Waldrop, David Wicker; Department of Fish and Wildlife Resources; Amy Barker; Department of Corrections; Chad Collins, Amy Peabody, Julian Tackett, Department of Education; Greg Dearing, Anne-Tyler Morgan, Bruce Roberts, Gilbert Robinson, State Fire Commission; Russell Coy, DJ Wasson, Clark Williams, Department of Insurance; Jack Coleman, Phil Craig, Michael Davis, Gary Feck, Dale Spicer, Steve Willinghurst; Deborah Anderson, Alice Blackwell, Mike Handy, Stuart Owen, Phyllis Sosa, Mary Sparrow, Steven Veno, Cabinet for Health and Family Services; Nick D'Andrea, UPS; Sean Dreisback, Jeffersontown Fire Department.

**The Administrative Regulation Review Subcommittee met on Tuesday, June 10, 2014, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates**

16 KAR 2:010. Kentucky teaching certificates. Gary Stephens, staff attorney, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**SECRETARY OF STATE: Address Confidentiality Program**

30 KAR 6:010 & E. Kentucky address confidentiality program. Maryellen Allen, executive director, and Lynn Zellen, director of communications, represented the office of the Secretary of State.

In response to questions by Co-Chair Harris, Ms. Zellen stated that victims of crimes such as sexual assault, stalking, domestic violence, and crimes against minors were included as victims who may apply to keep their addresses out of publicly available voter records and who may vote by absentee ballot. This administrative regulation protected victims from the release of their addresses and from the potential risk of appearing at a polling place.

In response to questions by Representative Damron, Ms. Zellen stated that the voter records from which the addresses were omitted were the same records used by candidates for campaign purposes. There was an application process, and victims were not

automatically placed on the protected list. There was a process by which a victim may withdraw from the protected list, and the protection expired every two (2) years. After the expiration, the victim may opt to apply again.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 8 to include an additional relevant statutory citation; and (2) to amend Section 11 to correct the agency's email address in three (3) of the forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Selective Excise Tax; Motor Fuels**

103 KAR 43:330. Measurement of compressed natural gas (CNG) and liquefied natural gas (LNG) in gallons. Mike Grammer, assistant director, and Gary Morris, policy advisor, represented the office. Nick D'Andrea, director, United Parcel Service, appeared in support of this administrative regulation.

Mr. D'Andrea thanked the office for amending this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a superfluous statutory citation; (2) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 2(3) to delete "or 1.52 gallons" from the conversion rate for liquefied natural gas (LNG), so that the conversion rate is now "6.06 pounds" of LNG to "one (1) gallon of special fuels." Without objection, and with agreement of the agency, the amendments were approved.

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

201 KAR 9:301. Repeal of 201 KAR 9:300. Carolyn Reed, licensure coordinator, and Michael Rodman, executive director, represented the board.

201 KAR 9:305. Continued licensure of athletic trainers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 2 to correct statutory citations; and (2) to amend Section 2 to clarify that the required HIV/AIDS course shall count as part of the required number of continuing education units. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 9:307. Fee schedule regarding athletic trainers.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Barbering: Board**

201 KAR 14:085. Sanitation requirements. Sonja Minch, administrator, and Francis Simpson, chair, represented the board.

In response to questions by Co-Chair Harris, Ms. Minch stated that the board had been working to educate licensees regarding new sanitation requirements, the most significant of which was the requirement that the concentration of alcohol required for disinfectants was changing from seventy (70) to ninety (90) percent. There should be no cost associated with the change.

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; (2) to amend Sections 1 through 6 and 12 through 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Sections 13, 14, and 15 to re-insert sanitation requirements that had been inadvertently deleted. Without objection,

and with agreement of the agency, the amendments were approved.

**Board of Licensure for Professional Engineers and Land Surveyors: Board**

201 KAR 18:192. Continuing professional development for professional land surveyors. Jonathan Buckley, general counsel, and David Cox, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 6 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Nursing: Board**

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements. Nathan Goldman, general counsel, and Paula Schenk, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to change references for the American Academy of Nurse Practitioners to the American Association of Nurse Practitioners to conform to the name change of the national certifying organization; and (2) to amend Sections 2, 6, 7, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

In response to a question by Co-Chair Harris, Mr. Goldman stated that no comments were received during the public comment period.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, 9, and 11, and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 11 to change references for the American Academy of Nurse Practitioners to the American Association of Nurse Practitioners to conform to the name change of the national certifying organization. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:161. Investigation and disposition of complaints.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend Sections 1, 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:360. Evaluation of prelicensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to clarify what constitutes "progress" by adding the factors for evaluating a program on monitoring status and if the program will obtain full approval or be placed on conditional approval status. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:370. Applications for licensure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add relevant statutory citations; (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (3) to revise material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with

agreement of the agency, the amendments were approved.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

A motion was made and seconded to approve the following amendments: to amend Section 2 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:450. Alternative program.

In response to questions by Co-Chair Harris, Ms. Schenk stated that the term, "chemical dependency" was being changed to "substance abuse disorder" to reflect the same change in the Diagnostic and Statistical Manual. The manual was changed to broaden the term to include those confronting a similar situation but who did not qualify as chemically dependent. The change was mainly one of nomenclature more than a distinction in the effect.

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, 2, 3, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Physical Therapy: Board**

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant. Mark Brengelman, counsel, and Scott Majors, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; (2) to amend Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:160. Telehealth and telephysical therapy.

In response to questions by Co-Chair Harris, Mr. Majors stated that physical therapy activities that may be done through telehealth included consultations, evaluations, education, assessments, and intervention. This administrative regulation only authorized telehealth as appropriate. The board had discussed professional consultation via telehealth between multiple providers with the same patient, but had yet to address robotic physical therapy via telehealth-like technology.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A; and (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Social Work: Board**

201 KAR 23:015. Temporary permission to practice. Jim Grawe, assistant attorney general, and Margaret Hazlette, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Licensure for Professional Art Therapists: Board**

201 KAR 34:060. Qualifying experience under supervision. Stewart Bridgman, board member, and Jim Grawe, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 3 to establish that the supervisory agreement shall include the number of hours of face-to-face supervision and how it shall be obtained; (4) to amend Section 5 to establish that the board may grant a limited waiver from the face-to-face supervision requirements upon written request by the supervisor and supervisee; (5) to amend Section 8 for temporary supervision of an associate in cases of extenuating circumstances to establish a time frame of notifying the board of these circumstances within ten (10) days; and (6) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

**Kentucky Applied Behavior Analysis Licensing Board: Board**

201 KAR 43:100. Telehealth and telepractice. Angela Evans, assistant attorney general, represented the board.

In response to a question by Co-Chair Harris, Ms. Evans stated that appropriately administered telehealth and telepractice was trending in an effort to increase access to providers.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to make a technical correction; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:300. Black bear seasons and requirements. Karen Waldrop, wildlife division director, and David Wicker, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the Media Release form attached to CPP 1.2 to delete the portion of the form that required a member of the media to release the department from liability for any injury incurred at a facility before being allowed access to the facility; and (2) to amend Section 1 to change the edition date for the revised policy. Without objection, and with agreement of the agency, the amendments were approved.

At the May 13, 2014 meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend CPP 1.2, News Media, to specify under what conditions an interview request may be denied and to clarify identification requirements; (2) to amend CPP 9.8, Search Policy, to clarify definitions for contraband, cross-gender searches, and exigent circumstances; and (3) to amend Section 1 to change the edition dates for those revised policies. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:999. Corrections secured policies and procedures.

This administrative regulation was reviewed and amended, without objection and with agreement of the agency, by the Subcommittee in closed session pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Terms, Attendance and Operation**

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. Chad Collins, general counsel, and Julian Tackett, commissioner, represented the Kentucky High School Athletic Association. Amy Peabody, assistant general counsel, represented the board.

In response to questions by Co-Chair Harris, Mr. Tackett stated that restrictions regarding a student athlete who followed a coach to a different school are not automatic. The transfer would be discussed at a hearing to consider if restrictions should apply. The trend was to penalize school personnel involved in these situations, rather than the student athletes who are usually not responsible for the infractions.

In response to a question by Representative Damron, Mr. Tackett stated that public comments were supportive of this administrative regulation. Representative Damron thanked the Kentucky High School Athletic Association for moving in the direction of penalizing the school officials, rather than the student athletes. He thanked Mr. Tackett for always handling emotional issues in a positive and professional way.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, and 5: (1) for technical corrections; and (2) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Fire Commission: Commission on Fire Protection Personnel Standards and Education**

739 KAR 2:090. Candidate Physical Ability Test. Anne-Tyler Morgan, counsel, and Bruce Roberts, division director, represented the commission. Sean Dreisbach, chief, Jeffersonton Fire Department, appeared in support of this administrative regulation.

In response to a question by Senator Clark, Mr. Roberts stated that the commission considered training styles that were gender appropriate, and the commission's twenty-five (25) year training program had been validated through the court system to provide effective training for both genders. Up to two (2) practice sessions were available prior to testing.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Section 1 to insert a definition for "professional firefighter" to clarify that administrative and part-time personnel are not professional firefighters; and (3) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Department of Insurance: Financial Standards and Examination Division: Insurance Premium Finance Companies**

806 KAR 30:020. Abuse of minimum service charge. Russell Coy, program manager, and DJ Wasson, administrative coordinator, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to cite to the service charge established in KRS 304.30-090(3); and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Division of Insurance Fraud Investigation: Insurance Fraud**

806 KAR 47:010. Designation of a contact person. DJ Wasson, administrative coordinator, and Clark Williams, division director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

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

815 KAR 7:120. Kentucky Building Code. Jack Coleman, deputy commissioner; Michael Davis, general counsel; and Gary Feck, director, represented the division.

815 KAR 7:125. Kentucky Residential Code.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Supports for Community Living Waiver**

907 KAR 12:020E. Reimbursement for new Supports for Community Living waiver services. Alice Blackwell, assistant director, and Stuart Owen, regulation coordinator, represented the cabinet.

Mr. Owen stated that the department's telehealth provisions were established by statute. The goal was to increase accessibility, especially to remote areas of Kentucky.

**Division of Policy and Operations: Veterans Affairs Nursing Facilities**

907 KAR 18:001 & E. Definitions for 907 KAR Chapter 18.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) add a definition for "regular part-time employee." Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 18:005 & E. Reimbursement provisions and requirements regarding Veterans Affairs nursing facility services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3 through 6, 14, and 15 to establish provisions to cover prescription drugs as part of the services at a Veterans Affairs nursing facility; (2) to amend Section 5 to delete outdated provisions; and (3) to amend Sections 2 through 6 and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Aging and Independent Living: Division of Guardianship: Guardianship**

910 KAR 2:040. Service provisions for adult guardianship. Mike Handy, branch manager, and Phyllis Sosa, staff assistant, represented the cabinet.

In response to questions by Senator Gregory, Ms. Sosa stated that the change regarding Do Not Resuscitate (DNR) orders still required nurse consultation, but was no longer limited to a Department of Community Based Services nurse.

In response to a question by Co-Chair Harris, Ms. Sosa stated that there had been complaints that the DNR order process was too slow; however, the division was committed to a thorough process because these were life and death issues.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 6, 7, 15, 16, 19, 22, 25, and 26 to comply with the drafting and formatting requirements of KRS Chapter 13A and for technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Income Support: Child Support Enforcement: Family Support**

921 KAR 1:430. Child support administrative hearings. Mary Sparrow, policy analyst, and Steve Veno, commissioner, represented the cabinet.

**Other Business:** Co-Chair Harris announced that Co-Chair Bell had resigned his seat on this Subcommittee. He also introduced new staff member, Angela Bertholf, who will serve as assistant to the Compiler.

**The following administrative regulations were deferred to the July 8, 2014, meeting of the Subcommittee:**

**GENERAL GOVERNMENT CABINET: Board of Licensure for Massage Therapy: Board**

201 KAR 42:035. Application process, exam, and curriculum requirements.

201 KAR 42:040. Renewal.

201 KAR 42:060. Code of ethics and standards of practice for massage therapists.

201 KAR 42:080. Programs of massage therapy instruction.

201 KAR 42:110. Continuing education requirements.

**TRANSPORTATION CABINET: Kentucky Bicycle and Bikeways Commission: Motorcycle and Bicycle Safety**

601 KAR 14:020. Bicycle Safety standards.

**Department of Highways: Division of Maintenance: Billboards**

603 KAR 10:001. Definitions.

603 KAR 10:010. Static advertising devices.

603 KAR 10:020. Electronic advertising devices.

603 KAR 10:030. Removal of vegetation related to advertising devices.

**PUBLIC PROTECTION CABINET: Department of Insurance: Financial Standards and Examination Division: Health Maintenance Organizations**

806 KAR 38:100. Risk-based capital for health organizations.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Controlled Substances**

902 KAR 55:090. Exempt anabolic steroid products.

**Department for Medicaid Services: Hospital Service Coverage and Reimbursement**

907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement.

**The Subcommittee adjourned at 2:10 p.m. until July 8, 2014 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 NATURAL RESOURCES AND ENVIRONMENT**  
**Meeting of June 4, 2014**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on **Error! Reference source not found.** for its meeting of June 4, 2014, having been referred to the Committee on May 7, 2014, pursuant to KRS 13A.290(6). The Interim Joint Committee did not take action on these administrative regulations because a quorum was not present.

301 KAR 1:155  
301 KAR 2:049  
301 KAR 2:126  
301 KAR 2:251

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 4, 2014 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE**  
**Meeting of June 18, 2014**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of June 18, 2014, having been referred to the Committee on June 6, 2014, pursuant to KRS 13A.290(6):

201 KAR 8:016  
201 KAR 8:532  
201 KAR 8:562  
908 KAR 2:240 & E  
908 KAR 2:250 & E

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 8:016

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 4, 2014 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT**  
**Meeting of June 25, 2014**

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 June 25, 2014, having been referred to the Committee on June 4, 2014, pursuant to KRS 13A.290(6):

109 KAR 15:020

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 25, 2014 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.





## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates

A - 2

The Locator Index lists all administrative regulations published in VOLUME 41 of the *Administrative Register of Kentucky* from July 2014 through June 2015. 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 40 are those administrative regulations that were originally published in VOLUME 40 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2014 *Kentucky Administrative Regulations Service* was published.

### KRS Index

A - 7

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 41 of the *Administrative Register of Kentucky*.

### Technical Amendment Index

A - 9

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

### Subject Index

A - 10

The Subject Index is a general index of administrative regulations published in VOLUME 41 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date	Regulation Number	40 Ky.R. Page No.	Effective Date
<b>VOLUME 40</b>					
The administrative regulations listed under VOLUME 39 are those administrative regulations that were originally published in Volume 40 (last year's) issues of the Administrative Register but had not yet gone into effect when the 13 bound Volumes were published.					
<b>SYMBOL KEY:</b>			As Amended	2675	
* Statement of Consideration not filed by deadline			103 KAR 43:330		
** Withdrawn before being printed in Register			Amended	2589	See 41 Ky.R.
**** Emergency expired after 180 days			109 KAR 15:020		
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))			Amended	2194	
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			As Amended	2411	
			As Amended	2678	
			201 KAR 3:025		
			Amended	2325	
			201 KAR 3:090		
			Amended	2326	
			As Amended	2678	
			201 KAR 8:016	2385	
			As Amended	2679	
			201 KAR 8:532		
			Amended	2328	
			As Amended	2680	
			201 KAR 8:550		
			Amended	2332	
			201 KAR 8:562		
			Amended	2338	
			As Amended	2683	
			201 KAR 8:571		
			Amended	2343	
			201 KAR 9:301(r)	2648	
			201 KAR 9:305		
			Amended	2591	See 41 Ky.R.
			201 KAR 9:307		
			Amended	2592	See 41 Ky.R.
			201 KAR 11:011		
			Amended	2810	
			201 KAR 11:105		
			Amended	2811	
			201 KAR 11:121		
			Amended	2812	
			201 KAR 14:085		
			Amended	1863	See 41 Ky.R.
			201 KAR 14:090		
			Amended	2195	
			As Amended	2686	
			201 KAR 14:115		
			Amended	1866	
			As Amended	2688	
			201 KAR 18:192		
			Amended	2593	See 41 Ky.R.
			201 KAR 20:056		
			Amended	2596	See 41 Ky.R.
			201 KAR 20:057		
			Amended	2599	See 41 Ky.R.
			201 KAR 20:161		
			Amended	2602	See 41 Ky.R.
			201 KAR 20:360		
			Amended	2346	See 41 Ky.R.
			201 KAR 20:370		
			Amended	2605	See 41 Ky.R.
			201 KAR 20:411		
			Amended	2607	See 41 Ky.R.
			201 KAR 20:450		
			Amended	2609	See 41 Ky.R.
			201 KAR 22:040		
			Amended	2612	See 41 Ky.R.
			201 KAR 22:160		
			Amended	2227	See 41 Ky.R.
			201 KAR 23:015		
			Amended	2614	See 41 Ky.R.
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>					
(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 6:010E	2401	3-24-14			
907 KAR 1:019E	1573	12-30-13			
907 KAR 1:030E	1581	12-26-13			
907 KAR 1:038E	1585	12-26-13			
907 KAR 1:039E	1591	12-26-13			
907 KAR 1:044E	1595	12-30-13			
907 KAR 1:045E	1600	12-30-13			
907 KAR 1:054E	1603	12-30-13			
907 KAR 1:082E	1617	12-30-13			
907 KAR 1:604E	1631	12-26-13			
907 KAR 1:631E	1638	12-26-13			
907 KAR 1:632E	1642	12-26-13			
907 KAR 1:913E(r)	1646	12-26-13			
907 KAR 3:005E	1648	12-26-13			
907 KAR 8:005E	1655	12-26-13			
907 KAR 8:010E	1657				
Reprinted	2095	12-26-13			
907 KAR 8:015E	1660	12-26-13			
907 KAR 8:020E	1662	12-26-13			
907 KAR 8:025E	1665	12-26-13			
907 KAR 8:030E	1668	12-26-13			
907 KAR 8:035E	1671	12-26-13			
907 KAR 10:014E	1673	12-26-13			
907 KAR 12:020E	2109	2-6-14			
907 KAR 13:005E	1677	12-26-13			
907 KAR 13:010E	1680	12-26-13			
907 KAR 13:015E	1683	12-26-13			
907 KAR 15:005E	1686	12-30-13			
907 KAR 15:010E	1688				
Reprinted	2098	12-30-13			
907 KAR 15:015E	1691	12-30-13			
907 KAR 18:001E	2404	3-24-14			
907 KAR 18:005E	2405	3-24-14			
908 KAR 2:240E	2112	2-6-14			
908 KAR 2:250E	2115	2-6-14			
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>					
16 KAR 2:010					
Amended	2584	See 41 Ky.R.			
16 KAR 4:060					
Amended	2581				
30 KAR 6:010	2646	See 41 Ky.R.			
102 KAR 1:270					
Amended	2320				
As Amended	2675				
102 KAR 1:320					
Amended	2321				

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date	Regulation Number	40 Ky.R. Page No.	Effective Date
201 KAR 34:060	2387	See 41 Ky.R.	Amended	2843	
201 KAR 42:035			803 KAR 2:412		
Amended	2202		Amended	2845	
201 KAR 42:040			803 KAR 2:421		
Amended	2204		Amended	2849	
201 KAR 42:060			803 KAR 2:423		
Amended	2206		Amended	2851	
201 KAR 42:080			803 KAR 2:500		
Amended	2207		Amended	2852	
201 KAR 42:110			803 KAR 2:505		
Amended	2210		Amended	2854	
201 KAR 43:100	2649		803 KAR 2:551	2926	
		See 41 Ky.R.	803 KAR 50:010		
301 KAR 1:201			Amended	1440	
Amended	2814		As Amended	2695	
301 KAR 2:132			804 KAR 1:051(r)	2391	
Amended	2349		804 KAR 1:100		
As Amended	2689		Amended	2857	
301 KAR 2:300		See 41 Ky.R.	804 KAR 9:050		
Amended	2615		Amended	2358	
500 KAR 8:030			As Amended	2702	
Amended	2219		804 KAR 11:040	2927	
As Amended	2692		806 KAR 30:020		See 41 Ky.R.
501 KAR 6:020		See 41 Ky.R.	Amended	2622	
Amended	2353		806 KAR 38:100		
As Amended	2692		Amended	2623	See 41 Ky.R.
501 KAR 6:110			806 KAR 47:010		
Amended	2819		Amended	2629	
505 KAR 1:110			815 KAR 7:120		
Amended	2821		Amended	2630	
600 KAR 6:040			815 KAR 7:125		
Amended	2355		Amended	2633	
601 KAR 1:230	2389		900 KAR 6:055		
As Amended	2694		Amended	2858	
601 KAR 14:020			900 KAR 6:070		
Amended	2223		Amended	2860	
603 KAR 10:001	2019		900 KAR 6:075		
Amended	2453		Amended	2862	
603 KAR 10:010			900 KAR 7:030		
Amended	1889		Amended	2865	
Amended	2456		902 KAR 30:001		
603 KAR 10:020	2022		Amended	2869	
Amended	2474		902 KAR 30:110		
603 KAR 10:030	2027		Amended	2872	
Amended	2478		902 KAR 30:120		
702 KAR 7:065		See 41 Ky.R.	Amended	2876	
Amended	2618		902 KAR 30:130		
704 KAR 3:346	2925		Amended	2879	
704 KAR 3:370	2651		902 KAR 30:150		
739 KAR 2:090	2231		Amended	2883	
Amended	2798	See 41 Ky.R.	902 KAR 30:160		
803 KAR 2:300			Amended	2887	
Amended	2823		902 KAR 30:180		
803 KAR 2:306			Amended	2889	
Amended	2825		902 KAR 30:200		
803 KAR 2:308			Amended	2893	
Amended	2828		902 KAR 55:045		
803 KAR 2:309			Amended	2635	
Amended	2830		902 KAR 55:090		
803 KAR 2:314			Amended	2639	
Amended	2832		907 KAR 1:019		
803 KAR 2:317			Amended	1933	
Amended	2834		As Amended	2703	
803 KAR 2:318			907 KAR 1:030		
Amended	2837		Amended	1941	
803 KAR 2:400			As Amended	2709	
Amended	2839		907 KAR 1:038		
803 KAR 2:404			Amended	1945	
Amended	2841		Amended	2481	
803 KAR 2:406			As Amended	2712	
			907 KAR 1:039		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date	Regulation Number	40 Ky.R. Page No.	Effective Date
Amended	1951		Amended	2305	
As Amended	2716		907 KAR 13:005	2056	
907 KAR 1:044			As Amended	2776	
Amended	1955		907 KAR 13:010	2058	
Amended	2487		Amended	2560	
As Amended	2718		As Amended	2776	
907 KAR 1:045			907 KAR 13:015	2062	
Amended	1959		As Amended	2777	
Amended	2492		907 KAR 15:005	2064	
As Amended	2721		Amended	2564	
907 KAR 1:054			As Amended	2778	
Amended	1962		907 KAR 15:010	2066	
Amended	2495		Amended	2566	
As Amended	2722		As Amended	2779	
907 KAR 1:082			907 KAR 15:015	2076	
Amended	1977		Amended	2577	
Amended	2510		As Amended	2788	
As Amended	2736		907 KAR 18:001	2658	
907 KAR 1:604					See 41 Ky.R.
Amended	1991		907 KAR 18:005	2660	
Amended	2524				See 41 Ky.R.
As Amended	2749		908 KAR 2:240	2234	
907 KAR 1:631			As Amended	2793	
Amended	1998		908 KAR 2:250	2236	
Amended	2532		As Amended	2795	
As Amended	2755		910 KAR 2:040		
907 KAR 1:632	2034		Amended	2361	See 41 Ky.R.
Amended	2536		Amended	2801	See 41 Ky.R.
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907 KAR 1:835			Amended	2642	
Amended	2899		921 KAR 2:055		
907 KAR 3:005			Amended	2369	
Amended	2002		921 KAR 2:060		
Amended	2540		Amended	2910	
As Amended	2759		921 KAR 3:030		
907 KAR 8:005	2038		Amended	2912	
As Amended	2765		921 KAR 3:042		
907 KAR 8:010	2040		Amended	2914	
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## SYMBOL KEY:

\* Statement of Consideration not filed by deadline

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(r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation

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** Withdrawn before being printed in Register			Recodified as 791 KAR 1:040		6-12-14
**** Emergency expired after 180 days			201 KAR 40:050		
(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.			Recodified as 791 KAR 1:050		6-12-14
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## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

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